

## Lockheed's \$144M Aircraft Upgrade Claim Found Timely

By **Rae Ann Varona**

*Law360 (April 29, 2022, 7:02 PM EDT)* -- Lockheed Martin Aeronautics Co. can proceed with its claim for \$143.5 million for "over and above" work performed on U.S. Air Force aircraft after the Armed Services Board of Contract Appeals rejected the government's contention that the claim was untimely.

The contractor had filed its claim in October 2018 for allegedly "over and above," or O&A, work required to upgrade certain C-5 Galaxy aircraft under a 2007 Air Force contract. The government said Lockheed's claim was filed too late under a six-year statute of limitations, saying the contractor knew or should have known the basis of its claim when it sent a letter to the Air Force in February 2011 asking for equitable compensation adjustments, or by September 2012 at the latest when Lockheed began "delay and disruption" meetings.

But in an April 13 decision released before Friday, the ASBCA shut down the government's arguments and agreed with Lockheed that the Air Force was attempting to compare "apples to oranges" by not taking into account that Lockheed's October 2018 claim included different work hours than those cited in the February 2011 letter. The timing of when Lockheed knew its claim had accrued is still undetermined, the board said.

"There are questions regarding what the contractor knew and when about the need for O&A work, and regarding the number of production hours in its claim versus the production and support hours discussed in its February 24, 2011, letter and at the September 2012 meetings," the board said.

The ASBCA noted that the Contract Disputes Act, which mandates the six-year statute of limitations, doesn't define "accrual" for purposes of making a claim, but that the Federal Acquisition Regulation says that accrual begins when the government incurs liability.

It concluded that Lockheed's claim effectively accrued each time the government approved manufacturing deficiency reports, which set out the work required to be done by Lockheed. Orders for the additional and unanticipated work continued to be made after October 2012, it noted.

"Each relevant [manufacturing deficiency report] approved by the government on or after October 15, 2012, qualifies as a separate and distinct claim pursuant to the continuing claim doctrine," it said.

Counsel for Lockheed and the government did not immediately respond to requests for comment Friday.

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

The government is represented by in-house counsel Jeffrey P. Hildebrant, Caryl A. Potter, Lawrence M. Anderson and Kyle E. Gilbertson.

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 Stephen Berg.

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