

## Sikorsky Prevails In US' \$80M Aircraft Contract Suit

By Eric Hornbeck

*Law360, New York (March 25, 2013, 7:21 PM ET)* -- The U.S. government didn't overpay Sikorsky Aircraft Corp. by \$80 million on an aircraft contract, a federal judge ruled Friday, finding the government hadn't shown that Sikorsky had improperly allocated overhead costs.

The U.S. alleged it overpaid Sikorsky from 1999 to 2005 on a number of contracts for aircraft and spare parts because of the contractor's noncompliant accounting systems and its accounting method used to allocate indirect costs of buying and handling aircraft parts beginning in 1999. But U.S. Court of Federal Claims Judge Charles F. Lettow found the government hadn't shown the method Sikorsky used to designate overhead costs had violated federal Cost Accounting Standards regulation 418.

"The government's failure of proof negates its claim for approximately \$79.7 million plus interest that it alleged Sikorsky owed due to the claimed violation of CAS 418. Sikorsky thus prevails on its challenge to the government's claim," the judge said in a brief order following a one-week trial in October and closing arguments in January. The full opinion was sealed, but a redacted version is expected to be released later this week.

A Sikorsky attorney said he was pleased with the decision. Other attorneys involved in the case didn't immediately respond to requests for comment late Monday.

Sikorsky had used material-cost base method to allocate indirect overhead costs, by which it portioned out its overhead costs to each of its government and nongovernment contracts based on the material associated with that contract, according to court records.

But in 1999, it switched to a direct-labor-cost method for allocating those costs, because, it said, its costs were distorted by government-furnished material like engines the U.S. bought elsewhere and provided to Sikorsky, according to court documents.

Sikorsky argued its contracting officer around that time approved the change. The officer thought the company's new allocation method to account for the government-furnished material didn't have any significant impact, the company said, but the government said that it was only a temporary approval that was supposed to be monitored and updated.

After an audit five years later found “potential noncompliance” with the accounting standards, Sikorsky maintained it had reached an agreement with a new contracting officer, Edward Weisman, to change its accounting practices and pass on future savings to the government if the government would consider the potential noncompliance finding resolved.

But in 2007, the contracting officer who took over for Weisman, Frank J. Colandro, used the same audit report to find that the contractor's accounting practices violated regulations, and that the violation had resulted in overcharges between 2003 and 2006.

Sikorsky is represented by Jeffrey A. Hall and Katherine M. Swift of Bartlit Beck Herman Palenchar & Scott LLP and by Karen L. Manos of Gibson Dunn & Crutcher LLP.

The cases are Sikorsky Aircraft Corp. v. U.S., case numbers 1:09-cv-00844 and 1:10-cv-00741, in the U.S. Court of Federal Claims.

--Additional reporting by Stewart Bishop and Dietrich Knauth. Editing by Eydie Cubarrubia.

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