

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )  
)  
Lockheed Martin Tactical Aircraft Systems ) ASBCA Nos. 49530 and 50057  
)  
Under Contract No. F33657-90-C-2002 )

APPEARANCES FOR THE APPELLANT: W. Stanfield Johnson, Esq.  
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Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE DELMAN  
ON MOTION FOR RECONSIDERATION

The Government has timely moved for reconsideration of our decision, *Lockheed Martin Tactical Aircraft Systems*, ASBCA Nos. 49530, 50057, 2000 ASBCA Lexis 47 (3/22/00), which held that appellant was entitled to recover certain costs incurred in connection with co-production efforts under its contract with the Department of Air Force to produce F-16 aircraft under the foreign military sales program. Familiarity with that decision is presumed.

For the most part, the Government repeats the same arguments previously considered and rejected by the Board. We find them no more persuasive at this time. The Government also asserts that the Board neglected certain evidence which would support its position (Motion at 3). This is not correct. The Board reviewed the entire record before issuing its decision. Rather, the Government's evidence on the key issues was weighed in the balance and found wanting. The Board found that the Government's key witnesses were not credible, and their attempts to distance themselves from

contemporaneous project records supportive of appellant's position were strained and unsuccessful. We also find ironic the Government's evidentiary arguments. While the Board's decision consistently cited to the documents and testimony of record, the Government's motion does not do so. We have again reviewed the Government's contentions, but believe that the record amply supports our findings.

The Government also asserts that the Board's decision is erroneous as a matter of law because it "glosses over" statutory and regulatory requirements which would support the Government's position (Motion at 3). This is also not correct. The Government misreads FAR 6.302-4. An "international agreement" is listed as merely one of a number of exceptions to full and open competition. Another exception listed is "the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services of such government," which the Board accurately referenced in the decision. There is ample evidence of record to support a finding of such direction in this case, including but not limited to the Government of Turkey's written direction of 24 October 1994, which the Air Force F-16 System Program Office wrongfully frustrated and which the Government has ignored in its motion and briefs. Hence, that the LOA did not expressly direct the co-production is not determinative under the facts of this case, given the well-documented AOI co-production arrangement of which Turkey, the Air Force, and appellant were well aware at all times relevant. More importantly, the Government has failed to come to terms with its authorized written directions and representations to appellant, spelled out in our decision, which authorized the co-production costs in question.

Having reviewed our decision in light of the Government's motion, we affirm it. The Government's motion for reconsideration is denied.

Dated: 15 May 2000

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JACK DELMAN  
Administrative Judge  
Armed Services Board  
of Contract Appeals

(Signatures continued)

I concur

I concur

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MARK N. STEMLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

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EUNICE W. THOMAS  
Administrative Judge  
Acting Vice Chairman  
Armed Services Board  
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA Nos. 49530 and 50057, Appeals of Lockheed Martin Tactical Aircraft Systems, rendered in conformance with the Board's Charter.

Dated:

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EDWARD S. ADAMKEWICZ  
Recorder, Armed Services  
Board of Contract Appeals