ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -	)	
	)	
U.S. Aeroteam, Inc.	)	ASBCA Nos. 61972, 61973
	)	
Under Contract No. FA8526-09-C-0007	)	
Contract No. FA8526-12-C-0039	)	

APPEARANCES FOR THE APPELLANT: Milton C. Johns, Esq.
Rachel Leahey, Esq.
Jill F. Helwig, Esq.
Executive Law Partners, PLLC
Fairfax, VA

APPEARANCES FOR THE GOVERNMENT: Caryl A. Potter, III, Esq.
Air Force Deputy Chief Trial Attorney
Isabelle P. Cutting, Esq.
Michael J. Farr, Esq.
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE O'CONNELL

These appeals involve two Air Force contracts to purchase ground support trailers for aircraft engines. The contracts have an extensive litigation history, which can be traced to two requests for equitable adjustment that appellant, U.S. Aeroteam, Inc. (USAT), submitted in 2015 that the contracting officer mostly denied. In 2016 and 2017, USAT submitted certified claims related to the trailer running gear, which was the main cost component of the REAs. After the contracting officer denied the claims, USAT filed suit in the Court of Federal Claims, which entered judgment in favor of the government. That decision was affirmed by the Court of Appeals for the Federal Circuit. *U.S. Aeroteam, Inc. v. United States*, No. 2021-2272, 2022 WL 2431626 (Fed. Cir. July 5, 2022) (*USAT I*).

Nearly two years after it submitted the first running gear claim, USAT certified claims for the remaining REA issues. The present appeals arise from those claims. As will be seen, the government contends that some parts of the two appeals were, or should have been, litigated in the Court of Federal Claims.

During the period in which the REAs/claims were under consideration or in litigation at the Court of Federal Claims, work on the second contract ground to a halt. The contracting officer terminated the contract for default and demanded the return of more than $3 million in unliquidated progress payments. USAT appealed both decisions to the Board, which denied the appeals in *U.S. Aeroteam, Inc.*, ASBCA Nos. 61933, 61934, 25-1 BCA ¶ 38,826 (*USAT II*). USAT did not appeal that decision, and it is now final and binding.

The Board conducted a five-day hearing on the present appeals.[1] Only entitlement is before us (tr. 1/7). The Board dismisses the appeals in part for lack of jurisdiction. We sustain the appeals with respect to shoring of trailers, consultants, and in-house REA costs. Otherwise, we deny the appeals.

FINDINGS OF FACT

1. USAT is a contractor that specializes in building components for the aerospace industry. *USAT I*, 2022 WL 2431626, at *1.

2. On April 24, 2009, the Air Force awarded USAT Contract No. FA8526-09-C-0007 (the 07 contract) for the delivery of up to 41 ground support trailers for C-17 Globemaster III aircraft engines. The contract provided for payment of $199,877.90 per trailer during the base contract, and $218,319.60 for optional trailers. (Joint Stipulation of Facts (JSF) ¶ 8; R4, tab 6 at 3, 12)).[2]

3. On September 6, 2012, the Air Force awarded USAT Contract No. FA8526-12-C-0039 (the 39 contract), a contract for 86 trailers at $179,975 each, with options for 12 trailers at $184,975 (R4, tab 41 at 1-4).

4. The contracts were firm-fixed-price, placing upon USAT the "'maximum risk and full responsibility for all costs and resulting profit or loss.'" *USAT I*, 2022 WL 2431626, at *1 (quoting Federal Acquisition Regulation (FAR) 16.202-1).

5. The contracts included a technical data package (TDP) that identified thousands of parts to be produced or acquired. The TDP included about 800 drawings (tr. 1/33; 4/70; R4, tab 1 at 58-86 (initial list of drawings)). Most of the litigation at the Board and the Court of Federal Claims has stemmed from the TDP.

[1] Judge Young, who conducted the hearing, retired in 2025.
[2] Citations to the Rule 4 file are to the .pdf page number of the electronic file.

<u>The Requests for Equitable Adjustment (REAs)</u>

6. In January or February of 2015, USAT submitted an REA on each contract with the running gear as the primary cost component (JSF ¶ 41). Each REA contained multiple discrete issues referred to as "factors."

7. The REA for the 07 contract sought the following amounts:

Factor 1 – Running Gear	$1,092,415
Factor 2 – Gov't Source Inspections	$37,880
Factor 3 – Progress Payments	$287,439
Factor 4 – Shoring of Trailers	$4,868
Factor 5 – Storage Boxes	$53,006
Factor 6 – Engineering Orders	$8,811
Factor 7 – Consultants	$15,904
Factor 8 – In-House REA Expenses	$25,129
Factor 9 – ID Tags	$2,109

(JSF ¶ 42; R4, tab 27).

8. The REA for the 39 contract contained many of the same factors:

Factor 1 – Running Gear	$3,559,810
Factor 2 – Gov't Source Inspections	$55,169
Factor 3 – Shoring of Trailers	$9,501
Factor 4 – Floor Space for trailers	$53,010
Factor 5 – Engineering Orders	$70,200
Factor 6 – Brake Testing	$62,162
Factor 7 – Consultants	$35,900
Factor 8 – In-House REA Expenses	$53,124
Factor 9 – ID Tags	$4,624
Factor 10 – Change in Contract – FMS	$53,758
Factor 11 – Impact on Business	$574,265

(JSF ¶ 43; R4, tab 52).

9. On May 17, 2016, the contracting officer issued a decision with respect to the 07 contract REA (R4, tab 29). He determined that USAT was entitled to:

Factor 5 – Storage Boxes	$48,229.64
Factor 6 – Engineering Orders	$8,446.64

Factor 7 – Consultants	$296.70

(JSF ¶ 49).

10. On the same date, the contracting officer issued a decision with respect to the 39 Contract. He determined that USAT was entitled to:

Factor 5 – Engineering Orders	$72,730.09
Factor 6 – Brake Testing	$68,812.12
Factor 7 – Consultants	$542.58

(JSF ¶ 53).

11. The contracting officer effectively denied the remaining factors in the REAs but left them "on hold" if USAT wished to submit additional documentation (JSF ¶¶ 49, 53).

The Running Gear Claims and Litigation

12. The running gear is essentially a drive train for the trailer, which allows it to roll, brake, and steer. USAT obtained the running gear from a subcontractor, PDI Ground Support Systems (PDI). *USAT I*, 2022 WL 2431626, at *1. According to USAT's president, Suhas Kakde, depending upon how one counts (number of parts or dollar value), the running gear made up 40 to 50% of the trailers (tr. 1/26, 49).

13. On December 19, 2016, USAT submitted a claim for $1,385,912 related solely to the running gear for the 07 contract. USAT certified the claim on February 10, 2017. (R4, tabs A - B) On February 24, 2017, USAT submitted a certified claim for $4,022,273 for the running gear on the 39 contract (R4, tab C).

14. USAT alleged that the Air Force had ordered USAT to manufacture the running gear in place of PDI, causing it to incur increased costs. *USAT I*, 2022 WL 2431626, at 2. What actually happened is that in March 2012, after delivering 19 running gear units on the 07 contract, PDI attempted to raise its price from an agreed-upon $20,300 per unit to $38,000. *Id.*; (R4, tab A at 2-3). USAT chose not to absorb the price increase and decided to manufacture the running gear itself. The financial consequences of this decision increased sharply when USAT subsequently bid the much larger 39 contract at a significantly lower price per trailer. *USAT I*, 2022 WL 2431626, at *1. (R4, tabs A at 2-3; C)

15. USAT made a number of allegations in the 07 contract running gear claims concerning defects in the contract's TDP and the ensuing delays that are relevant to the present appeals. The allegations include the following:

A. The government-provided TDP "included many RG [running gear] component drawings that were faulty." PDI had its own TDP, which was also faulty. The "discrepancies" in the TDPs "caused delays in production, increased material scrap rates, extensive rework, and greater oversight and inspection of processes and procedures by USAT inspection and management personnel." (R4, tab A at 7)

B. The TDPs "were deficient" and forced USAT to "develop solid models," which required "many attempts until the specifications were met. USAT consistently found the TDP drawing specifications resulted in 'tolerance stack-up.'"[3] (*Id.* at 8)

C. "If USAT had produced the RG using the approved drawings it received, the overall performance of the trailer would have been impaired" (*id.* at 10).

D. "Hold Point delays" imposed by the Defense Contract Management Agency (DCMA) "cost USAT their battle rhythm in the manufacturing process." When DCMA imposed these delays, "USAT incurred tremendous waste in the form of idle machines and employees working at less than their full capacity." (*Id.* at 11)

E. USAT had "to engineer a new TDP that would evolve into a build to print and to address the failings for the PDI and Government-provided TDPs, both of which were not build to print drawings because they lacked the necessary precision to establish a RG manufacturing assembly line" (*id.* at 12).

F. USAT's increased costs were caused, in part, by "the failure of both sources and specifications listed on the Government-provided drawings USAT received when it was forced to manufacture the" running gear (*id.* at 16).

G. "It was time-consuming and costly for USAT… to create a manufacturing assembly process from scratch to make a product it had never produced, based on faulty TDPs" (*id.* at 19).

H. The government impliedly warranted that the running gear drawings "were free of errors" (*id.* at 14, 22).

[3] Tolerance refers to the acceptable variation in individual pieces. Stack-up refers to a problem that can occur when individual pieces that are each within acceptable limits must fit together. (R4, tab A at 8-9)

I. USAT is entitled to recover under "the theory of defective specifications" (*id.* at 22).

J. USAT is not "legally responsible for the delays and costs of inefficiencies which it encounters when, for reasons not foreseen by the contractor, its performance proves to be more difficult or complex than that described in the solicitation" (*id.* at 23).

