



ACQUISITION
AND SUSTAINMENT

THE UNDER SECRETARY OF DEFENSE
3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

October 19, 2022

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510

Dear Senator Warren:

Thank you for your letter dated October 5, 2022, expressing concerns and raising questions regarding Department of Defense (DoD) policy on inflation and progress payments. The Department shares your commitment to using taxpayer funds wisely and appreciates the opportunity to address its most recent guidance pertaining to inflation.

On May 25, 2022, the DoD issued guidance to its contracting officers on inflation and economic price adjustments (EPAs). This guidance reinforced that treatment of cost increases as a result of economic conditions depends on contract type. It further advised contracting officers that companies generally bear the risk of cost increases on firm fixed price contracts, and they should not agree to requests for adjustment due to changed economic conditions as cost impacts attributable to unanticipated inflation are not a result of contracting officer directed changes. This guidance further addressed EPA clauses as a tool to equitably balance the risk of inflation between the Government and contractor and provided contracting officers with considerations to properly utilize the tool. DoD has provided an online course as well as a webinar on inflation and EPA clauses.

The Department met with the industrial associations and heard their concerns regarding harmful effects of inflation on defense contracts. On September 9, 2022, the Department issued additional guidance that addressed three areas. First, it reinforced the prior guidance regarding contract types. Second, it addressed the possibility of accommodations that may be reached by mutual agreement of all parties while reinforcing the need for consideration. Finally, it addressed authorities available to address extraordinary contractual relief under Public Law 85-804, as implemented by Part 50 of the Federal Acquisition Regulation. The Department stated it will consider requests, but noted there are stringent criteria for these requests and that funding must be available. The Department also included a reporting requirement for the Components, to enable me and my office to track these requests and ensure consistency in handling them.

The enclosed provides answers to your specific questions.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. LaPlante".

William A. LaPlante

Enclosure:
As stated

RESPONSES TO QUESTIONS
Senator Warren Letter dated October 5, 2022

1. What data and analyses has DoD received from the National Defense Industrial Association, Aerospace Industries Association, and the Professional Services Council to support increasing contract prices due to inflation? Please provide copies.

Response:

To date, the Department has not received any analyses or data from the National Defense Industrial Association, Aerospace Industries Association or the Professional Services Council to support increasing contract prices due to inflation, other than what has been provided to the general public.

2. If DoD enacts a policy to increase contract prices due to inflation, how will DoD ensure that any increased payments are not used for buybacks, dividends, or bonuses or other compensation for top company executives?

Response:

DoD does not intend to enact a policy to increase contract prices due to inflation. As indicated in guidance we issued to our workforce on September 9, 2022, we called contracting officers' attention to the existing policies (e.g. Public Law 85-804 as implemented in Part 50 of the Federal Acquisition Regulation (FAR)). Under any scenario, DoD does not have the authority to restrict how contract payments can be utilized after making a payment.

3. If DoD enacts a policy to increase contract prices due to inflation, what metrics will DoD use to determine whether this policy change achieved DoD's policy objectives?

Response:

Given that there is no present intent to put such a policy in place, the Department has not taken steps to develop metrics that would track whether any underlying policy objectives have been met.

4. If DoD enacts a policy to increase contract prices due to inflation, what role will the Defense Contract Audit Agency and the Defense Contract Management Agency have in overseeing any inflation-related contract adjustments?

Response:

Given that there is no present intent to put such a policy in place, the Department has not taken steps to scope roles and functions for DCMA and DCAA. However, I expect DoD contracting

officers will engage DCAA and DCMA to audit any significant cost proposals contractors submit invoking FAR Part 50.

5. I am not aware of any study that predated DoD's decision to increase the progress payment rate, what data was utilized by the Department to determine an increase in progress payment rates from 80% to 90% was justified?

Response:

In early Spring of 2020 when the COVID-19 National Emergency was declared, a qualitative approach was decided upon by senior DoD officials to quickly respond to the pandemic crisis and infuse cash into the defense industrial base. Most recently, the Department has been conducting a review of progress payment invoices and we will use data from that review to inform decision making relative to the standing deviation.