

Paul Solomon
3307 Meadow Oak Drive
Westlake Village, CA 91361
Paul.solomon@pb-ev.com

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The Honorable Donald Norcross
Chairman, HASC Subcommittee on Tactical Air and Land Forces
2216 Rayburn House Office Building
Washington, D.C. 20515

Subject: More on Deceptive Performance Metrics and Ponzi Schemes

Dear Subcommittee Chairman Norcross:

In my previous letter, I asserted that current regulation (DFARS) enables contractors to misuse Management Reserve (MR) to deceive DOD Program Managers about the true cost, schedule, and technical performance. In practice, MR budget is often transferred to cover additional rework, drawings, code, or tests and hide the true cost overrun. It is used as a slush fund.

DFARS requires that contractors use an industry standard for Program/Project Management (P/PM) called EIA-748, Earned Value Management Systems. Chairman Smith knows that I have been advocating the replacement of EIA-748 (owned by the NDIA and not accredited by ANSI) with P/PM standards that are owned by the Project Management Institute and are ANSI-accredited. The PMI standards focus on the product, not the work.

During my two years as a Northrop Grumman employee on the F-35 program, I became aware of Lockheed Martin's (LM) and Northrop Grumman's (NG) misuse of MR to reduce cost overruns. My whistleblower lawsuit against these contractors failed in a federal appeals court on jurisdictional grounds. However, some excerpts from the court documents can shed light on the misuse of MR.

Excerpts from my Surreply to LM's Reply Brief in Support of its Motion to Dismiss:

LM and NG deliberately used the term "Risk Mitigation" as a sham to deceive the government by giving the false appearance of legitimate attempts to control costs... ("Level of Effort," "rework," "recovery to schedule," "failed enablers," "return to green plans," and "change curve sunk costs."

Far from endorsing these improper practices, the JPO specifically rejected a LM request to relax the criteria for using MR going forward...Letter from JPO Contracting Officer Randall Cohen reiterating that "MR shall not be used to offset unfavorable variances."

Excerpts from the District Court Memorandum of Opinion and Order:

These allegations are also included in the central findings of the November 19, 2007 DCMA report—and subsequently in the GAO report. In the executive summary, DCMA lists the significant findings, including that Lockheed “use[d] **MR funds to alter its own and subcontractor performance levels and cost overruns.**” . . .DCMA ultimately concluded that LM “failed to demonstrate proper use of the MR budget . . . and **misapplied MR budgets** . . . solely for the purpose of keeping the cost performance index (CPI) from worsening.”

Deceptive MR Practices are Systemic and Pervasive in DOD Contracts

The lawsuit was terminated in 2017 after five years of litigation. So, you may ask, why are the allegations relevant today? Because the contracting environment, including DFARS and EIA-748, has not been fixed.

Regarding the misuse of MR, in Sept. 2009, DOD submitted a report to Congress (as required by WSARA) which found:

“DoD has found many instances of inappropriate changes, such as **arbitrarily changing past variances, moving (MR) budgets to mask overruns**, and making changes that were not properly authorized. Inappropriate changes will not allow early insight into developing issues and will prevent managers from making effective decisions to mitigate problems.”

I observed these corporate malpractices on other programs, including B-2 and Global Hawk. If you authorize GAO to assess the F-35 program and similar development programs, I am confident that it will find current examples of MR being used for rework, additional drawings etc. and verify that the true cost overruns are hidden.

This letter and may also be downloaded from www.pb-ev.com at the Acquisition Reform tab. More information about the whistleblower suit is at the “F-35 Whistleblower Case” tab.

Yours truly,



Paul J. Solomon

CC:

Hon. Adam Smith, Chairman, HASC

Hon. Joni Ernst, SASC

Mr. Andrew Hunter, Biden-Harris Transition Team

Hon. Kathleen Hicks, Dep. Sec. of Defense

Hon. Acting Undersecretary of Defense Stacy Cummings

Ms. Diana Maurer, GAO