16. The 39 contract claim incorporated the allegations in the 07 contract claim (R4, tab C at 2).

17. The contracting officer denied the running gear claims (R4, tabs D - E). On July 26, 2018, USAT filed a 10-count complaint in the Court of Federal Claims. The complaint raised a variety of theories including constructive change, commercial impracticability, and cardinal change (R4, tab F). The Air Force draws our attention to counts seven and eight, which alleged that the government's TDP was defective (*id.* at ¶¶ 126-27, 134-35). These counts alleged, in part, that:

> 126. The government provided design specifications as part of the TDP with the 0007 solicitation.
> 127. The government's design specifications were defective.
> 128. USAT was not aware of the defects in the government's design specifications when it submitted its proposal on or about October 28, 2008.
> 129. USAT relied on the defective government specifications in submitting its proposal. USAT believed that the design specifications would allow a manufacturer to build-to-print. This proved to be impossible.
> 130. The defects in the government's design specifications were not apparent upon visual examination but became apparent only after USAT started manufacturing RGs in late 2012 and early 2013.

(R4, tab F)

18. During the trial at the Court of Federal Claims, USAT presented expert testimony from the same expert it employed at the Board. The expert opined that USAT had incurred $1,656,926 in damages due to "production inefficiencies and disruption" after "taking over production of the running gear"[4] (*USAT I*, CAFC app'x at 1986 (COFC tr. 628)).

[4] This testimony led to an objection by the government and an argument about the proper scope of the cases at the court and the Board. Ultimately, the court decided to bifurcate the trial into liability and damages phases (*USAT I*, CAFC app'x at 1986-89 (COFC tr. 628-42)). Because the court decided the liability issue in favor of the government, it never resolved the objection.

19. After a trial, the Court of Federal Claims ruled from the bench in favor of the government without a subsequent written opinion. *USAT*, 2022 WL 2431626, at *2. USAT appealed to the Federal Circuit, which affirmed the trial court's decision. The Court of Appeals held that USAT failed to prove its contention that the Air Force ordered it to manufacture the running gear. *Id.* at *2. Rather, USAT "chose" to manufacture it. *Id.* The Court observed that PDI did not refuse to manufacture the running gear. Rather, PDI only demanded a higher price, which USAT chose not to pay. *Id.* at *2-*4. The Court held that an increase in a subcontractor price was part of the risk that USAT assumed when it executed a firm-fixed-price contract. *Id.* at *5.

USAT Submits Claims on the Remaining REA Factors

20. On November 16, 2018, more than nine years after award of the 07 contract, USAT submitted certified claims for the REA factors that had not been resolved, withdrawn, or filed in the Court of Federal Claims (JSF ¶¶ 61-64; R4, tabs 31, 60). The biggest changes to the claims from the REAs were the introduction of a Factor 11 on the 07 contract and a large increase in Factor 11 on the 39 contract. Factor 11 dominated these claims.

21. The claim for the 07 contract sought:

Factor 2	Gov't Source Inspection Changes	$35,488
Factor 4	Shoring of Trailers	$4,562
Factor 7	Consultants	$93,327
Factor 8	In-House REA and Claim Expenses	$27,635
Factor 9	ID Tags	$1,917
Factor 11	Impact on Business/Interruption to Production	$2,460,000
	TOTAL	**$2,622,929**

(JSF ¶ 62; R4, tab 31).

22. The claim for the 39 contract sought:

Factor 2	Gov't Source Inspection Changes	$52,703
Factor 3	Shoring of Trailers	$9,474
Factor 4	Floor Space for trailers	$18,119
Factor 7	Consultants	$210,670
Factor 8	In-House REA and Claim Expenses	$60,768
Factor 9	ID Tags	$4,357
Factor 10	Change in Contract – FMS	$50,596

Factor 11	Impact on Business/Interruption to Production	$4,054,265
	TOTAL	**$4,460,952**

(JSF ¶ 64; R4, tab 60).

23. The contracting officer did not issue final decisions on the claims (JSF ¶ 67). USAT filed appeals on February 15, 2019.

24. The Board docketed the 07 contract appeal as ASBCA No. 61972 and the 39 contract appeal as No. 61973.

For the remainder of this decision, we make separate findings of fact and conclusions of law for each factor as applied to the two contracts. We begin with Factor 11 because its portion of the claims is the most complex and constitutes about 92% of the amount in dispute.

FINDINGS OF FACT FOR FACTOR 11 – IMPACT ON BUSINESS/INTERRUPTION TO PRODUCTION AND CONSISTENT NONRESPONSIVENESS

Background

25. During the solicitation of the 07 contract, the Air Force was under pressure to award a contract due to expiring funds. The Air Force used engineering orders to amend the drawings in advance of issuing final revised drawings. During the TDP package preparation and the solicitation, the Air Force issued approximately 27 drawing updates through engineering orders. (Tr. 4/69) The parties continued to discover issues with the TDP after award (tr. 5/18).

26. If an error in the TDP was discovered by USAT or the government, the government would send the issue to David Doran, an Air Force engineer (tr. 4/67, 90). Mr. Doran would review the issue and coordinate a response with Boeing, the aircraft manufacturer. If they determined that a change to a drawing was warranted, an engineering order would be generated. (Tr. 4/90-91) The amount of time it took to identify a solution was "highly variable" and depended on the complexity of the issues and the number of suppliers involved (tr. 4/93).

27. On October 28, 2011, USAT submitted an REA for 85 engineering orders issued after the award of the 07 contract (JSF ¶¶ 15-16; app. supp. R4, tab 120).

28. On May 3, 2012, the parties entered into bilateral Modification No. P00008 (Mod. P8) in the amount of $234,754 in settlement of the REA. The parties have

stipulated that USAT released the government from further liability for these engineering orders (JSF ¶ 16; R4, tab 16).

29. By contrast, in the REAs that led to the present appeals, when the Air Force agreed to pay USAT for the engineering order factors (findings 9, 10), the payments were for "engineering labor only, not for production-related costs" (JSF ¶¶ 51, 54).

30. During the 07 contract, the Air Force issued 196 engineering orders (JSF ¶ 51). During performance of the 39 contract, the Air Force issued 85 engineering orders (JSF ¶ 54).

The Factor 11 Claims

31. In its November 16, 2018 certified claims, USAT entitled the Factor 11 issue "Impact on Business/Other Customer Deliveries and Interruption to Production, and Consistent Non-Responsiveness" (R4, tabs 31 at 3; 60 at 4). During the hearing before us, USAT abandoned the first part involving the impact on its business and deliveries to other customers (tr. 1/100-01; 2/9-10).

32. As to the remaining portion (interruption to production and consistent non-responsiveness), the claims on the two contracts had nearly identical explanations and, like the running gear claims, contained allegations of a defective TDP. The 07 contract claim stated:

> All the EOs on [the two contracts] caused not only the engineering interruptions & time spent to come up with the correct solution that of which we were paid for, but we were not compensated for the interruption to Production Flow/Battle Rhythm while waiting on responses from AF engineering & contracting. This was a build to print we did not include disruptions in production for a deficient TDP. As a Lean Manufacturer, we priced this very competitively thinking the government would not have a deficient TDP and delayed responsiveness especially when there had been over 120 trailers fielded prior to [the 07 contract]. A total of forty-one (41) trailers were delivered under the 0007 contract, and this cost is attributable to production of only those units.

(R4, tab 31 at 3-4)

33. These four sentences were the sole explanation the contracting officer received. While the part of the Factor 11 claim that USAT abandoned had been part of

the 39 contract REA, the remaining issue had not. USAT alleges that there were 4.5 years of delay on the two contracts (app. br. at 33), but it would have been impossible for the contracting officer to discern that from the quoted text.

34. Curiously, in a hearing in which only entitlement, not quantum, was at issue, USAT presented expert testimony only from a certified public accountant (tr. 2/40). Although he read some of the engineering orders, the expert did not know how many, and he did not "have any independent interests in understanding engineering order [sic]" (tr. 2/103).

35. USAT has provided the Board a blurry spreadsheet entitled "DELAYS ON EACH OF THE ENGINEERING CHANGES to implemet [sic] the change thru mfg process" (app. supp. R4, tab 202). The spreadsheet states that it was prepared "by Ed Cyran, Chief Eng'r" (*id.*) (hereinafter USAT EO Delay Spreadsheet). Mr. Cyran did not testify during the hearing.[5] Among other things, the document identifies a part, the number of trailers affected, and the days of alleged delay. For example, line 10 of the spreadsheet identifies a part referred to as "Flap & Tube" (discussed below) that affected 41 units and for which Mr. Cyran listed 135 days of delay.

36. The spreadsheet contains a total of 42 entries requesting delays up to 238 days per entry. Mr. Kakde testified that the spreadsheet "is not complete" (tr. 1/104). While this would imply that USAT contends that there were more than 42 engineering orders that caused delay, USAT witnesses discussed fewer than 42 issues at the hearing, as we will discuss below. Accordingly, the number of engineering orders for which USAT alleges delay or disruption is not clear.

