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The Honorable Adam Smith  
Chairman, HASC  
2216 Rayburn House Office Building  
Washington, D.C. 20515

Subject: Request for Supplemental GAO Investigation, F-35 Modernization

Dear Chairman Smith:

In my previous letter to you, dated December 19, 2019, I requested that you consider oversight actions and legislation that can lead to reduced acquisition costs and early warning of potential cost and schedule overruns, DOD-wide.

The GAO just published its latest report, "F-35 JOINT STRIKE FIGHTER Actions Needed to Address Manufacturing and Modernization Risk on the F-35 Program," GAO-20-339. This time, please consider initiating oversight actions that address the GAO findings. In my opinion, the current findings are symptoms of chronic Lockheed Martin F-35 failures to perform and to report the truth.

Two problems cited by GAO provide evidence that performance and reporting deficiencies that I have been disclosing for years have not been fixed, as follows:

1. Unrealistic Cost Estimates at Completion (EAC)
2. Deferred Functionality

#### **EAC**

GAO reported that the F-35's Block 4 development cost estimate did **not meet** the GAO Leading Practice that "The cost estimate results are unbiased, not overly conservative or optimistic and based on an assessment of **most likely** costs." Per GAO, "Congress is left without a complete picture of what DOD intends to spend on the total Block 4 effort."

Lockheed Martin's failure to report a most likely EAC was first disclosed in my whistleblower lawsuit against LM and Northrop Grumman in 2012. Per Northrop Grumman's reply in support of its motion for summary judgement, "There was public disclosure that defendants' EAC3 projections were *not based* on "Most Likely" estimates. On 12/19/2017, the US Court of Appeals concluded that "the DCMA and GAO reports allege facts that make a *potentially fraudulent scheme* readily identifiable: LMC 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...estimates at completion reported to the government.**

#### **Deferred Functionality**

GAO reported that Lockheed Martin “did not deliver the Block 4 capabilities it planned to deliver in 2019. Specifically, according to the plan outlined in its May 2019 report to Congress, the F-35 program was going to deliver eight Block 4 capabilities in 2019. However, the program delivered only one.”

The current problem of deferred Block 4 functionality is “déjà vu all over again.” In my letter to Sen. McCain, dated 1/21/15, I cited the “DOT&E FY2014 Annual Report” of deficiencies in the Block 2B software in fusion, radar, passive sensors, identification friend-or-foe and electro-optical targeting.

I recommended to Sen. McCain that he request the GAO to determine if the F-35 EVM Contract Performance Reports (CPR) include behind schedule conditions that are consistent with DOT&E assessments. If the CPRs are inconsistent, the GAO should examine Lockheed Martin’s Earned Value Management (EVM) processes to determine why the reports are inaccurate. It was also recommended that GAO examine the DCMA’s EVM compliance surveillance reports to determine if DCMA has detected and reported inconsistencies between the reported earned value and actual technical performance achieved.

### **Recommended HASC Oversight**

The F-35 continues to miss its schedule targets and grow in cost. It is time to examine whether Lockheed Martin’s reporting of Block 4 cost and schedule performance to DOD and to Congress is credible and accurate. My recommendations to Sen. McCain are valid today.

In a letter from Sen. McCain, dated 3/5/15, he said, “I want to thank you for your letter concerning the cost overruns and mismanagement of the F-35 program...Our focus of effort for this Congress will be to provide accountability and to arrest the growth in cost and schedule.”

That was five years ago. It has not happened. Please continue his quest.

This letter and the cited letters may be downloaded from [www.pb-ev.com](http://www.pb-ev.com) at the “Acquisition Reform” tab. Please contact me for additional information or support.

Yours truly,



Paul J. Solomon

CC:

Sen. Joni Ernst, SASC

Sen. Kamala Harris, HSGAC