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February 20, 2021

The Honorable Alex Padilla
Russell Senate Office Building
Suite B03
Washington, DC 20510

Subject: Reduce Capital Asset Costs and Budgets

Dear Sen. Padilla:

Congratulations on being my new Senator. I am pleased that you are serving on the Committee on Homeland Security and Governmental Affairs and the Budget Committee. You are positioned to initiate acquisition reforms that can lower the costs of major capital assets, especially for DoD.

I am also delighted to learn that you are an MIT graduate and were a Hughes software engineer. Your engineering background and committee assignments uniquely qualify you to understand the issues. I hope that you will initiate oversight actions and legislation that can lead to improvement of Program/Project Management (P/PM) policies and reduce the costs of acquiring capital assets for all agencies. We need to revise OMB policy and the Program Management Improvement and Accountability Act of 2015 (PMIAA).

Revise PMIAA

Chairman Adams took an important first step towards acquisition reform with his markup of the NDAA for FY 2021, H. R. Sec. 1745, Requirements Relating to P/PM. However, the Senate rejected that provision. This provision was tantamount to a revision of the PMIAA. The Conference Report provided no reason for the rejection. I have requested that he resubmit the provision this year. Excerpts from my letter to him, dated Nov. 21, 2020, follow:

As I stated in an email to Sen. Harris, I fear that NDIA/CODSIA may have lobbied to reject it to preserve the status quo. The status quo provides contractors with the ability to develop major weapon systems without providing transparency regarding the true cost, schedule, and technical performance of the program and to earn undeserved profits.

If passed, implementation of your markup will result in lower costs of major capital acquisitions and earlier detection and reporting of cost overruns and schedule delays. Opponents of Sec. 1745 may allege that its passage will increase acquisition costs. They are wrong. My recommendations will result in a reduced regulatory burden, lower contractor costs, and lower compliance-review costs.

Support for my assertions is provided in the white paper, "DOD Acquisition Reform: *EVMS-lite* to Program/Project Management."

The white paper and this letter may be downloaded from www.pb-ev.com at the "Acquisition Reform" tab. Please contact me for additional information or support.

Please contact Chairman Smith and offer your support to achieve a better outcome this year. Sen. Ernst was the sponsor of the PMIAA when she was on the HSGAC. So she should also be an ally.

Revise OMB Policy

OMB policy also needs revision. The policy is OMB Circular No. A-11 (2020), Capital Programming Guide (Guide). Because it cites the wrong industry standard for EVMS, it is insufficient to achieve the following, stated objectives:

1. "Status reports from the contractor...if the acquisition is not achieving cost, schedule, or performance goals...The Integrated Project Team to determine the reasons for the deviations and the corrective actions planned by the contractor."
2. "Visibility early on into a contract's progress to identify any problems. This allows time for contractors and the Government to implement corrective actions before significant deviation from goals results." Inaccurate Again, corrective actions
3. "Implemented properly, an Earned Value Management (EVM) system will measure progress against a baseline and provide an early warning of cost overruns and schedule delays."
4. "Use of an EVM system will assist in identifying and mitigating project risk."

I first warned OMB of these problems in a letter to Jeff Zients, subj: Section 302 of the Weapon System Acquisition Reform Act (WSARA) EVM, Dec. 13, 2009.

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

Earned Value Management Standard (EVMS)

Most agencies use EVM based on the EIA-Standard 748, EVMS, to obtain timely information regarding the progress of capital investments. However, there is a serious deficiency in EVMS. The deficiency 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. 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.

I also asked Sen. Sanders to act in a letter dated Feb. 8, 2021, subj: Reduce the Military Budget and Related Fraud, Waste, and Abuse. Excerpts follow:

I would like to help you reach your objectives as Chairman of the Senate Budget Committee with specific recommendations for legislation and oversight. The recommendations directly address your goals to reduce the size of the military budget and the amount of waste in that budget. I also address reforms to OMB policy and FAR that will improve P/PM and the use of EVM” by all federal agencies, not just DoD.

