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The Honorable Kathleen Hicks  
Deputy Secretary of Defense  
1010 Defense Pentagon  
Washington, DC 20301-1010

Subject: DoD Acquisition Reform Needs and Recommendations

Dear Deputy Hicks:

I watched your nomination hearing and read your answers to the Advance Policy Questions. Congratulations on being confirmed. We share common acquisition reform goals.

I have participated in and advocated acquisition reform for 25 years. My recommendations were incorporated into NDAAs, DoD policy and guides, and ANSI-accepted standards for Program/Project Management (P/PM) and Earned Value Management Systems (EVMS). Unfortunately, the DoD reforms were more cosmetic than substantive. Current DoD Instructions and DFARS are not sufficient for effective management of Major Capability Acquisitions or Software Acquisitions when Agile methods are used. Please consider my assessments and recommendations that dovetail with your goals.

Below, I reiterated some of your answers and statements to the SASC followed by my associated comments. The comments and slides below are excerpts from my past letters to legislators and federal officials, from my tutorial at the Naval Postgraduate School, "Integrate Systems Engineering with EVM Program Management, Contractually and Practically," and from the cited white paper, "*From EVMS lite to PMBOK*" (*EVMS lite*).

**From your answer to the Advance Policy Question re cost, schedule, and performance goals:**

Hicks: "I plan to closely monitor the acquisition system to ensure achievement of those goals and will make adjustments as necessary to ensure our programs achieve them."

Paul: The monthly Integrated Program Management Reports provided by contractors for Major Capability Acquisitions do not provide valid, reliable information.

**Excerpts from letter to Zients (OMB), Dec. 2009:**

**EVMS**

Most agencies use EVM based on the EIA-748, EVMS, to obtain timely information regarding the progress of capital investments. However, there is a serious deficiency in EVMS (that) enables a contractor to be compliant with the EVMS guidelines yet fail to report valid performance towards meeting a program's cost, schedule, and technical objectives. EVMS does not provide sufficient guidance to link reported earned value with progress towards meeting the quality or technical performance requirements of the

customer (Quality Gap). Instead, EVMS waives a requirement to link EV to technical performance.

### **DoD Report to Congress**

The DoD recently submitted a report to Congress as required by Section 887 of the FY 2009 National Defense Authorization Act as amended by Section 302 of the Weapon System Acquisition Reform Act of 2009 (WSARA). The report is "DoD EVM: Performance, Oversight, and Governance" (Report). The Report concludes that the utility of EVM has declined to a level where it does not serve its intended purpose. Other excerpts follow:

Accuracy of EVM data provided by vendors...in conveying the true status of the project :

- Various subsystems that make up many contractors' EVMS are not integrated, resulting in inconsistent portrayals of status
- Contractor change control processes do not maintain the integrity of the Performance Measurement Baseline
- Contractors treat EVM as a reporting requirement rather than the management process it is intended to be
- Many instances of inappropriate changes
  - o Arbitrarily changing past variances
  - o Moving budgets to mask overruns
- End result
  - o Many Defense contractors cannot accurately predict outcomes that affect program costs or deliveries
  - o These types of data quality problems hinder the government's ability to meet program objectives by delaying or masking insight into developing problems

### **Excerpts from letter to HASC Chairman Skelton, March 2010:**

- 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.
- 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 on performance problems on a consistent basis.

### **Excerpts from letters to Chairman McCain, 2011:**

- The acquisition regulations and process enable contractors to submit invalid, misleading information to the Government on all capital asset acquisitions, not just weapon systems. We need to improve transparency and accountability when contractors use a contractually-required EVMS on cost-reimbursement contracts.

- The EVMS guidelines are like Generally Accepted Accounting Principles (GAAP). However, GAAP protects investors but EVMS often fails to protect taxpayers. The standard has ambiguities and loopholes that should be removed.

**Excerpts from letters to VP-Elect Harris, Nov. 2020:**

Please forward the Vought letter to the future OMB Director and Secretary of Defense. It addresses elements of the current President's Management Agenda (PMA) that should be included in Pres. Biden's future agenda as well my specific recommendations regarding PMA objectives to:

1. Reduce the accumulated regulatory burden (and acquisition/oversight costs).
2. Improve management of major acquisitions.

**Excerpts from *EVMS lite*:**

In the WSARA House/Senate conference report, Sen. Susan Collins stated that the GAO observed that contractor EVM reporting lacks consistency and leads to inaccurate data and faulty application of the EVM metric. "In other words, garbage in, garbage out."

The Section 809 Report concluded that "EVM has been required on most large software programs but has not prevented cost, schedule, or performance issues." The lack of focus on product in the procurement process was discussed in Volume 2 of the Section 809 Report, as follows. "The current system focuses on process, not product. Former ASN(RDA) Sean Stackley said this focus takes PMs' attention away from the fundamentals of cost, schedule, and performance, and is one of the major contributors to negative acquisition outcomes. This perspective is shared by many stakeholders with whom the Section 809 Panel met and was aptly described by one stakeholder as "mission becoming secondary to perfection of the contract."

