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The Honorable Tammy Duckworth, Joni Ernst, Kamala Harris (Senate)
The Honorable Chairman Adam Smith (HASC)
Under Secretary of Defense Ellen Lord

Subj: Award/Incentive Fees for Software Deliveries Using Agile Methods

Dear Senators, HASC Chairman Smith, and USD Lord:

This letter supplements the previous letter, Subj: "F-35 Software Deliveries Using Agile Methods; Schedule Slips and "Technical Debt" per DOT&E," dated February 6. It responds to DOT&E's assessment that the Agile process is "high risk." Recommendations are provided to increase the effectiveness of recent acquisition reforms and to focus congressional oversight on "high risk" software acquisitions.

There are two recommendations:

1. DOD should consider a revision to DOD Instruction 5000.02I, "Operation of the Adaptive Acquisition Framework," that would add award/incentive fee criteria that are dependent on:
 - a. Achieving the goals and features of each software iteration and increment in the Product Roadmap on a timely basis and
 - b. Reducing the total open deficiencies in the Technical Debt, especially Type I or critical deficiencies.
2. The Armed Services Committees should include a provision in the NDAA for FY 21 for DOD to perform two reviews regarding the use of Agile methods and to submit respective reports to the Committees.

DOD Actions

a. Pertaining to DOD-wide use of Agile Methods

Review DoD Instruction DODI 5000.02I, "Operation of the Adaptive Acquisition Framework," to consider whether the Software Acquisition Pathway Policy and Procedures should include procedures and criteria for award/incentive fees, including:

- i. Should award/incentive fee criteria include unambiguous, objective measures of progress towards meeting goals and features of each software iteration and increment in the Product Roadmap?
- ii. Should the decision authority use the Value Assessments of progress on the program as a basis for award/incentive fees.
- iii. Should end users determine if the mission improvements and/or efficiencies realized from the delivered software capabilities meet the criteria for award/incentive fees
- iv. Should award/incentive fee criteria include quantitative goals to reduce the total open deficiencies in the Technical Debt, especially Type I or critical deficiencies.

b. Pertaining to Use of Agile methods on the F-35 Program

Review the award/incentive fees paid to Lockheed Martin for the F-35 Program Block 4 Operational Flight Program (OFP) software updates since the inception of C2D2/Agile methods, the initial criteria for those fees, any revisions to the criteria, the justification for any revisions to the criteria, and the reductions or increases in the Technical Debt, including Type I open deficiencies.

c. Submit respective reports to the Armed Services Committees by (date TBD).

Armed Services Committees Actions

Include in the NDAA for FY 2021 a provision that requires DOD to take the actions described above.

Background on Award/Incentive Fee Issues

Both former Secretary of Defense Ashton Carter and Sen. Joni Ernst have expressed concerns about undeserved award fees.

Sec. Carter gave a speech at Harvard on May 16, 2014. It was entitled, "Why Does Government Not Work? Winning Back the Trust." He discussed how a former F-35 program executive officer was fired in 2010 after explaining that he based the government's decision to award Lockheed Martin 85 percent of the potential award fee, even though the F-35 program was suffering from major cost growth on his desire to protect the job of his Lockheed Martin counterpart.

Although not applicable to DOD, the U.S. Senate passed Sen. Ernst's measure that bans federal agencies from paying bonuses to government contractors for federal projects that don't meet outcome standards. Per the Senator, "If projects are billions over budget and years behind schedule...the federal contractors working on these boondoggles are incomplete or poorly done, then they sure as heck shouldn't be awarded a bonus."

Per, DFARS PGI 216.402-2, Technical performance incentives, "Contractor performance incentives should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

Conclusion

These recommendations address the DOT&E assessment, the DFARS clause, the concerns of Sec. Carter and Sen. Ernst, and the specific Lockheed Martin F-35 history and issues that were described in the previous letter.



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Copies:

The Honorable Asst. Secretary of Defense for Acquisition, Kevin Fahey
Anthony Capaccio, Bloomberg News
Michael LaForgia, NYT