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January 9, 2021

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

Subject: Additional, Unfinished NDAA Legislation

Dear Chairman Smith:

My previous letter dated Dec. 20, 2020, included actions for you to consider for oversight and acquisition reform. However, I forgot to include additional, unfinished business from 2010.

In the attached letter to your predecessor, Ike Skelton, dated March 28, 2010, I asserted that program managers are handicapped in their *“ability to measure and manage contractor performance because contractors have no requirement to report measures of quality performance. When a contractor uses an Earned Value Management System (EVMS), it is only required to report progress towards achieving cost and delivery objectives. Neither the DFARS EVMS clause 252.234-7002 nor its cited EVMS guidelines in EIA-748 require that contractors report progress toward achieving quality or technical goals that are specific and measurable.”*

The letter included a recommendation for legislation that would require the DFARS EVMS clause 252.234-7002 to be revised.

The **current DFARS clause** follows:

252.234-7002 Earned Value Management System.

(f) The Government will schedule integrated baseline reviews (IBR) as early as practicable, and the review process will be conducted not later than 180 calendar days after—

- (1) Contract award;
- (2) The exercise of significant contract options; and
- (3) The incorporation of major modifications.

During such IBRs, the Government and the Contractor will jointly assess the Contractor’s baseline to be used for performance measurement to ensure complete coverage of the **statement of work** (see last sentence of this letter), logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

The **proposed clause** would add “technical performance measures” to the last paragraph, as follows:

During such reviews, the Government and the Contractor will jointly assess the Contractor’s baseline to be used for performance measurement to ensure complete coverage of **technical performance measures in addition to** the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

Unfinished Business from NDAA for FY 2011

Chairman Skelton listened. He marked up the NDAA for FY 2011 to include Sections 864 a, b, and c. DoD was required to:

- Review acquisition guidance, including DoD Instruction 5000.02, to “consider whether **measures of quality and technical performance** should be included in any EVM system.
- Submit a report to the Armed Services Committees

As you know, ten years later, contractors are still not required to measure technical performance and they don’t.

I am optimistic that the new DOD administration will be more receptive to real acquisition reform regarding Program/Project Management (P/PM). In 2010, my focal point for the NDAA markup was then-HASC staffer, Andrew Hunter. Today, he is on the Biden-Harris Transition Team and has been receiving my recommendations to you. I am hopeful that he will be in a position to influence DOD P/PM policy and be supportive again.

So, if DOD fails to take remedial actions regarding the cited DFARS clause, please take action to make it happen in addition to the actions that were recommended earlier.

To restate the real goal, DOD should “**Buy Products that Work, not Statements of Work.**”

Yours truly,



Paul J. Solomon

CC:

Sen. Joni Ernst, SASC

Sen. Kamala Harris, VP-Elect

Mr. Andrew Hunter, Biden-Harris Transition Team

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March 28, 2010

The Honorable Ike Skelton, Chairman
House Armed Services Committee
2120 Rayburn House Office Building
Washington, DC 20515

Subject: Panel on Defense Acquisition Reform Recommendation Regarding Earned Value

Dear Chairman Skelton:

I am pleased that the HASC Panel on Defense Acquisition Reform issued its final findings and recommendations. However, there is an impediment to successful implementation of Recommendations 2.3 and 2.4.

It is commendable that the recommendations include implementation of performance measures that track how a Program Executive Office (PEO)/buying activity manages its contractors. Those measures include cost, quality, and delivery. It is also commendable that the performance assessments of PEO/buying activities be directly linked to positive incentives and consequences. Unfortunately, the PEO/buying activity will be handicapped in its ability to measure and manage contractor performance because contractors have *no* requirement to report measures of *quality* performance.

When a contractor uses an Earned Value Management System (EVMS), it is only required to report progress towards achieving cost and delivery objectives. Neither the DFARS EVMS clause 252.234-7002 nor its cited EVMS guidelines in ANSI/EIA-748 require that contractors report progress toward achieving quality or technical goals that are specific and measurable.

In fact, ANSI/EIA-748 states that earned value is a “measurement of only the *quantity* of work” and that “quality and technical content of work performed are controlled by other means” (Section 3.8). Guideline 2.2.b describes the use of technical performance goals to measure progress as an *option*, not a *requirement*. DoD’s Report to Congress, *DoD Earned Value Management: Performance, Oversight, and Governance*, stated that contractors “keep EVM metrics favorable and problems hidden.” The deficiency in DFARS and ANSI/EIA-748 enables contractors to report metrics that are more favorable than actual conditions and to defer reporting of real problems.

For example, a contractor that bases earned value primarily on the quantity of work completed could report that the program is on schedule based on the quantity of drawings or software code completed, or tests executed, even though it has not met planned technical achievement. Also, the deficiency in DFARS and EVMS enables a contractor to base earned value for rework on the quantity of design changes instead of reporting net progress towards a plan for meeting specified technical requirements.

A revision to the DFARS EVMS clause would provide a remedy for this deficiency. The revision would require contractors to measure and report quality or technical performance in their contractual schedules and contract performance reports. A proposed revision is shown in bold Italics within the quotation marks below.

Proposed Legislation to Revise DFARS

In order to support the ability of a PEO/buying activity to manage its contractor's quality performance, the DFARS EVMS clause 252.234-7002(e) should be revised to require that, during integrated baseline "reviews, the Government and the Contractor will jointly assess the Contractor's baseline to be used for performance measurement to ensure complete coverage of **quality or technical performance measures in addition to** the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks."

Today, neither the acquisition managers nor the PARCA office can be assured that a contractor's performance metrics are valid or accurate. To my knowledge, neither the GAO nor any other agency ever validated that EVMS truly integrates cost, schedule and quality/technical performance or that it provides accurate status and Estimate at Completion. There is a need to transform EVMS into a more valuable acquisition management tool that will provide early warning of performance problems on a consistent basis.

Please consider this recommendation to revise DFARS as a basis for legislation that will be considered in the House this year and will ultimately be enacted into law. I will send a similar request to Sen. Levin. Additional information was provided to you in my letter dated Dec. 11, 2009.

I would be happy to discuss this with you or your staff. I believe this acquisition reform will benefit the taxpayers and war fighters.

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Copy:
Rep. Robert Andrews
Mr. Andrew Hunter