37. USAT attempted to prove its claims mostly by fact witness testimony. While these witnesses referred to documents in the record, in most cases these documents were emails, not contract drawings, engineering orders, or schedules. Testimony on Factor 11 was primarily given by Jeffrey Maag, USAT's former vice president of sales (tr. 3/36), and Mr. Doran of the Air Force. Both witnesses were credible but at times struggled to recall events that occurred up to 10 years before USAT submitted the claims at issue (and 12 years before the hearing). This was particularly so for Mr. Maag, who was no longer a USAT employee at the time of the hearing (tr. 3/35). Because USAT lacked an expert who could analyze the engineering issues and calculate specific delays, USAT's delay presentation consisted mostly of Mr. Maag declaring that USAT had been delayed, without any specific testimony or documents establishing the length of the delay.

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[5] Mr. Cyran did testify in the running gear trial at the Court of Federal Claims. The court found that Mr. Cyran "had very little memory to offer. He repeatedly said he didn't remember things …. He just didn't remember the critical facts." (*USAT I*, Fed. Cir. Appx. at 2061 (tr. 843)).

38. During his testimony, Mr. Maag attributed numerous problems USAT experienced to errors in the TDP. Our findings with respect to these issues are set forth below. However, we note that because USAT did not raise most of these issues in its claims nor discuss them in its post-hearing briefs, it is not clear which issues are actually part of the Factor 11 claims.

A. *Weldments*

39. Mr. Maag cited this issue after USAT's attorney asked him for examples of mistakes within the TDP. Mr. Maag's testimony, while terse, was that the drawings provided that parts should be finished to print dimensions and then welded, but USAT found that the heat of the welding would change the configuration of the pieces and cause them to fall out of tolerance (tr. 3/49).

40. Mr. Maag did not address the extent of the delay or disruption caused by the alleged problem, nor did he refer to any documents.

41. The entire trailer contained weldments, including the running gear (tr. 4/6).

42. A weldment issue is not mentioned in the claims, nor in USAT's post-hearing briefs.

B. *Dampening*

43. Mr. Maag testified about this issue after USAT's attorney asked: "what was the most significant supplier issue that you encountered with the tech data package?" (tr. 3/56).

44. Mr. Maag testified that the most significant supplier issue involved a dampening, which looks like a hydraulic cylinder. Mr. Maag testified that the dampening was supposed to have a fixed valve that could not be altered, but the supplier, which he referred to as Cunningham, sent a product with adjustable valves, which was "a clear violation of the TDP." (Tr. 3/56, 59) Mr. Maag attributed the problem to "turnover" in Cunningham's "small shop" (tr. 3/59). Mr. Maag did not address the extent of the disruption caused by the alleged problem, nor did he refer to any documents.

45. The dampening issue was not mentioned in USAT's claims, or in its post-hearing briefs, or in the USAT EO Delay Spreadsheet. It is not entirely clear if this issue is part of USAT's claim, but the import of Mr. Maag's testimony seemed to be that USAT contends that the government was responsible for these problems because

the supplier was a "directed source" (tr. 3/59). USAT did not direct the Board to documents showing that Cunningham was a directed source.

C. *Storage Boxes*

46. Each trailer contained a lockable metal storage box. While the TDP listed approved sources, by 2012 they no longer manufactured the boxes. The Air Force modified the contract in June 2012 to add USAT as an approved source, which proceeded to manufacture them. (R4, tab 29 at 7; app. supp. R4, tab 128 at 1-2)

47. It is not clear when the TDP-listed suppliers stopped making the storage boxes. Mr. Maag testified that prior to bidding on the 07 contract, he engaged with the pre-existing suppliers (tr. 3/39), but he did not state whether he had contacted the storage box manufacturers.

48. As described above, the contracting officer approved USAT's REA with respect to storage boxes, which was a component of only the 07 contract REA. There is no indication that delay or disruption related to the storage boxes are included in the Factor 11 claim. Mr. Maag testified at the hearing that "[w]e were compensated for all of our effort on [the storage boxes], including design" (tr. 3/60). When specifically asked in a follow-up question by USAT's attorney whether USAT had been compensated for "interruptions to the battle flow," Mr. Maag responded "I don't recall it" (tr. 3/61). In any event, Mr. Maag did not testify as to the extent of any delay or disruption caused by the storage boxes.

49. Six of the 42 issues listed on the USAT EO Delay Spreadsheet are identified as "Storage Box" and allege delays ranging from one to 99 days. There are conclusory notes that we find unhelpful. For example, the note for one of the 99-day delays states "Effectivity – 6 Units SN 17-41 & added alternative Storage box drawing 9658-3." (App. supp. R4, tab 202 at 1)

50. The storage box issue was listed as paid in USAT's claims (R4, tabs 31 at 6; 60 at 6). The storage boxes are mentioned in the context of the Factor 11 claim in USAT's post-hearing briefs but only to challenge testimony from Mr. Doran that the change had been for the convenience of USAT (app. br. at 35-36).

D. *Quality Control Issues*

51. This issue relates to delay or disruption but not any alleged errors in the TDP. In a February 28, 2013 letter from Mr. Maag to the administrative contracting officer, Kevin Smith, Mr. Maag stated that Mr. Smith had called USAT the previous day, informing USAT that progress payments would be suspended until quality issues

had been resolved. Mr. Maag stated in the letter that "most" of the quality issues were not the fault of USAT. (App. ex. 51 at 1; tr. 3/108)

52. The quality issues included adding too much grease to kingpins, which were part of the running gear. Mr. Maag contended in the letter and in his testimony that the color of the overflowing grease showed that it was not USAT grease but rather grease added by the government (app. ex. 51 at 1; tr. 3/108-09). Other issues raised in the letter involved damage to a storage box and to engine rails on the trailer, which USAT contended had been caused by the shipper after it left the USAT facility (app. ex. 51 at 1).

53. These quality control issues are not mentioned in USAT's claims or in its post-hearing briefs. In his testimony, Mr. Maag seemed most concerned about the "rumor mill" at DCMA and the lack of an apology. He also testified that when faced with these allegations, USAT had to spend time researching the issues and defending itself and that it "takes away from our battle rhythm" (tr. 3/111-12). Mr. Maag did not quantify any delay or disruption.

E. *Flaps and Tubes*

54. As evidenced in several emails starting in approximately June 2012, after USAT delivered several trailers to Boeing, the tires began going flat. The source of the problem was the inner tube and flap in the tires, which Boeing had to replace. (App. supp. R4, tab 138 at 4) The Air Force and USAT agreed that PDI workmanship had caused the problem. USAT agreed to replace the flaps and tubes in Boeing's inventory and to inspect tires that were still at USAT's facility. (*Id.* at 1, 3) Subsequently, in an email to the contracting officer in March 2013, Mr. Doran stated that the manufacturer of the flaps and tubes, Goodyear, had stopped making them (app. supp. R4, tab 160 at 3).

55. Neither Goodyear nor the flaps and tubes are mentioned under Factor 11 in the claims. However, the flaps and tubes are listed as paid under Factor 5, the engineering orders. (R4, tab 31 at 5) The flaps and tubes are briefly mentioned in USAT's post-hearing brief, in which it cites the USAT EO Delay Spreadsheet prepared by Mr. Cyran (app. supp. R4, tab 202 at 1) to contend that there was a 135-day delay (app. br. at 32).

56. Mr. Maag testified that this was one of many problems USAT had with PDI. However, he could not remember how long shipments were delayed due to the tire issues. (Tr. 3/116-17) USAT introduced no persuasive evidence supporting a 135-day delay.

57. The tires (and the flaps and tubes) were part of the running gear (tr. 4/7).

F. *Part Substitutions*

58. Mr. Maag testified concerning two part-substitution requests that USAT made in February of 2013 (tr. 3/118-21). The first involved a hose. Mr. Doran investigated and found that the solicitation contained Revision A of the relevant drawing but that the Air Force had never given USAT Revision B, which allowed use of the hose at issue (app. supp. R4, tab 159 at 1). Mr. Maag testified that this had caused "more delay," but he did not quantify it (tr. 3/119). A hose issue is not mentioned in the claims or in USAT's post-hearing briefs.

59. The second issue involved a brake drum.[6] All prior trailers included brake drums manufactured by PDI because PDI was the only approved source. The PDI drums had a unique feature in that they had six holes (to accommodate six lug studs) whereas most commercial sources have eight holes. (App. supp. R4, tab 159 at 2; tr. 4/124)

60. Due to the breakdown in the relationship with PDI, USAT asked if there was an alternate source (*id.*; tr. 3/120). The Air Force answer was that unless PDI refused to make the part, PDI would remain the source (app. supp. R4, tab 159 at 2). Mr. Maag did not testify as to whether PDI ever refused to manufacture the brake drum. He also testified that the brake drum "really wasn't a – an issue for us so much" (tr. 3/120).

61. The brake drums are not mentioned in the claims or in USAT's post-hearing briefs.

62. The brake drum is part of the running gear (tr. 4/7).

G. *Brake Cables*

63. Mr. Maag testified with respect to two sets of emails discussing issues with the brake cables. First, he testified concerning emails from March 2015 in which USAT informed the Air Force that the sole-source supplier had updated the cable after completion of the first article test and requested approval of the substitute. USAT complained about how long it was taking the Air Force to approve the substitution. (App. supp. R4, tab 194 at 3; tr. 3/122-24) The supplier is not identified in these emails, but Mr. Maag testified that it was the "Orscheln brake company" (tr. 3/124).

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[6] A brake drum is part of a drum brake system, which is "a type of vehicle brake in which brake shoes press against the inside of a drum on the wheel." New Oxford American Dictionary (3rd ed. 2010).

