

Air Force Must Hand Over Answers In Lockheed's \$144M Fight

By **Grace Dixon**

Law360 (November 10, 2021, 6:47 PM EST) -- The Armed Services Board of Contract Appeals ordered the Air Force to hand over better answers to Lockheed Martin Aeronautics Co.'s inquiries, weighing in again on discovery disputes in the contractor's claims for an additional \$143.5 million in an aircraft contract.

After finding that the Air Force can't bar Lockheed's bid for more information simply because it believes the contractor's methods for litigating over excessive costs will be unsuccessful, the ASBCA ordered the federal government to turn over more information. The board told the parties it hopes this is the last time it has to mediate discovery disputes.

"This is not the first motion to compel that has been filed in this appeal, but the board is optimistic that this will be the final one and will guide the parties in working together to resolve any future discovery disputes," the ASBCA said in an October ruling unsealed this week.

The court stepped in to resolve the latest brawl between the parties in Lockheed's suit over a fixed-price contract awarded in 2007 to upgrade 49 C-5 Galaxy aircraft. The contractor alleged that excessive "over and above" work drove up costs and undermined productivity.

When the Air Force denied Lockheed's bid for additional funds, the company appealed to the ASBCA in October 2019 and has since launched three motions to compel in response to the federal government's alleged foot-dragging.

In the motion to compel at issue, the parties had been unable to reach an agreement on whether the federal government's response to Lockheed's first set of interrogatories was adequate.

Lockheed deemed the government's answers nonresponsive, inadequate, incomplete and evasive. The federal government, for its part, defended its answers and called the questions "unduly burdensome."

But the board sided with the contractor in the recently unsealed ruling, finding that just because the Air Force doesn't agree with Lockheed's theory of the case, it doesn't mean the requested information is irrelevant.

"It is not for the government to decide, especially at the discovery stage, whether appellant can be successful on its method of proof," the board said. "Appellant is free to pursue its theory of the case and propound discovery that it hopes to support this theory even if the evidence is ultimately inadmissible at the hearing stage."

The board added that the federal government's remaining objections are boilerplate responses and don't demonstrate that the discovery requests are disproportionate.

In fact, one response that it would be "unduly burdensome to attempt to locate anyone" who might have relevant information indicated that the government hadn't even given a good faith effort to try and respond, it ruled.

The ASBCA ordered the federal government to turn over answers to all of Lockheed's initial interrogatories, with the exception of two it has already addressed.

Previously, the ASBCA refused to let the Air Force use unreasonable delay as a defense in the suit because of a legislative statute of limitations.

A third discovery dispute between the two was resolved when the Air Force turned over a Defense Contract Audit Agency report to Lockheed.

Representatives for the Air Force and counsel for Lockheed didn't respond to requests for comment Wednesday.

Lockheed is represented by Stephen J. McBrady, Skye Mathieson, J. Chris Haile, Michelle D. Coleman and John Nakoneczny of Crowell & Moring LLP.

The Air Force is represented by in-house counsel Jeffrey P. Hildebrant, Caryl A. Potter, Lawrence M. Anderson and Danielle A. Runyan.

The case is Appeal of Lockheed Martin Aeronautics Co. Under Contract No. FA8625-07-C-6471, ASBCA number 62209, before the Armed Services Board of Contract Appeals.

--Editing by Orlando Lorenzo.