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The Honorable Henry Waxman
2204 Rayburn House Office Building
Washington, D.C. 20515

June 22, 2007

Dear Representative Waxman:

Subject: Award Fees and Contract Oversight

I am very pleased with your initiative to cut wasteful spending, the "Clean Contracting Act." I am especially supportive of Sec. 401, Funding Contract Oversight, and Sec. 501, Preventing Unjustified Award Fees. I also favored Sen. McCain's amendment in the DOD Appropriations Act of 2007 to bar award fees to contractors that are not meeting contract requirements. However, I want to warn you of defense industry efforts that may thwart your objectives.

I am a defense industry employee, a veteran and a taxpayer. I agree with you, the Senator, and the GAO that the award fee criteria must be revised to ensure that fee shall be paid based on the contractor meeting cost, schedule, and performance goals. I have worked on many programs where the contractor received high award fees while failing to meet those objectives. Consequently, I am very concerned about a defense industry position paper that was sent to DOD and want to bring it to your attention.

The National Defense Industrial Association (NDIA) sent a position paper on award fee incentives to the Deputy Under Secretary of Defense on May 11. You may be surprised to learn that NDIA candidly admits that some contractors have **misused** award fee incentives and have **not** reported objective program status in order to win high award fees. Despite their admission, NDIA recommends that recent DOD practices regarding award fee criteria, that I believe are needed, should **not** be continued because they would cause **continuation** of the inappropriate behavior. I disagree with the NDIA position and believe that it supports industry objectives at the expense of the taxpayer.

First, here is some background information. The Defense Acquisition Reform Act of 2007 (S32) and DOD policy require the use of objective criteria to assess contractor performance for award fees. Recent DOD policy states that award fee criteria be derived from **technical/programmatic, cost, and schedule contract objectives** as does the Clean Contracting Act.

The FAR **requires** that contractors use an Earned Value Management System (EVMS) for major acquisitions for development. Per the FAR, EVM effectively integrates the project scope of work with cost, schedule and performance elements for optimum project planning and control.

Some DOD acquisition managers have begun to base award fees on progress towards meeting the contract objectives. They tied award fee to progress as reported in **contractually required** EVMS reports. However, NDIA recommends breaking this link between monthly EVM reporting and incentives.

NDIA states “Some defense contractors have misused incentives by tying achievement of EVM cost and schedule metrics to award and incentive fees and thereby **sacrificing objective program status reporting in favor of “making the number.”** NDIA warns that continuation of these incentives may cause contractors to report unreliable information on contract status and constrained estimates of the final cost. The position paper also states that:

1. These types of incentive provisions could fundamentally be driving higher proposal cost and longer schedules to ensure the desired incentives are achieved.
2. With incentives based on EVM reports, **contractors may "manage data and reports,"** "cut corners," and "not do appropriate re-design or re-test."

In my opinion, when a contractor is contractually required to use an EVMS and to submit progress reports, award fee should be based on validated EVM metrics in addition to other objective indicators of progress towards meeting contract objectives. We should monitor the accuracy of reported progress with appropriate contract oversight. Consequently, award fees could be tied to the reported cost and schedule performance or be constrained when performance is not meeting contract objectives.

Although NDIA should be commended for its candor, its recommendations are not consistent with your objectives. Please continue your Clean Contracting efforts. Please consider cooperating with Sen. McCain to oversee the future changes to DOD acquisition policy or to DFAR. Please monitor DOD’s oversight of the accuracy and integrity of contractor EVMS reporting to ensure that we taxpayers are protected. Perhaps the NDIA should also demand a higher standard of integrity and ethics for its members. The NDIA position paper is attached.

I have worked on the B-2, Global Hawk, and F-35 Joint Strike Fighter programs. I am also a recipient of the DOD David Packard Award for Excellence in Acquisition for previous acquisition reform accomplishments. Your office may contact me if it needs clarification of these matters.

Sincerely,

Paul Solomon