Mr. Maag did not testify as to how this issue was resolved, that is, whether the substitution was approved or denied. He did not quantify any delay or disruption.

64. Mr. Maag next testified with respect to emails from January 2014, more than a year earlier, which refer to the brake cables as "PDI cables" (app. supp. R4, tab 175). In these emails, Mr. Doran stated, among other things, that the PDI cables did not conform to the bid drawings because they were missing an external seal that allowed rain and salt air into the cable assembly, resulting in internal corrosion. Boeing and Air Force engineering personnel requested a halt to trailer deliveries until the problems were resolved. (App. supp. R4, tab 175; tr. 3/126-28) Mr. Doran stated that PDI had made an unauthorized substitution of its own version of the brake cable (app. supp. R4, tab 175). Mr. Maag testified that USAT had "to wait, again delay for the acceptable brake cable" (tr. 3/128), but he did not dispute that the corrosion and other problems discussed in the email had occurred. Mr. Maag characterized the matter as "PDI's problem, not ours" (tr. 3/127).

65. It is not clear how the problems with the brake cables in 2014 impacted the request for approval of an updated cable in March 2015.

66. The brake cable issue is not discussed in USAT's claims or in USAT's post-hearing briefs.

67. The brake cable is part of the running gear (tr. 4/7).

H. *Drawing Revisions*

68. This issue relates to an October 29, 2012, email from Mr. Doran to an official at Boeing. Mr. Doran stated that USAT had submitted five technical support requests. Among other things, Mr. Doran concluded that 26 drawings provided to USAT by the government were not at the correct revision level so that "Rev. A" drawings needed to be changed to "Rev. B." (App. supp. R4, tab 141)

69. Mr. Maag did not explain what the underlying issues were and what, if any, problems were caused by USAT having an earlier version of the drawings. Mr. Maag asserted that the issue was "disrupting", but he again failed to quantify the impact (tr. 3/152). USAT did not discuss the issue in its claims. USAT mentioned this issue in its post-hearing brief but only to establish that the parties continued to find errors in the TDP after award (app. br. at 30).

I. *Guide Plates*

70. This issue involves parts that are referred to as guide plates. In an email dated February 6, 2013, to contracting officer Mr. Gordon Abney, Mr. Doran stated

that the guide plates had not been installed correctly. He concluded that it was not the fault of USAT or DCMA because the drawings were not clear with respect to the correct orientation of the plates. (App. supp. R4, tab 157)

71. Mr. Maag testified that this caused "a lot of administrative paperwork" for USAT and required it to retrain assembly line personnel but he was not specific as to the extent of the delay or disruption this caused (tr. 3/153).

72. USAT did not mention guide plates in its claims or post-hearing briefs.

J. *Brake Drums*

73. This is a second issue involving the brake drums. As of July 2014, more than two years after it decided to manufacture the running gear, USAT was still having trouble building trailers with properly functioning brakes. In a July 9, 2014 email to CO Abney, Mr. Doran reported "that the brake drum drawing lacked explicit concentricity/run-out criteria" (app. supp. R4, tab 187 at 1). As Mr. Doran testified at the hearing, it is important to "hav[e] the drum concentric with the axle, or the hub, so that you're not running ineffectively trying to chase an egg shape" (tr. 4/135). In other words, the parts should be concentric circles, not a circle around an egg shape. The lack of explicit direction in the drawings was not a problem until USAT became the manufacturer because PDI had the expertise to manufacture, finish, and install the parts correctly (tr. 4/135-36). Such knowledge is widely held among manufacturers and service garages (app. supp. R4, tab 187 at 2).

74. While reviewing this problem, Mr. Doran also discovered that the drawings permitted the use of 2.5-inch brake shoes even though the Air Force had determined that 3.0-inch brake shoes were necessary. The Air Force ordered the use of the 3.0-inch shoes. (*Id.* at 1-2)

75. Mr. Maag was again unable to provide a detailed explanation as to the disruption or delay these issues caused USAT (tr. 3/156).

76. USAT did not discuss the brake drum issues in its claims or post-hearing briefs.

K. *Surge Brake*

77. This issue stems from a February 20, 2013 request for deviation by USAT "to correct the End Fitting changes" on the surge brake because the government did not provide USAT the correct drawing (app. ex. 94 at 1). Mr. Maag testified that USAT "ha[d] to pull all the paperwork that's throughout the company" and that it had

"to recreate a new router" but did not quantify any delay or disruption to USAT (tr. 3/161).

78. The surge brake is not mentioned in USAT's claims. USAT mentions the surge brakes once in its briefs, but only in a conclusory manner (app. br. at 43).

79. The surge brake is part of the running gear (tr. 4/145).

L. *Hollow Member Treatment Plugs*

80. This issue involved holes drilled into the bottom of the trailers, which led to concerns about corrosion (tr. 4/149). USAT applied a rust-inhibiting compound to the holes, but the compound leaked out in warm weather. According to an August 1, 2012 email from Mr. Doran to CO Abney, the drawings contained conflicting guidance as to whether the holes should be plugged. (App. supp. R4, tab 131 at 1) CO Abney ordered USAT to stop deliveries on August 9, 2012. The problem had been solved with plugs installed by August 29, 2012, and DCMA asked the Air Force if deliveries could be resumed. However, as of September 13, 2012, the Air Force had not responded. (App. supp. R4, tab 136 at 1-2) It is not clear when the Air Force allowed shipments to resume, and Mr. Maag failed to quantify the delay in his testimony.

81. USAT did not mention the hollow member treatment plugs in its claims or in its post-hearing briefs.

M. *Dust Cap/Notch in Grating/Brackets Moved*

82. This issue relates to three requests for variance referenced in a December 31, 2013 email from USAT to DCMA (app. supp. R4, tab 176 at 2-3). The Air Force did not respond to the requests until January 21, 2014 (*id.* at 1). USAT has not referred us to any contemporaneous documents that explain the issues, and we have no way of analyzing whether a three-week response time was appropriate.

83. The first issue involved a dust cap that was no longer made by the supplier and for which USAT had proposed a replacement (tr. 3/167-68). There is no evidence as to when the supplier stopped making the part, but the fact that it did not arise until late 2013 suggests that it was after the award of the 07 contract.

84. The second issue involved a cradle in the trailer. Mr. Maag testified that there was a maintenance platform in the cradle for workers to stand on, but the platform did not fit in the space allotted in the relevant drawing because a weld created a blockage. USAT "took our own initiative and suggested not putting a notch in the gra[t]ing to create a clearance." (Tr. 3/168) No documents have been brought to our

attention that would explain why this issue was not discovered until more than four years after award of the 07 contract.

85. The third issue involved a tie rod that, when not used, was stored in a bracket. Mr. Maag testified that the location of the bracket on the drawing was incorrect. (Tr. 3/168-69) There is nothing in the record that would explain why this issue was not discovered until more than four years after award of the 07 contract.

86. Mr. Maag did not testify concerning the delay these issues caused. USAT did not mention any of the three issues in its claim or in its post-hearing briefs.

87. The dust cap and the tie rod bracket were part of the running gear (tr. 4/8).

DECISION – FACTOR 11

I. Election Doctrine

The government contends that we lack jurisdiction to consider Factor 11 due to the election doctrine. The Board agrees to the extent that Factor 11 relates to the running gear.

The election doctrine arises from the Contract Disputes Act, which gives contractors the right to appeal a contracting officer's final decision to a board of contract appeals or to file a direct action in the Court of Federal Claims. 41 U.S.C. § 7104(a) & (b)(1). The Federal Circuit has interpreted this as an "either-or choice of forum" such that once the contractor makes a binding election, the contractor can no longer pursue its claim in the other forum. *Bonneville Assocs. v. United States*, 43 F.3d 649, 653 (Fed. Cir. 1994) This doctrine does not apply if the original forum lacked jurisdiction. *Id.*

While the election doctrine bars the contractor from litigating the same claim, there is a related doctrine that applies to claims that overlap. This bar on "claim splitting" means that claims on a single contract generally must be brought together, but the presumption may be overcome if the contractor shows that the claims are unrelated. *Phillips/May Corp. v. United States*, 524 F.3d 1264, 1271-72 (Fed. Cir. 2008).

In *Phillips/May*, after several appeals at the Board, the contractor filed suit in the Court of Federal Claims on a different claim (the Inspection Claim) on the same contract. The court granted the government summary judgment. *Id.* at 1266. The Federal Circuit affirmed the decision that the action was barred by the doctrine of res judicata due to the earlier Board appeals. The Court of Appeals explained that tribunals must determine whether claims are based on the same transactional facts, which is "determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Id.* at 1271 (quoting RESTATEMENT (SECOND) JUDGMENTS § 24(2) (1982)).

The Federal Circuit observed, among other things, that the "bulk" of the Inspection Claim "related to overzealous and delayed inspection…." *Id.* at 1273. The Court observed that in two of the ASBCA appeals the contractor alleged overzealous inspection, although the Board never ruled on that claim. *Id.* The Court also found that there were similarities with respect to allegations of design changes and a failure to follow the approved design. *Id.* at 1272. The Court held that there was "substantial factual and evidentiary overlap between the Inspection Claim and several of the claims appealed to the Board" and, as a result, held that the lawsuit was barred by the doctrine of res judicata. *Id.* at 1273; *accord Bowers Inv. Co., LLC v. United States*, 695 F.3d 1380 (Fed. Cir. 2012) (in a 12-year lease, an appeal for the last month's rent and a lawsuit for the first three months' rent were distinct for purposes of the election doctrine, but they arose from the same transactional facts, barring the Court of Federal Claims suit).

