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The Honorable Ellen Lord
Office of the Under Secretary of Defense for Acquisition & Sustainment

Subject: NASA OIG Report and Reform Implications for the DOD Adaptive Acquisition Framework

Dear Undersecretary Lord:

The NASA OIG's latest report, "NASA's Management of the Orion Multi-Purpose Crew Vehicle Program," includes two findings that have elements in common with the F-35 Joint Strike Fighter program. I believe that NASA's issues are also systemic in DOD. Please consider providing remedies in your roll out of the remainder of the Adaptive Acquisition Framework.

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."

Pertinent Findings on Management Reserves and Award Fees

Per the NASA report:

1. Management Reserve: "Lockheed's management reserves were depleted to such a degree as to require the Over Target Baseline at least 28 months ahead of the planned Artemis I launch."
2. Award Fees:
 - a. "Given the Orion Program's significant cost increases and schedule delays, we found that NASA has been 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, for both the Orion Program and frequently other NASA programs, is that adjectival ratings—such as "Excellent"—given to the contractor often do not accurately reflect performance shortfalls."
 - b. "Historically, we have found NASA's award fee practices to be overly generous in light of programs' significant cost increases and schedule slippages, and in past reports have recommended reforms to ensure poor contractor performance is reported to the award fee rating officials."

Our Prior Correspondence

In my letter to you and Senators Ernst and Harris, subject: "Support of Bogus Bonus Ban Act and Related Acquisition Reforms," dated Sept. 22, 2019, I cited evidence, supplied in a whistleblower lawsuit, of **award fees that should never have been approved on the F-35 contract**. 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: Lockheed Martin Corporation 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.”

Cited in that letter was former Secretary Ash Carter’s 2014 speech at Harvard Kennedy School. 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 Lockheed Martin 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.”

The cited letter may be downloaded from my web site, www.pb-ev.com, at the “Acquisition Reform” tab.

Recommendations to Improve Effectiveness of Award Fees

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

The article included the following recommendations in the paragraph headed “**Contractual Performance-Based Progress and Incentives**”:

DoD customers should use performance-based acquisition management by including requirements and award fee incentives for performance-based management and reporting in their contracts, beginning with the solicitation. Then the program manager can link award fees to achieving desired program outcomes. Earned value will provide insight that is based on technical performance if the contractor is required to link discrete work packages to milestones for key technical and management deliverables. A sample of those deliverables follows:

- Success criteria for major technical reviews
- Technical Performance Measures (TPM) planned values and measurement milestones
- Master schedule that identifies all systems engineering products, such as the technical baselines and requirements traceability matrices; identifies TPM planned value milestones; and is linked to the identified success criteria
- Product metrics reports.

Adaptive Acquisition Framework

The award fee and management reserve issues persist. Your Adaptive Acquisition Framework is unfinished. For example, the DOD 5000 instructions for **Major Capability Acquisition and Engineering** are “coming soon,” per your web site.

Please consider my recommendations for inclusion in the remaining policy reforms and instructions.

Yours truly,

A handwritten signature in black ink that reads "Paul J. Solomon". The signature is written in a cursive style and is placed on a light pink rectangular background.

Paul J. Solomon

CC:

Sen. Joni Ernst, SASC

Sen. Kamala Harris, HSGAC

HASC Chairman Adam Smith

Anthony Capaccio, Bloomberg News

Michael LaForgia, NYT