**From Your SASC statement on abuse and waste:**

Hicks: We need to squeeze out abuse and, more frequently, we see waste, and that will be a priority for me.

Paul: Covered in my letters to Sen. McCain (cited in Sanders letter), in excerpts from *EVMS lite*, and from my whistleblower lawsuit against Lockheed Martin and Northrop Grumman on the F-35 program.

**Excerpts from *EVMS lite*:**

A NDIA Letter to DOD, May 11, 2007, with its attached position paper, "Award Fee Incentive Provisions Using EVM Reporting," admitted that:

"..in recent years, some defense contracts have misused these incentives (to achieve program contractual outcomes) by tying achievement of certain EVM cost and schedule metrics to award and incentive fees and thereby **sacrificing objective program status reporting** in favor of **"making the number."**...A greater risk posed by the use of these monthly incentives is that they can provide the wrong focus (i.e., **management of data and reports**). Managing a program using these data outcomes could cause contractors to ...taking other **actions that might be less than optimal in order to maintain high ratios**

***between budgeted cost and schedule and actuals...EVM will reveal the truth about a program but meanwhile at-completion projections become constrained and **project managers will not receive reliable information on contract status throughout most of the Program.*****

**Excerpts from whistleblower lawsuit:**

1. This is a ***case of fraud by two major defense contractors***, who wrongfully obtained lucrative defense contracts and contract payments by submitting grossly understated cost estimates and using improper accounting to conceal their cost overruns, ***resulting in a loss to the United States government in the hundreds of millions of dollars.*** Defendants ***Lockheed Martin Corp.*** and ***Northrop Grumman***, prime contractor and a leading subcontractor on the F-35 Joint Strike Fighter program, conspired to defraud the government in at least three ways.

2. Third, by covering up their cost overruns, presenting a misleadingly rosy picture of their performance on measures of cost control, and setting performance goals which they knew all along they would not be able to meet, ***LMC and NGC were able to secure larger profits in the form of higher performance-based Award Fees than were warranted based on their actual contract performance.***

**Excerpts from my letter to Sen. Harris, Sept. 2019:**

It is sad that, ten years after the CODSIA letter, the conditions that encourage poor behavior still exist. I believe that statutory or regulatory action is needed to impede corporate malfeasance and to provide incentives for ethical corporate practices and better contract outcomes. Also, Senate action to publicize and shame the actions of Lockheed Martin and Northrop Grumman would deter future, greedy actions, even if the \$100 M of undeserved fees are not recovered.

**From Your SASC statement on lowering barriers to non-traditional defense players.**

Hicks: There are significant challenges to non-traditional defense players getting into the marketplace. We need to lower those if we are going to compete successfully.

Paul: Solution is to implement the PMIAA at DoD including replacing EIA-748 with a standard that is in accordance with ANSI-accepted P/PM standards, as prescribed in the white paper, the tutorial, and in an email to Ellen Lord.

- EIA-748: Barrier to
1. Competition from commercial suppliers
  2. Contractor Accountability and Transparency



Ms. Lord,  
Tear Down This Wall!



My recommendations for the acquisition of capital assets are applicable to all civilian agencies, not just DoD. That is why I sent a more detailed letter, subj: *Reduce the Military Budget and Related Fraud, Waste, and Abuse*, to Chairman Sanders yesterday (attached). However, since DoD is the gorilla in the room, I am hoping that you will take the lead.

You can verify my credentials with Andrew Hunter and with Katrina McFarland. I worked with Andrew on Ike Skelton's markup to the NDAA for FY 2011. That provision addressed EVM and technical performance. Also, you can read the letter of appreciation I received from Sen. McCain, which is cited in the Sanders letter. Finally, I received the David Packard Excellence in Acquisition Award and was a finance officer during the Vietnam War.

Please lead DoD and coordinate with OMB to fix the policies, process, and FAR/DFARS. Chairman Smith's markup to the NDAA for FY 2021 required OMB to adopt government-wide standards, policies, and guidelines for P/PM for executive agencies that are "in accordance with standards accredited by ANSI" (not EIA-748). Unfortunately, that provision was "receded" by the Senate. If the right fixes are implemented by DoD and OMB, there will be no need for Congressional prodding. *EVMS-lite* contains a detailed plan for DoD, including interim and long-range actions.

This letter is posted on my website, [www.pb-ev.com](http://www.pb-ev.com), at the "Acquisition Reform" tab. Excerpts from similar letters are also at that tab and in a table within the letter to Chairman Sanders. In addition to the mail, I will attach this letter to an email to Mr. Hunter with a request that he forward it to you electronically. That will be faster than the snail mail and paper flow process.

Good luck,



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CC:

Sen. Joni Ernst, SASC

Sen. Bernie Sanders, Senate Budget Committee

Chairman Adam Smith, HASC

Andrew Hunter, Biden-Harris Transition Team