II. The Factor 11 Delay and Disruption Claims Related to the Running Gear

In its post-hearing brief, USAT states that the Factor 11 claims "encompass the impact of the TDP defects on the entirety of USAT production under the subject contracts" (app. br. at 25). USAT contends that the TDP issues caused a 4.5-year delay (*id.* at 33). It further states that it retained its expert "to identify and quantify the damages associated with Factor 11 - the loss of battle rhythm/disruption" (*id.* at 36).

USAT states that in the Court of Federal Claims it sought only the difference in cost to manufacture the running gear in-house versus purchasing it from a vendor (app.br. on jurisd. at 2). At that court, it states that it sought only damages "pulled from direct labor costs, direct material costs, and generally accepted overhead" (*id.* at 5). It further states that there was "no aspect[] of damages that involve[s] delay costs or any other peripheral or indirect costs" (*id.*). USAT contends that because it did not pursue a claim based on a defective TDP at the Court of Federal Claims, it is entitled to pursue the defective TDP claim at the Board, regardless of whether those defects relate to the running gear or other parts of the trailers[7] (*id.* at 6-7; app. supp. br. on jurisd. at 13-14).

[7] During oral argument at the Federal Circuit in *USAT I*, in response to a question from the Court about the ASBCA appeals, counsel for USAT stated that the Board appeals involved matters "not related to the running gear" (CAFC oral argument at 1:25-28). That was not accurate.

Despite USAT's contentions, the running gear claims litigated at the Court of Federal Claims contained at least 10 allegations that the TDP was defective, that the TDP and/or the government caused delay or disruption to USAT, and that USAT was entitled to recover for the defective TDP and the associated delay and disruption (findings 15A-15J). USAT's original complaint at the Court of Federal Claims included counts seven and eight entitled "Defective Government Design Specifications" for the 07 and 39 contracts, respectively. These counts contained broad allegations that there were defects in the TDP (finding 17; R4, tab F at 17-18). We acknowledge that USAT subsequently filed an amended complaint that withdrew counts seven and eight, which it contends "remedied" any jurisdictional issues (app. br. on jurisd. at 4; gov't br. on jurisd. at 4). However, as we have found, USAT continued to pursue a claim for disruption and inefficiency related to the running gear during the trial (finding 18).

The Board finds that the running gear claims presented to the contracting officer contained repeated, not merely passing, allegations of a defective TDP. USAT pled causes of action alleging a defective TDP in its original complaint at the Court of Federal Claims. We see no reason why the court lacked jurisdiction to consider those portions of the running gear claims. Once a contractor has properly invoked the jurisdiction of a tribunal, the contractor cannot change its mind, withdraw the allegations, and then file at another forum. *Bonneville*, 43 F.3d at 653. Accordingly, the Board lacks jurisdiction to consider USAT's claims for delay and disruption that a defective TDP caused to running gear production.

In the alternative, if the claims were not barred by the election doctrine, we would hold that USAT split its claims and that the appeals at the Board are barred by res judicata. The claims litigated at the Court of Federal Claims and the Board are not claims submitted on the same contracts that are otherwise unrelated. All of the claims addressed the same subassembly of the trailers, the running gear. All of the claims arise from the same event – USAT's decision to manufacture the running gear after PDI demanded more money. All of the claims involve the core fact that USAT found it more difficult and costly to manufacture the running gear than it expected. All of the claims alleged that defects in the TDP caused USAT to incur damages. All of the claims involved allegations of disruption. (Findings 15-18, 32, 54-57, 58-66, 73-79, 83, 85-87) Accordingly, the claims in the two tribunals contain "substantial factual and evidentiary overlap," they "are related in time, space, origin, or motivation," and would "form a convenient trial unit." *Phillips/May*, 524 F.3d at 1271, 1273. The Board holds that our consideration of the Factor 11 running gear claims is barred by the doctrine of res judicata to the extent it is not barred by the election doctrine.

III. Factor 11 Issues not Related to the Running Gear

The CDA requires a contractor to submit claims to the contracting officer and request a final decision. 41 U.S.C. § 7103(a)(1). In the claim, the contractor must provide the contracting officer "a clear and unequivocal statement that gives the contracting officer adequate notice of the basis and amount of the claim." *Contract Cleaning Maint., Inc. v. United States*, 811 F.2d 586, 592 (Fed. Cir. 1987). The Board has held that "[t]he statement of claim must provide a basis for meaningful dialogue between the parties aimed toward settlement or negotiated resolution of the claim if possible, or for adequate identification of the issues to facilitate litigation should that be necessary following issuance of the decision." *Blake Const. Co.*, ASBCA No. 34480, 88-2 B.C.A. ¶ 20,552 at 103,891. In addition, "[a]n adequate statement of a claim requires a sufficient quantification, both as to length of delay claimed and the amount of monetary adjustment attributable to delays or changes or the like; the information must be sufficient to enable the CO to undertake a meaningful review and to then be able to render the requested determination." *Id.*

We first address the specific issues discussed by Mr. Maag at the hearing using the same lettering as above.

A. *Weldments (to the extent not part of running gear)*

USAT failed to mention a weldment issue in its claim (finding 42). Accordingly, it failed to provide adequate notice of the basis and amount of the claim and the Board lacks jurisdiction to consider it. *Contract Cleaning*, 811 F.2d at 592.

In the alternative, this issue fails for lack of evidence of delay or disruption because USAT did not produce sufficient evidence that weldments caused delay or disruption (finding 40).

B. *Dampening*

USAT failed to present a dampening issue to the contracting officer (finding 45). Accordingly, the Board lacks jurisdiction.

In the alternative, the dampening claim fails for two additional reasons. This issue arose from a supplier who provided USAT the wrong item, namely an adjustable valve instead of a fixed valve (finding 44). USAT's theory apparently is that because the supplier, Cunningham, was a "direct source," the government is liable (as we have found, USAT has not proven that Cunningham was a directed source (finding 45)). However, a prime contractor is responsible for the failure of its subcontractor to perform. This is so even if the contractor is a sole source. *Bromion, Inc. v. United States*, 411 F.2d 1020, 1023-24 (Ct. Cl. 1969); *Demusz Mfg. Co.*, ASBCA No. 55311, 07-1 BCA ¶ 33,463 at 165,884; *Gen. Ship Corp. v. United States*, 634 F. Supp. 868, 869 (D. Mass. 1986); *see also Metro Machine dba General Dynamics NASSCO-Norfolk*, ASBCA No. 62221, 22-1 BCA ¶ 38,096 at 185,012-13 (comprehensive discussion).

The dampening issue also fails for lack of proof that the issue caused any delay or disruption to USAT (finding 44).

C. *Storage Boxes*

This issue was listed as paid in USAT's claims or in USAT's post-hearing briefs, and we are unsure whether it is part of the claim (finding 50). It is undisputed that the Air Force modified the contract so that USAT would manufacture the storage boxes (finding 46). Assuming that a brief mention in the claim is enough to give us jurisdiction, Mr. Maag testified that USAT had already been compensated for the storage boxes (finding 48). When USAT's attorney tried to coax from him testimony that it had not been compensated for delay or disruption, Mr. Maag was unable to confirm this (*id.*). There is simply no evidence of an uncompensated delay or disruption.

D. *Quality Control Issues Other than Kingpins*

USAT failed to present to the contracting officer the quality control issues in its claims. Accordingly, the Board lacks jurisdiction to consider them.

In the alternative, the largest injury suffered by USAT due to these issues seems to have been psychological. Mr. Maag clearly believed he was entitled to an apology after the government accused USAT of several quality control issues, "most" of which he contended were not USAT's fault. There is no proof of delay or disruption. (Finding 53)

The kingpins were part of the running gear (finding 52) and are barred by the election doctrine or claim preclusion.

E. *Flap and Tubes*

As these were part of the running gear (finding 57), they are barred by the election doctrine or claim preclusion.

F. *Part Substitutions*

USAT failed to present a hose issue in its claims (finding 58). Accordingly, the Board lacks jurisdiction to consider it.

In the alternative, USAT only offered Mr. Maag's conclusory testimony that this issue caused "more delay," which was not sufficient for USAT to carry its burden of proof (finding 58).

The second part substitution issue related to the brake drum, which was part of the running gear and is barred by the election doctrine or claim preclusion (finding 62).

G. *Brake Cables*

The brake cables were part of the running gear and are barred by the election doctrine or claim preclusion (finding 67).

H. *Drawing Revisions*

USAT failed to present a drawing revision issue in its claims (finding 69). Accordingly, the Board lacks jurisdiction to consider it.

In the alternative, this issue fails for lack of proof of delay or disruption. Mr. Maag did not seem prepared to testify about it, and USAT failed to discuss it in its post-hearing briefs (finding 69).

I. *Guide Plates*

USAT failed to raise a guide plates issue in its claims (finding 72). Accordingly, the Board lacks jurisdiction to consider it.

In the alternative, Mr. Maag's vague testimony and USAT's failure to discuss it in its post-hearing brief mean that it fails for lack of proof (findings 71)

J. *Brake Drums*

The second brake drum issue is also barred by the election doctrine or claim preclusion.

K. *Surge Brake*

The surge brake is part of the running gear and is barred by the election doctrine or claim preclusion (finding 79).

