

Paul Solomon
3307 Meadow Oak Drive
Westlake Village, CA 91361
Paul.solomon@pb-ev.com

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The Honorable Stephen A. Feinberg
Dep. Secretary of Defense
1010 Defense Pentagon
Washington, DC 20301-1010

Subj: Part 2, Acquisition Reform To Do List – Cost-Plus Contracts and Fees

Dear Hon. Dep. Sec. of Defense Feinberg:

Please add a review of the effectiveness of cost-plus contracts with award or incentive fees to your acquisition reform to do list. This recommendation augments my letter to Sec. Def. Hegseth, Subj: DoD Cost-Plus-Award-Fee Contracts Enable Fraud, Waste, and Abuse, dated Feb. 12.

The new information includes evidence from my whistleblower lawsuit against Lockheed Martin (LM) and Northrop Grumman (NG) regarding “alleged” fraud, and real waste and abuse regarding the F-35 Joint Strike Fighter (JSF) contract. It also includes my letter to former USD Ellen Lord, 2020, and Ash Carter’s 2014 speech, “Why Does Government Not Work? Winning Back the Trust.” The evidence cites the F-35 program but the issues are pervasive and systemic at DoD.

Lord, Subj: NASA OIG Report and Reform Implications for the DOD Adaptive Acquisition Framework (AAF), 7/17/20

Excerpts:

The NASA OIG’s latest report, “NASA’s Management...” includes...findings...in common with the JSF program. I believe that NASA’s issues are...systemic in DOD..consider providing remedies in your roll out of the remainder of the AAF. The issues in the NASA report are:

1. “Replenishment of Lockheed’s management reserves”
2. “Award fee practices to be overly generous in light of programs’ significant cost increases and schedule slippages.”

Given...significant cost increases and schedule delays, we found...overly generous with award fees provided to Lockheed...We attribute these overly generous award fees to the subjective nature of award fee evaluations coupled with nebulous and dated criteria used by the program. The result...is those adjectival ratings—such as “Excellent”— given to the contractor often do not accurately reflect performance shortfalls.”

My article in *Defense Acquisition Magazine* “Systems Engineering and Earned Value Management Support for Performance-Based Awards,” January 2007, cited GAO findings that :

- Contractors are not held accountable for achieving desired outcomes, including cost goals, schedule goals, and desired capabilities.
- DoD needs to change its requirements and budgeting processes to get desired outcomes from the acquisition process.

Ash Carter’s Speech on F-35 Award Fees

The letter to Ms. Lord also cited Ash Carter's 2014 speech about award fees that LM received from the JSF program office that were based on subjective criteria. Carter said, "When I inherited the F-35 program, it was...way over cost...This is an embarrassment. Let me see your award fee history. He brought it and I look at the award fee history over ten years. it's eighty-five percent a year. I said this is a disaster. You're giving eighty-five percent of your award fee every year. What's going on? And he looked me in the eye and said, well I like the program manager on the LM side that I work with and he tells me if he gets less than eighty five percent of award fee, he's gonna get fired."

Evidence in My Whistleblower Lawsuit (Circuit Court and Appeals Court), 2012-2017

I presented evidence in my whistleblower lawsuit against LM and NG that supported Carter's remarks. Excerpts from the exhibits follow:

A federal appeals court concluded that "the Defense Contract Management Agency (DCMA) and GAO reports allege facts that make a potentially fraudulent scheme readily identifiable: LM and its subcontractors were violating contracting regulations by using their management reserve budgets to compensate for over budget expenditures that would have otherwise raised their cost performance indexes and Estimate at Completion reported to the government.

"...F-35 Team's outstanding performance during Award Fee Period 11... Our JSFPO customer notified us...we achieved an "Exceptional" score, the **highest possible overall rating**, and earned greater than **95% of the available fee**...In making this award, the JSFPO ... **excellent progress** on other key events:

- Continuously **improving** cost performance (CPI)
- High responsiveness to all customer expectations

From the F-35 Program Manager



To: All F-35 Lightning II Employees

June 25, 2007
F-35 PA07-09

Highest Rating for F-35 Lightning II Program

Following is a message for the entire F-35 Lightning II Team that I am especially proud to share with you. Award Fee ratings are a direct result of excellent execution to plan and that depends on excellent people. Thank you for your hard work that helps make this program successful.

*sig.1
Janis Pamiljans
Vice President, Tactical Systems
and F-35 Program Manager*

Brig Gen Davis and BGen Heinz characterized our Period 11 performance as the "**best period in the program to date**," a remarkable statement.

From my letter to Sen. McCain and GAO Fraudnet, Subj: Fraud or Abuse on F-35 Joint Strike Fighter Contract; Excessive Award Fees Based on Flawed Earned Value Management Reports, 11/22/2011:

Evidence of defense contractor fraud or abuse on the F-35... The intentional failure to follow regulatory reporting guidelines and corporate procedures enabled LM and its major subcontractors to receive excessive award fees...earned based on **flawed cost performance** that was reported in

Earned Value Management (EVM) reports called Contract Performance Reports (CPR)...included false and misleading information.

It is important to note that award fees are based on subjective criteria and determinations of "Excellence."

Punishment and Reward

Carter said that he fired the General who was told by the LM program manager that "he's gonna get fired." The NG F-35 program manager fared better than the General. He praised our team about achieving an "**Exceptional**" score and **95% of the available fee**. Janis became a Corporate Vice President for his "excellent execution to plan." I presented the following slide at a TAF national whistleblower's conference in 2018.



Where is he now?

- 6/25/07, Janis Pamiljans, NG **Sector VP**, F-35 Program Manager:
 - "Award Fee ratings are a direct result of **excellent execution to plan** and that depends on excellent people.
 - It is our pleasure to pass on news regarding the F-35 Team's outstanding performance during Award Fee Period 11...**Continuously improving cost performance (CPI)** "
- Today, Janis Pamiljans
 - **Corporate** Vice President and President of Aerospace Systems at NG since April, 2017.

The slide includes a photograph of Janis Pamiljans, a man in a suit and glasses, speaking at a podium. Behind him are the American flag and a blue banner with the Northrop Grumman logo.

Today

The statutes, regulations, cost-plus contract types, and incentives that were in place in 2007 are the status quo. They haven't worked. A favorable DCMA EVMS compliance review provides false assurance that the books are not cooked and is tantamount to a license to steal. In my opinion, agile/iterative development contracts also add to the toxic mix if there are no objective success criteria, outcome-based metrics, excellent schedule management, and excellent requirements management.

Please corroborate my assertions and finally clean up this mess. I recommend that you start with an examination of award or incentive fees that were paid recently on F-35 and submarine or other shipbuilding contracts.

Yours truly,



Paul Solomon

CC:

Hon. Sec. Def. Hegseth

Hon. Steven Morani, USD

Hon. Tammy Duckworth, SASC

Hon. Glen Grothman, HOAC	Hon. Adam Smith, HASC
Hon. Ken Calvert, HAC	Hon. Mike Rogers, HASC
Hon. Robert J. Wittman, HASC	Hon. Donald Norcross, HASC
Hon. Ro Khana, HASC	Hon. Jim Jordan, HCOA
Hon. Roger Wicker, SASC	Hon. Joni Ernst, SASC
Hon. Elizabeth Warren, SASC	DOGE
Jon Sindreu, WSJ	Anthony Capaccio, Bloomberg News