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July 14, 2021

The Honorable Adam Smith  
Chairman, HASC  
2216 Rayburn House Office Building  
Washington, D.C. 20515

Subject: Repeated Request for GAO Assessment of F-35 Block 4 Modernization Incentive/Award Fees

Dear Chairman Smith:

Yesterday, GAO issued its latest report, GAO-21-105282 *F-35 JSF Cost and Schedule Risks in Modernization Program Echo Long-Standing Challenges*. The report repeated earlier findings that

“program officials acknowledged that they are not collecting all the metrics they need to better understand program risks and make more informed management decisions, but are taking steps to do so.” Per GAO, the metrics “provide further insight into the quality and performance of software development.”

Metrics that provide insight into the quality and performance of software development should, in my opinion, also be the basis for determining incentive or award fees. I have previously expressed my concerns that the use of Agile Program/Project Management (P/PM) methods will not be successful in acquiring software that is embedded in weapon systems and other military-unique hardware systems. I also expressed concerns that award or incentive fees were being paid on such contracts based on subjective assessments of technical performance and not on real achievements and pre-determined objective criteria.

Previously, six requests were sent to you and other legislators (Sen. Ernst, then-Sen. Harris, and Sen. McCain) to request a GAO assessment of incentive or award fees paid to Lockheed Martin for Block 4 Modernization. Please include a provision or provisions in the NDAA for FY 2022 to authorize an assessment of the criteria used for incentive/award fees. Excerpts from previous letters follow.

**Letter to then-Sen. Harris, Subj: Subject: Support of Bogus Bonus Ban Act and Related Acquisition Reforms, dated Sept. 22, 2019 (which cited email to Sen. Ernst, dated 8/12/19)**

Conduct a study of the incentive or award fees most recently paid on the F-35 Lightning II JSF...contract.

(2) ELEMENTS.—The study (1) shall include an assessment of the following

- (A) the extent to which the Department has established award or incentive fee criteria that are based on the verification, on a timely basis, of the quality and technical maturity of the features and functions of the product being developed and tested and that the Department has defined and documented technical performance objectives such as technical performance measures, progress against requirements, and exit criteria of life-cycle phases.
- (B) the extent to which the prime contractors have reported schedule performance in their contract performance reports for the most current incentive or award fee period that is based on verified, objective measures of technical performance.
- (C) the extent to which the prime contractors have been paid award or incentive fees, in the most recent period, that is based on verified technical and schedule performance

(D) the extent to which the prime contractor has reported schedule performance that includes verified objective measures of technical performance for development of Block 4 software and the Automatic Logistics Information System (ALIS).

**Letter to you, Subj: Repeated Requests for GAO Investigations, F-35 Modernization and Agile development (many “Days late and dollars short”), dated June 9, 2020**

Yesterday, the GAO published yet another report, GAO-21-222 Weapon Systems Annual Assessment, which cites problems with the F-35 Block 4 Software Modernization effort and with Agile development methods. These problems are chronic and systemic in DOD Major Capability Acquisition and Software Acquisition programs.

Please take oversight actions that I had recommended to you in 2020 and to Sen. McCain in 2015.

...of the 36 programs that reported using Agile development (23 MDAPs and 13 MTA programs), only six reported delivering software to users in less than 3 months. The majority of programs using Agile either responded that the question was not applicable or they did not know the frequency with which software is delivered to users; or are delivering software to users every 10 to 13 months or more, ***well outside the recommended range for Agile development***. We previously reported that the most well-known feature of Agile software development is its emphasis on developing software in iterations that are being continuously evaluated on their functionality, and customer satisfaction.

**Requested Oversight Actions**

Please review my letters. The recommended GAO investigations, going back to 2015, are still pertinent. Why are we still “always a day late and a dollar short?”

Also, please add a review of the F-35 program office’s failure to perform. It *recategorized* 178 of the 861 category 2 deficiencies as “enhancements.” If category 2 deficiencies could formerly impede mission success, how can they now be considered enhancements? What is an enhancement? Is this another scheme to conceal deferred or reduced functionality?

**Letter to you, Subj: Request for Supplemental GAO Investigation, F-35 Modernization, dated Oct. 6, 2020**

It is recommended that you request GAO to expand the scope of requested Report on Agile P/PM, to include “other information” that includes:

1. An assessment of the effectiveness and use of incentive and award fees when Agile P/PM is used to acquire software that is embedded in weapon systems and other military-unique hardware systems.

**My Concerns**

Per my letter to you dated Oct. 6, 2020:

I am concerned that the current policies, guidance, and regulations do not provide sufficient incentives to deliver the Minimum Viable Product (MVP) within cost and schedule objectives and to reduce the technical debt. More importantly, the lack of disincentives or financial penalties provide no deterrence to contractors from continuing to receive undeserved award fees. Without more contractual definition and oversight, contractors are enabled to earn the Maximum Viable Profit despite delivering a subjectively defined and downwardly revised Minimum Viable Product.

Please include appropriate provisions in the NDAA markup.

Yours truly,



Paul J. Solomon

CC:

Hon. Sen. Joni Ernst, SASC

Hon. Sen. Bernie Sanders

Hon. Sen. Elizabeth Warren, SASC

Hon. Rep. Donald Norcross

Hon. Kathleen Hicks, Dep. Sec. of Defense

Hon. Stacy A. Cummings, Acting Under Sec. Def. for Acquisition and Sustainment

Anthony Capaccio, Bloomberg News

Michael LaForgia, NYT