L. *Hollow Member Treatment Plugs*

USAT failed to present a hollow member treatment plug issue in its claims (finding 81). Accordingly, the Board lacks jurisdiction to consider it.

In the alternative, USAT failed to prove the extent of the delay or disruption through testimony at the hearing, and it failed to reference it in its post-hearing brief (finding 80).

M. *Dust Cap/Notch in Grating/Brackets Moved*

The dust cap and brackets were part of the running gear and are barred by the election doctrine or claim preclusion (finding 87).

As for the notch in grating, USAT did not mention it in its claims (finding 86). We lack jurisdiction to consider it.

In the alternative, USAT provided no explanation as to why the notch in grating was discovered so late in performance, and there was no evidence of any delay or disruption (finding 86).

IV. <u>Other Factor 11 Delays/Disruptions</u>

At the beginning of the hearing, the Board cautioned the parties that the Board considers the number of days of delay to be part of entitlement (tr. 1/7). USAT mostly ignored the obligation to prove the number of days of delay.

Beyond the issues itemized above, there is some indication that USAT contends that there were other issues related to a defective TDP that caused delay or disruption (findings 33, 36). USAT did not discuss any such issues in its post-hearing briefs, nor did its witnesses at the hearing address them. Any such claim fails for a complete lack of proof.

USAT contends that Government actions caused 4.5 years of delay on the project (app. br. at 33). USAT refers the Board to a 62-page spreadsheet (in .pdf format), referred to as a capacity planning chart, whose authors are unknown (app. supp. R4, tab 201). USAT apparently expects the Board to go through this spreadsheet line by line to calculate the 4.5-year delay, but we decline to do so. Other than the reference to this spreadsheet, USAT makes no attempt to prove a 4.5-year delay (*id.*). As we have described, Mr. Maag made general assertions that various events or government actions caused delays (*e.g.*, findings 53, 64, 71), but his testimony failed to pinpoint the length of any single delay, let alone a 4.5-year delay.

To prove a compensable delay, a contractor must separate government-caused delays from its own delays; it cannot recover for concurrent delay. *Sauer Inc. v. Danzig*, 224 F.3d 1340, 1348 (Fed. Cir. 2000). USAT has not made any attempt to separate government delays from delays caused by PDI, or USAT's decision to manufacture the running gear in-house, nor has it separated delays caused by Cunningham or other subcontractors (findings 15A-15J, 44-45, 54, 56, 64).

The Board observes that USAT's claim and brief also mention a disruption claim. In a disruption claim, a contractor needs not show that the completion of the project was delayed, and it may recover for loss of efficiency. *Sauer*, 224 F.3d at 1348-49. However, USAT makes no attempt to delineate a separate disruption claim and it is not clear from USAT's brief whether it intends to articulate separate delay and disruption claims because the two concepts are discussed interchangeably (e.g., app. br. at 39 (stating that USAT's expert "defined a disruption or delay as what occurs to the assembly line whenever there are parts that are either nonconforming or there are errors in the specifications that will naturally stop or impact the rate of production")).

USAT's claims for a 4.5-year delay and for disruption fail due to a lack of proof.

The Board's findings and decisions on the remaining issues are as follows.

FINDINGS OF FACT FOR FACTOR 2 – GOVERNMENT SOURCE INSPECTION CHANGES

88. The contracts incorporated FAR 52.246-2, INSPECTION OF SUPPLIES – FIXED-PRICE (AUG 1996) (R4, tabs 6 at 18, tab 41 at 6), which defines supplies as including, but not limited to, "raw materials, components, intermediate assemblies, end products, and lots of supplies." FAR 52.246-2(a). The clause provides:

> The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

FAR 52.246-2(c)

89. The contracts also contained FAR 52.246-11, HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT (FEB 1999) (R4, tab 6 at 18, tab 41 at 6). This clause provides that "The Contractor shall comply with the higher-level quality standard selected below," but the clause simply refers to the contract line item schedule, which, in turn, references various standards issued by the International Organization for Standardization (R4, tab 6 at 7, tab 41 at 3). Neither party explains what higher quality requirements were imposed by these standards. USAT does not mention either of the two FAR clauses in its post-hearing briefs.

90. In March 2013, Robert Anderson became the quality assurance representative (QAR) for DCMA (gov't ex. 1 at 4). The crux of USAT's claim is that Mr. Anderson imposed on USAT "heightened and excessive" trailer inspection procedures (app. br. at 25).

91. Nearly a year earlier, on April 10, 2012, CO Gordon Abney wrote by email to USAT stating: "[t]he quality control issues surrounding your performance on this contract have reached levels that have piqued the interest of my superiors. The avenues available to the Government to redress these failures are being investigated" (R4, tab 15 at 1-2).

92. On April 12, 2012, USAT met with DCMA "to discuss the continuing trailer problems and to determine the path forward" (app. supp. R4, tab 17 at 1).

93. On April 27, 2012, USAT replied to the CO's April 10, 2012 letter (R4, tab 15 at 3). It stated "[w]e agree that there have been issues in the field" and that "[w]e own some of these issues," but it also stated that the drawing package played a role in the problems. USAT blamed PDI for many of the problems and predicted that the issues would be eliminated now that it had taken over responsibility for producing the running gear. USAT also devoted two paragraphs of the letter to Cunningham, the supplier of the dampening, which it accused of "poor workmanship and lack of a robust installation procedure…" (*Id.*at 3)

94. USAT was not able to eliminate the quality problems with the running gear. In August 2012, USAT produced the last running gear (no. 19) for which PDI performed the work. The next two units (nos. 20 and 21) were completed in January 2013 and contained a combination of USAT and PDI parts. USAT admitted that these units were "not fully debugged." In June 2013, USAT produced unit 22, which it described as "almost debugged." (App. supp. R4, tab 8; tr. 5/111-12).

95. There is ample evidence that USAT experienced quality control issues or otherwise failed to provide the Air Force fully functioning trailers throughout 2013 and into 2014 (findings 44, 51, 54, 56, 64, 73).

96. The actions by Mr. Anderson that USAT complains about include his inspection "on the entire TT90 manufacturing processes"; his refusal to accept videos or pictures of a process; his requirement that USAT "provide detailed inspection reports"; his presence on the site on a daily basis; his verification of the shipping and shoring of the trailers; his random selection of processes for quality inspection; and his request for a badge to access the facility (app. br. at 24-25). However, USAT does not cite any contract provisions that these actions violated, nor does it explain how they were unreasonable given the chronic quality control problems.

97. USAT also contends that the inspections were unreasonable in light of the problems with the TDP but it does not explain how any specific issue with the TDP led to quality control problems (app. br. at 24).

98. Mr. Anderson found that by July 2013, the government had issued four corrective action requests and that "numerous waivers, deviations, and Engineering Change Proposals (ECPs)" had been requested or issued (gov't ex. 1 at 4). After consideration of these documents, Mr. Anderson changed the risk classification for the units from moderate to high risk (tr. 5/108).

99. The Board finds that, given the problems that USAT experienced in taking over the manufacturing of the running gear, as well as other parts of the trailers, USAT has not proven that Mr. Anderson imposed "heightened and excessive" inspection requirements.

DECISION

The government can be liable for a contractor's extra costs when it requires a contractor to perform work to higher standards than those required by the contract, but the government has a right to insist on strict compliance with the contract and may require a contractor to correct nonconforming work. *Randolph & Co., Inc.*, ASBCA No. 52953, *et al.,* 03-1 BCA ¶ 32,080 at 158,584. The government may perform a higher level of inspection when the record demonstrates that the contractor's "'performance reflected major deficiencies.'" *Id.* (quoting *O'Neal Constr. Co.*, ENG BCA No. 5038, 87-2 BCA ¶ 19,935 at 100,890.

USAT's inspection claim fails because USAT has not established that the government's actions were excessive or violated any term of the contract. USAT has admitted throughout the litigation that there were extensive quality control problems with PDI's work. *E.g.*, *USAT I*, 2022 WL 2431626, at *4 (quoting USAT's admission that PDI's products were "plagu[ed] with quality control issues"). But USAT contends that it "should not be required to absorb the costs for increased inspections that are the result of … quality issues resulting from the government's required sole source provider"[8] (app. reply br. at 10). The Federal Circuit's decision in *USAT I* forecloses this argument. While PDI may have caused USAT multiple problems by raising its price and failing to comply with the quality control standards, these were part of the "maximum risk" that USAT accepted in executing a firm-fixed-price contract. *USAT I*, 2022 WL 2431626 at * 1; *Metro Mach.*, 22-1 BCA ¶ 38,096 at 185,013 ("[w]e consider the law clear that when the Government directs use of a sole source it represents only that the requirement of the contract can be met by use of the item and not that the item will be properly manufactured or delivered on time .... If appellant suffered damages as a result of the late delivery or improper manufacture ... its recourse is against [the sole-source supplier], not the Government" (quoting *Alabama Dry Dock & Shipbuilding Corp.*, ASBCA No. 39215, 90-2 BCA ¶ 22,855 at 114,811-12).

USAT has not demonstrated that the quality assurance representative, Mr. Anderson, was overzealous in his inspections. Given that both PDI and USAT experienced quality control problems in manufacturing the running gear (findings 54, 56, 64, 73, 93, 94), it is not at all surprising that the government began scrutinizing USAT's performance more closely. USAT has failed to explain how the inspections violated any term of the contract.