My recommendations will hold contractors accountable for results, increase transparency, and make it difficult for contractors to deceive the government regarding cost, schedule, and technical performance of major acquisitions. I also target undeserved, subjectively-determined award fees to contractors that are over cost and behind schedule. But DoD acquisition reforms should get priority because defense contractors are the biggest offenders. You are correct, in your letter to Gen. Mattis of March 14, 2018, that “DoD need to fundamentally reform its procurement and business operations to crack down on the widespread waste and abuse of private defense contractors.” You covered the subjects of defense contractor fraud and cost overruns in the acquisition budget.

I asked former OMB Director Vought to take specific actions in a letter dated Oct. 27, 2020, subj: Recommendations to Improve P/PM and Achieve the President’s Management Agenda. These actions are in the section entitled “Current Recommendations to OMB.”

I worked with Sen. McCain for several years on acquisition reform.

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 similar to 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.

In a letter of appreciation from Sen. McCain, March 4, 2015, he stated “Our focus of effort for this Congress will be to provide accountability and arrest the growth in cost

and schedule. Again, I appreciate your continued efforts in working to improve our acquisitions process.”

Your Involvement

I have been an advocate of acquisition reform regarding P/PM for over twenty years and have proposed legislation that was incorporated into NDAs by HASC Chairmen Skelton and Adams and SASC Chairman McCain. However, the legislation was germinal and did not lead to changes in acquisition regulations. So contractor practices have not improved.

I had also been corresponding with Sen. Harris and sent a final letter to her on Jan. 17, 2021. Excerpts follow. .

As today is your last full day as my Senator, I am writing to you as a constituent in California and as an American. In your email to me dated June 22, 2020, you stated “I will continue to fight for the strengthening and modernization of our military while *maintaining the strictest standards of responsibility.*”

Please take corrective action to *strengthen* those standards, not maintain them.

Today, the acquisition standards are *ambiguous, not strict, and are favorable to the contractors.* The standards, regulations, policies, and DoD Instructions for acquisitions enable contractors to continue receiving funds and award fees despite executing contracts that are over cost and behind schedule, Furthermore, many systems being developed will never achieve their intended capabilities and functionalities.

You can fix this. I provided a roadmap in prior letters and emails. As asserted in my letter to SASC Chairman Smith, dated 12/20/20, “the status quo is a toxic triad of the EVMS standard (EIA-748), Agile Methods, and subjective award fees. In concert, they enable, not deter, fraud, waste, and abuse. Contractors “keep EVM metrics favorable and problems hidden.” My recommendations are intended to improve transparency and accountability of Major Capability Acquisitions, including embedded software, and to reduce the cost of Engineering and Management Development programs that use EVM based on EIA-748.”

Your first target should be to abandon EIA-748, the so-called Voluntary Consensus Standard that is owned by the NDIA. DCMA performs reviews to assess contractor compliance with EIA-748. However, a finding of compliance is not like a CPA’s certification that a contractor’s financial statements are in conformity with GAAP. In fact, reliance on EIA-748 helps to perpetuate the hoax that, if DCMA finds compliance, then Program Managers can trust the data.

Regarding the costs of implementing EVMS via EIA-748, I can provide documented and anecdotal evidence of contractors wasting time on “making the number” (NDIA, 2007), and exhibiting “poor behavior” in the establishment of program baselines and EVMS implementations (CODSIA, 2009). Contractor effort and related DoD resources are diverted from managing the program in order to manage the numbers, avoid Nunn-McCurdy violations, and maximize award fees.

Please forward this to the incoming DoD policy makers, OMB Director Tanden, and the new SASC Chair.

Sen. Padilla, I am asking you to be a champion of acquisition reform and to continue Sen. McCain's efforts. The efforts by Sen. Ernst and Chairman Adams, regarding the PMIAA, are useful. However, PMIAA covers only P/PM personnel policies, not contract requirements.

This letter and the cited letters may be downloaded from my website, www.pb-ev.com, at the Acquisition Reform tab. I would be happy to provide more information and clarification to your staff. Please let me know how I can help you to succeed.

Good luck,

A handwritten signature in blue ink that reads "Paul J. Solomon". The signature is written in a cursive style and is positioned above the printed name.

Paul J. Solomon

CC:

Sen. Joni Ernst, SASC

Mr. Andrew Hunter, Biden-Harris Transition Team