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The Honorable John McCain
Chairman, Senate Armed Services Committee
241 Russell Senate Office Building
Washington, DC 20510

Subject: Fraud on the F-35 Program and Need for Acquisition Reform

Dear Sen. McCain:

I seek your continuing support regarding two issues:

1. Fraudulent claims on the F-35 program and retribution to the taxpayer
2. Acquisition reform regarding earned value management (EVM)

Fraudulent Claims

Last month, a federal appeals court issued an opinion which killed my False Claims Act (FCA) or whistleblower suit regarding the F-35 program.

Per my complaint, “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. (LM) and Northrop Grumman Systems Corp (NGC)...conspired to defraud the government in at least three ways.

First, Defendants obtained a contract modification and increased funding (Over Target Baseline or OTB) for the F-35 program in 2005 by knowingly submitting grossly understated cost estimates (Estimate at Completion or EAC), misleading the government into believing the F-35 program was more affordable than it actually was.

Second, after securing the contract modification, Defendants incurred substantial and foreseeable cost overruns. Lockheed and Northrop concealed these overruns by improperly diverting funds from “Management Reserve (MR),” a budget reserve that is set aside for unanticipated future needs and is specifically prohibited from being used to cover cost overruns.

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, Lockheed and Northrop were able to secure larger profits in the form of higher performance-based Award Fees than were warranted based on their actual contract performance.”

Regarding cost overruns and award fees, the complaint was thrown out because the court found that the elements of the alleged fraud had been publicly disclosed before my suit was filed. Per the Court, the public disclosures must provide “specific details about the fraudulent scheme and the types of actors involved in it” sufficient to ‘set the government on the trail of the fraud.”

Regarding the knowingly understated EAC that was used to secure a \$6 billion contract modification, NGC, in its brief to the district court, stated that it did not use the “most likely” EAC, as required by the regulations, but instead used a “should cost” estimate, Per NGC, “should cost” is a widely recognized cost estimating concept in government contracting that necessarily produces estimates that are lower than “most likely.” The (publicly) announced deviation from “most likely” is something no reasonable government official would have missed.”

The FCA suit, filed in 2012, had been preceded by several actions:

1. My internal Corporate Ethics investigation at NGC.
2. My letter to you and the GAO Fraudnet in November 2011. GAO turned it over to the DoD IG which turned it over to the DoJ, AUSA Clay Mahaffey
3. My FCA suit. After a year of DoJ investigation, I initiated the whistleblower suit to seek, hopefully, swifter justice. The outcome was neither swift nor just. So, I am asking you to consider taking actions to prod continuing federal investigation and to deter future, fraudulent or deceptive corporate behavior.

It is ironic that the public disclosures included DCMA and GAO reports that were based on my surveillance reports as a Northrop Grumman employee. In the meantime, the defendants profited and there is no imminent retribution to the taxpayer.

Acquisition Reform

You often discuss our flawed defense acquisition system and have authored acquisition reforms in National Defense Authorization Acts (NDAA). However, the recent NDAA's, and the earlier WSARA reforms, failed to address significant deficiencies in the acquisition regulations which enable contractors to report monthly EVM cost and schedule performance, including the most likely Estimate at Completion (EAC), that are inaccurate and misleading.

In a letter to you in October 2011, subject: “Cost Controls on the F-35 and the Need for Acquisition Reform of EVM” I reported similar conditions to you. In 2016, I discussed with Ms. Gabriel, DoD’s failure to implement improvements that were discussed in its 2010 DoD EVM Report to Congress that was required by WSARA. I also cited my article which addressed the failures of DoD to implement the objective of its 2004 Policy for Systems Engineering (SE) Policy. That objective was cited in the DoD EVM Report. The article cites a DCMA assessment that contractors are not integrating Technical Performance Measurement (TPM) with EVM and points out that contractors are not even required to

use processes that would enable a program manager to adhere to DoD instructions and guidance regarding TPMs and SE.

Working Together for Justice and Acquisition Reform

I have initiated contact with Mr. Lehman and provided supporting documents. I hope to work with him on proposed acquisition reforms that should be included in the next NDAA.

Regarding justice for the taxpayers and establishing a deterrent to future corporate misbehavior, please consider following up on the federal investigation or making other appropriate inquiries.

Some of the questions that you, DoJ, or another oversight agency should ask are:

What action did NGC take as result of its internal ethics investigation?

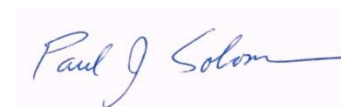
Why did the LM and NGC Vice Presidents, Dan Crowley and Janis Pamiljans, crow about the award fees in management communications with employees when they knew that the basis of the award fees, “improved” cost performance, was based on the misuse of Management Reserve (MR) to offset true cost overruns?

Why did the F-35 Joint Program Office (JPO), other DoD oversight agencies, and the GAO not detect the fraudulent actions?

Why did the F-35 JPO fail to take back undeserved award fees after publication of the DCMA and GAO reports that cited misuse of MR to improve the Cost Performance Index?

With regards to my claim of fraudulent inducement, why was the \$ 6 billion contract modification approved based on a “should cost” EAC which was lower than the “most likely” EAC? Were the approving authorities cognizant that the EAC that Lockheed Martin submitted in its request for approval of additional funds and a contract modification was lower than the “most likely EAC” that was required by the EVM guidelines and the Over Target Baseline (OTB) Guide?

Yours truly,



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