FINDINGS OF FACT FOR SHORING OF TRAILERS

100. The contracts provided that USAT was to deliver the trailers "F.O.B. Origin" (R4, tab 6 at 3, tab 41 at 3). The 07 contract incorporated FAR 52.247-30, F.O.B. ORIGIN, CONTRACTOR'S FACILITY (FEB 2006) (R4, tab 6 at 19). The 39 contract incorporated FAR 52.247-29, F.O.B. ORIGIN (FEB 2006) (R4, tab 41 at 7). While the latter clause requires the contractor to deliver the goods to a variety of possible locations such as a designated point in a city, or to a wharf, we do not see evidence that USAT delivered the trailers to any such location. As discussed below, USAT delivered the trailers to carriers that DCMA sent to USAT's facility.

101. On August 10, 2010, Mr. Doran, the Air Force engineer, forwarded to Esther Crowe, a contract specialist, an excerpt from Technical Order 35D3-3-80-1, which was a technical manual for the trailers, requesting that she forward it to USAT (app. supp. R4, tab 24 and 24a). Mr. Doran stated that it provided "guidance for loading, shoring and shipping the completed trailers" (app. supp. R4, tab 24 at 2). Ms. Crowe forwarded the document to USAT later that same day (*id.* at 1).

[8] The Federal Circuit identified PDI as an "approved vendor," rather than a sole source. *USAT I*, 2022 WL 2431626 at * 1.

102. The government was responsible for obtaining the carrier that would transport the trailers from the USAT facility (JSF ¶¶ 69-71). There were frequent problems with the carriers not arriving for the pickups, or arriving with the wrong equipment (tr. 3/74, 79; tr. 5/68; app. supp. R4, tabs 26, 30- 31, 41, 42-43, 46, 50, 53 att, 62).

103. According to a July 27, 2015 email from Jill Burnett, DCMA Transportation Officer, to administrative contracting officer Kevin Smith, DCMA provided the carriers with the specialized requirements for the trailers, such as the need for shoring blocks, but the carrier failed to provide them to the drivers, who then arrived at USAT without the correct equipment (app. supp. R4, tab 59 at 1-2; tr. 5/69).

104. When USAT was informed that a carrier was coming to pick up a trailer, it would stage the trailer for pickup. If the carrier had the wrong truck or equipment, USAT would have to remove the trailer from the staging area and then repeat the process when another truck was dispatched. (Tr. 3/80-81)

DECISION

The Air Force does not dispute that carriers failing to arrive at USAT's facility was a common occurrence, nor that the carriers often arrived with the wrong equipment. Instead, the Air Force raises several technical legal arguments.

First, the Air Force contends that the contract specialist made a mistake in sending Technical Order 35D3-3-80-1 to USAT because the order was only intended for use by fuel personnel and that the contract specialist did not have authority to change the contract (gov't br. at 7-10). However, these contentions do not address the undisputed facts about the carriers not arriving or having inadequate equipment (finding 102). The government has not identified any instances where a carrier arrived at USAT's facility with equipment appropriate to transport the trailers, but USAT failed to deliver the trailer.

The Air Force next argues that USAT is at fault because it did not forward the Technical Order to DCMA until 2013 (even though the Air Force contends USAT was not supposed to possess or use this order). This issue does not turn on when USAT supplied the Technical Order to DCMA because if DCMA needed a government-issued document, it was not USAT's responsibility to furnish it.

The Air Force further argues that DCMA was not authorized to change the contract and that DCMA and the Air Force are not responsible for the mistakes of the carriers (gov't br. at 11-12). But we do not understand USAT to be contending that DCMA changed the contract. With respect to the carriers failing to arrive for pickup, or arriving with the wrong truck or equipment, the government cannot escape from the failures of its contractors any more than USAT can escape from PDI's problems.

Finally, the Air Force makes a lengthy argument concerning the free on board origin clauses in the contracts (finding 100; gov't br. at 13-17). Among other things, it cites FAR 46.505(b), which provides that risk of loss or damage to the supplies stays with the contractor until delivery (gov't br. at 15). It also cites FAR 47.303-1 and 47.303-2, which both provide that the goods are to be free of expense to the government delivered on board the carrier (*id.* at 13-15). However, this again skirts the issue. USAT does not dispute that it bore the risk of loss or damage prior to delivery or that it had to deliver the trailers to the carrier free of expense to the government. USAT met its obligations in this respect.

The question is whether the government met its obligations. The government does not dispute that it was responsible for hiring the carriers and sending them to USAT's facility. When those carriers failed to arrive at the agreed-upon time or failed to bring the appropriate equipment, this represented a failure by the government to perform its contractual obligation. Accordingly, USAT is entitled to its costs incurred due to failed pickups.

We return this issue to the parties for the negotiation of quantum.

<u>FINDINGS OF FACT FOR FACTOR 4 – FLOOR SPACE FOR TRAILERS</u> (39 contract only)

105. This issue is related to factor 6 of the 39 contract REA, Brake Testing, which the contracting officer agreed to pay. As described in the REA decision, there were recurring problems with the parking brake (R4, tab 56 at 6-7). The contracting officer agreed to pay USAT because the resolution of the issue involved the performance of a test that was not required by the contract (*id.*),.

106. On April 29, 2014, while the parties attempted to resolve the brake issue, the contracting officer placed deliveries of the trailers on hold (JSF ¶ 37; app. supp. R4, tab 65). USAT continued producing trailers, which tied up space in its facility, resulting in costs for storage of the trailers and costs caused by having to work around them. The hold remained in place until October 2014 (JSF ¶ 38; app. supp. R4, tab 192). In the REA decision, the contracting officer concluded that the Air Force "could be liable" for $5,409 in storage costs and $13,373 in costs for employees having to work around the trailers. However, he denied the costs because he found them to be unsupported. (R4, tab 56 at 5-6)

107. The parking brake is part of the running gear (tr. 4/134). The delivery hold due to the parking brake was another aspect of the problems with the brakes that

USAT experienced after it assumed responsibility for manufacturing the running gear (tr. 4/135-36; app. supp. R4, tab 187 at 2).

DECISION

As we have found, the delivery hold that gave rise to the costs of storing and moving the trailers around was caused by problems with the brakes, which were part of the running gear. While we see no evidence that USAT raised this specific issue in the Court of Federal Claims, this issue is clearly based on the same transactional facts as the running gear claims litigated in the Court of Federal Claims. The Board holds that this claim is barred by the doctrine of res judicata.

FINDINGS OF FACT FOR FACTOR 7 – CONSULTANTS

108. In the REA decisions, the contracting officer granted the costs for the portions of the REA that he found to be meritorious. In the 07 REA decision, the contracting officer found that 3.73% of the REA was meritorious and awarded USAT 3.73% of the requested consultant fees, or $296.70 (R4, tab 29 at 9). In the 39 contract REA, the contracting officer found that 3.03% of the REA was meritorious and awarded USAT 3.03% of the consultant costs, or $542.58 (R4, tab 56 at 9). USAT was not willing to accept these amounts.

109. As described above, the amount sought by USAT for consultants on the 07 contract increased from $15,904 in the REA to $93,327 in the claim (findings 6, 21). The amount sought by USAT for consultants on the 39 contract increased from $35,900 in the REA to $210,670 in the claim (findings 8, 22).

110. USAT seeks payment for the services of a retired contracting officer, attorneys, and accountants (app. supp. R4, tabs 71-80). USAT states that it lacked the expertise to prepare the REAs and claims (app. br. at 15).

111. USAT states in its reply brief that "the only questions before the Board at this time are 1) whether contractors can recoup costs associated with REA preparation, including costs for consultants, and 2) if USAT incurred such costs" (app. reply br. at 6). While this suggests USAT is limiting the amounts sought to the REA period, many of the costs for which USAT sought recovery were incurred long after the contracting officer issued decisions on the REAs (*e.g.*, app. supp. R4, tab 72 at 16 (invoice for $2,500 dated Aug. 31, 2018), tab 80 at 3 (invoice for $12,015 dated Feb. 28, 2017)).

112. The record shows that USAT had a genuine intent to negotiate with the government and resolve the REAs (app. supp. R4, tabs 2 - 5; app. exs. 56, 58). USAT tried to work with the contracting officers to resolve the REAs but found it difficult

because there were four different contracting officers in less than two years and, in some cases, they were not responsive to USAT. USAT tried to surmount these challenges by contacting various government officials such as the "command ombudsman," but this only led the fourth contracting officer to accuse USAT of waging a "[p]ublic complaint campaign." (R4, tab 29 at 3; app. ex. 66; tr. 1/133-36).

DECISION

Costs incurred in preparing and negotiating an REA can be recoverable as costs associated with the administration of a contract, while the costs of prosecuting a CDA claim are not. Costs incurred for the genuine purpose of materially advancing the negotiation process should normally be a contract administration cost allowable under FAR 31.205-33. *Tip Top Const., Inc. v. Donahue*, 695 F.3d 1276, 1283-84 (Fed. Cir. 2012) (citing *Bill Strong Enters., Inc. v. Shannon*, 49 F.3d 1541, 1549-50 (Fed. Cir. 1995) (overruled in part on other grounds *Reflectone, Inc. v. Dalton*, 60 F.3d 1572 (Fed. Cir. 1995 (en banc)). Under FAR 31.205-33(b), professional and consultant services are allowable, subject to some exceptions, "when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government…."

The Board has found that USAT incurred costs for consultants for the genuine purpose of materially advancing the negotiation process (finding 112).

