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

Subject: Additional Rationale for Resubmittal of H. R. Sec. 1745 to Reduce Defense Costs

Dear Chairman Smith:

This letter augments my letter to you, dated Nov. 21, 2020, by providing another reason why passage of your H.R. Sec. 1745 will lead to reduced defense costs. As you know, your bill was not included in the NDAA for FY 2021. “The Conference Report included the follow recession: “Program management improvement officers and program management policy council (sec. 884). The House bill contained a provision (sec. 1745) that would amend title 31, United States Code, to direct adherence to certain standards for program and project management (P/PM)... The Senate recedes with an amendment that would strike the changes to the standards.”

In my previous letter, I expressed my fear (subsequently justified) 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.” I had also asserted previously that “implementation of your markup will result in lower costs of major capital acquisitions and earlier detection and reporting of cost overruns and schedule delays.”

In this letter, I am providing information and an assertion that the “status quo” enabled Lockheed Martin to receive a modification to the F-35 contract and additional funding in 2005 that was based on false information regarding the magnitude of the current cost overrun and the estimated overrun at completion. In my opinion, had the true Estimate at Completion (EAC) been reported by Lockheed Martin, prudent DoD officials and legislators might have cancelled or modified the program then, saving tens of billions of future dollars.

In my opinion, the status quo enables today’s contractors to understate true cost overruns and EACs. Passage of your bill would be a first step towards changing the status quo, the Earned Value Management Standard EIA-748, with a standard for Program/Project Management that is in accordance with ANSI-accepted standards. As you know, EIA-748 is not ANSI-accepted. In my speech to the Taxpayers Against Fraud Conference (whistleblower attorneys), in 2018, I advocated that EIA-748 be replaced because it is owned by and is favorable to the NDIA. That slide included the following cartoon instead of words:



The assertions regarding the F-35 program were included in my whistleblower lawsuit. The amended complaint, filed *in 2015*, included the following excerpts:

In concluding that Lockheed's cost estimates were unreliable, the GAO report relied in large part on the findings of DCMA's November 2007 Compliance Report, which in turn relied in part on information uncovered by Solomon.

Lockheed and Northrop's fraudulent conduct harmed the United States government in several ways, both in economic terms and in terms of the effectiveness and combat-readiness of a key national defense program.

By submitting false and misleading cost performance data to the government, Lockheed and Northrop (through Lockheed) were able to obtain higher Award Fee amounts to which they were not entitled, causing losses to the government in an amount to be proved at trial.

As a result of Lockheed and Northrop's fraudulent agreement to understate their cost estimates, the government received substantially less than what it had bargained for when it agreed to the 2005 modification of the SDD Contract. Lockheed (and Northrop through Lockheed) promised the government that it could deliver the F-35 at a cost it knew it would not be able to meet and did not intend to meet. As a result, the government was forced both to pay higher costs, and to accept a smaller and less effective program, than it had bargained for.

By deliberately understating their cost estimates, Lockheed and Northrop deprived the Department of Defense and Congress of the accurate information they needed in order to make informed decisions about how much of their limited resources should be spent on the F-35 program (which was already the most expensive defense program in history) versus other defense and non-defense spending priorities.

By using Management Reserve to conceal predictable cost overruns, Lockheed and Northrop effectively shifted their cost problems into later stages of the program, where the problems would cost more to address and would have a more disruptive effect.

In particular, the steep cuts in development testing that resulted from the depletion of Management Reserve by 2007 had expensive and detrimental consequences for the F-35 program in the long run. Fewer test planes and fewer early test flights meant that fewer technical problems would be identified at the early stages when they could be corrected easily and inexpensively. Instead, serious defects were more likely to be discovered after the plane was in production, when fixing them would be a much more expensive proposition with hundreds of aircraft already in the field.

The delay, expense, and disruption caused by these cuts at the testing and development phase remain a pervasive problem for the F-35 JSF program to this day. Since 2007, the entire F-35 fleet has been grounded for expensive repairs nearly a dozen times upon discovery of major defects, including twice in 2013 for engine turbine blade cracking and excessive wear on rudder hinges, and most recently in June 2014 after an engine caught fire on the runway and “ripped through the top of the plane.

After hundreds of billions of dollars in government spending and more than fifteen years of design, development, testing, and production, the F-35 Joint Strike Fighter remains years away from operational and combat readiness.

Chairman Smith, the F-35 situation described above was written in **2015!** The conditions are the same **today**. Contractors can systemically and legally deceive, with DCMA compliance assessment blessings, without committing fraud. How many billions of dollars were pissed away on the F-35 and similar programs? The acquisition reforms I have been advocating were first recognized by Chairman Skelton. Sen. McCain and I kept the ball rolling. Your markup revived the reform effort but was thwarted by the Senate.

Reforms are needed more than ever. We must eliminate enablers of contractor deception and ensure early detection of programs that are in trouble. That will prevent waste and reduce defense costs and budgets.

Yours truly,



Paul J. Solomon

CC:

Sen. Joni Ernst, SASC  
Sen. Bernie Sanders, Senate Budget Committee  
Deputy Secretary of Defense Kathleen Hicks  
Mr. Andrew Hunter, Biden-Harris Transition Team