The Board recognizes that the Court of Federal Claims and the Federal Circuit found that factor one (the running gear) lacked merit and that the running gear comprised about 77% of the combined value of the REAs. The Board also recognizes that we have denied USAT's appeals with respect to most other aspects of the claims. However, both the contracting officer and the Board have found that some components of the REAs had merit. We conclude that USAT is entitled to the reasonable costs of consultants, based upon the results achieved, incurred up to May 17, 2016, the date that the contracting officer issued decisions on the REAs.

We return this issue to the parties for the negotiation of quantum.

FINDINGS OF FACT RELATED TO FACTOR 8 – IN-HOUSE REA AND CLAIM PREPARATION COSTS

113. USAT states that the "support for each of the claimed REA factors required significant man-hours to identify, collect, analyze and distill the information required to establish the factual basis for each factor claimed" (app. br. at 16). USAT states that the work "included the collection and identification of production and labor

records as well as communications between USAT and the government agencies as well as documentation related to the multitude of issues experienced with the TDP" (*id.*). USAT has submitted documents identifying the names, hours, and rates of pay of the employees who performed the work (app. supp. R4, tabs 81-83).

114. In the REA decisions, the contracting officer denied the costs as inadequately supported (R4, tab 29 at 10, tab 56 at 10).

DECISION

The Board may award the costs of in-house REA preparation pursuant to the *Bill Strong* rationale. *States Roofing Corp.*, ASBCA No. 55504, 10-1 BCA ¶ 34,360 at 169,689. With similar concerns to those we expressed under the Consultants factor with respect to the lack of merit of the running gear and most other factors, the Board concludes that USAT is entitled to the reasonable costs of in-house labor in preparing the REAs, based upon the results achieved, up to May 17, 2016, when the contracting officer issued the REA decisions.

We return this issue to the parties for the negotiation of quantum.

FINDINGS OF FACT RELATED TO FACTOR 9 – ID TAGS

115. This is a small issue with a long paper trail. We summarize it as follows.

116. In the claims, USAT stated that the government required USAT to "use unique identification tags, which contradicts the drawing requirement" and that to comply with this requirement USAT "had to create an internal drawing" (R4, tab 31 at 3, tab 60 at 3) (emphasis added).

117. The relevant events relate to the serial numbers on two identifiers affixed to the trailers, identification (ID) tags and bar code plates.[9] As the text quoted above indicates and as the government has observed, USAT did not seek costs related to the bar code plates (gov't br. at 28). USAT did not dispute this in its reply brief (app. reply br. at 7-8).

118. At the time that the Air Force awarded the 07 contract, the contract required that the serial number consist of four digits, reflecting the number of the trailer delivered, such that the first trailer delivered would be 0001, the second would be 0002, and so on. Sometime after award, the Air Force changed its policy so that the four-digit number had to be preceded by USAT's Commercial and Government Entity

[9] The difference between the two identifiers is that the former is human readable while the latter contains a bar code (app. supp. R4, tab 100 at 2).

(CAGE) code (65141). Thus, the first trailer delivered would be 65141-0001. (App. supp. R4, tabs 98 at 1; tab 100 at 2; tab 104 at 1; tr. 4/84). Although the government suggests in its brief that the CAGE code applied only to the bar code plates (gov't br. at 26-28), a November 6, 2014 email from Mr. Doran to the contracting officer indicates that the CAGE code requirement applied to both the tags and the plates (app. supp. R4, tab 100 at 2).

119. On June 22, 2010, the Air Force provided USAT the CAGE code plus four-digit serial number format (R4, tabs 90, 90 att.) While the addition of the CAGE code post-award potentially could have been a change, it appears that the Air Force informed USAT early enough for USAT to order tags with the correct serial numbers.

120. Despite this guidance, USAT thereafter ordered tags and plates with the CAGE code but without the first two zeros (app. supp. R4, tabs 107, 111 at 1-3). Thus, on August 21, 2014, Boeing notified the Air Force that USAT had provided tags that read, for example, 65141-50 instead of 65141-0050 (R4 tab 92 at 4).

121. USAT does not dispute that it omitted the zeros on the ID tags (app. supp. R4, tab 92 at 2). In its reply brief, USAT contends that there was no "performance, safety, or identification" issue that required the replacement of the tags that had already been delivered and that it should only have been required to furnish tags with CAGE code plus the four-digit number going forward. The Air Force required USAT to replace the tags on 50 trailers already delivered and to include the revised format on future plates (app. reply br. at 8).

122. USAT also contends that it had to furnish bigger tags due to the change (app. br. at 19), but it does not cite any evidence for this, and we see none. While it does appear that the addition of the CAGE code meant that the tags would not have been big enough if the original font size was used, the Air Force reduced the font size to allow all the characters to fit (app. supp. R4, tab 104 at 1).

123. As for the internal drawing that USAT alleges that it had to create, this drawing is in the record (app. supp. R4, tab 110). However, the highlighted portions of the drawing indicate that the purpose of the drawing was to ensure inclusion of the omitted zeros.

DECISION

As the Federal Circuit has explained, "the government generally has the right to insist on performance in strict compliance with the contract specifications and may require a contractor to correct nonconforming work," but it may not direct the replacement of the work if the cost of correction is economically wasteful. *Granite Const. Co. v. United States*, 962 F.2d 998, 1006–07 (Fed. Cir. 1992)

The Air Force required USAT to replace some of the ID tags on the trailers because USAT failed to include the correct four-digit serial number on the tags (findings 120-21). USAT has not cited any documents showing that it had to replace ID tags due to the addition of the CAGE code.

In its reply brief, USAT contended that there was no "performance, safety, or identification" issue that required the replacement of the tags and that it should only have been required to furnish tags with CAGE code plus the four-digit number going forward (app. reply br. at 8). While this contention suggests an economic waste argument, it was raised for the first time in USAT's reply brief and then only in a conclusory manner. *See APTIM Fed. Servs.*, LLC, ASBCA No. 62982, 22-1 BCA ¶ 38,127 at 185,218; *Raytheon Co., Space & Airborne Sys.*, ASBCA No. 57801 *et al.*, 15-1 BCA ¶ 36,024 at 175,960-61 n.3. USAT submitted no evidence that replacement of the tags for about $6,000 was economic waste. Accordingly, to the extent USAT did not waive this contention, we find that it fails for a lack of proof.

FINDINGS OF FACT FOR FACTOR 10 – CHANGE IN CONTRACT – FMS (39 Contract)

124. In its claim, the entirety of USAT's explanation for this issue is that it relates to "Additional Contract requirements due to FMS" (R4, tab 60 at 6). (FMS means foreign military sales).

125. USAT's brief is only slightly more helpful. The contract required production of trailers for both the Air Force and foreign countries, but there was no difference between a domestic trailer and an FMS trailer (tr. 3/104; 5/147). The crux of the claim is that for domestic units USAT could produce trailers in groups and achieve economies of scale. USAT contends that the government required USAT to work on the foreign units in "runs of 1 or 2," which was "highly inefficient" (app. br. at 21). In its brief, USAT does not cite any support in the record for this direction. However, in his testimony, Mr. Maag contended that on a visit to USAT's facility, Marcia Ehresman requested that the trailers "be ran separately as individual[s]" (tr. 3/94).

126. Ms. Ehresman worked for DCMA, not the Air Force. She was an industrial specialist, not a contracting officer. (App. supp. R4, tab 116) Ms. Ehresman did not testify at the hearing.

DECISION

This claim fails for lack of proof. It is undisputed that there is no difference between a trailer made for the Air Force and one for a foreign military. The only possible basis for recovery would be if an authorized Air Force official had ordered USAT to make them in an inefficient manner, that is, in lots of ones or twos. USAT has not produced any such evidence.

USAT's vice president, Mr. Maag, testified that a DCMA industrial specialist requested that USAT produce the foreign trailers separately. This is not documented in the record, nor is there any notification to the contracting officer that USAT was carrying out a DCMA request that would increase costs.

"[A]nyone entering into an arrangement with the Government" is responsible for "accurately ascertain[ing] that he who purports to act for the Government stays within the bounds of his authority." *Fed. Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384 (1947). A government agent must have actual authority to modify a contract. *Winter v. Cath-dr/Balti J.V.*, 497 F.3d 1339, 1344 (Fed. Cir. 2007). The government has given the authority to enter into and modify contracts to a limited class of employees: contracting officers. *Id.* (citing FAR 1.601(a)). Because USAT has not produced any evidence that the DCMA industrial specialist possessed authority to modify the contract and does not even allege it, this claim fails.

CONCLUSION

USAT's appeals are dismissed for lack of jurisdiction insofar as they relate to the running gear. In the alternative, they are barred by the doctrine of res judicata. Claims related to weldments, dampenings, quality control issues other than kingpins, the hose part substitution, drawing revisions, guide plates, hollow member treatment plugs, and the notch in grating are dismissed for lack of jurisdiction because they were not presented to the contracting officer. The Board sustains the appeals with respect to shoring of trailers, consultants, and in-house REA preparation costs. Otherwise, the appeals are denied.

Dated: August 6, 2026

Michael N. O'Connell

MICHAEL N. O'CONNELL
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

(Signatures continued)

I concur

J. REID PROUTY
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur

THOMAS P. McLISH
Administrative Judge
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. 61972, 61973, Appeals of U.S. Aeroteam, Inc., rendered in conformance with the Board's Charter.

Dated: August 6, 2026

PAULLA K. GATES-LEWIS
Recorder, Armed Services
Board of Contract Appeals