

Cold Case Files

The Sikorsky Aircraft Corporation, manufacturer of the Black Hawk helicopter, holds several contracts with the U.S. government to furnish aircraft and spare parts. Over the years, Sikorsky has been involved in several disputes with the government over Sikorsky's method for allocating its material overhead costs. Prior to 1999, the company allocated materiel overhead costs using a hybrid allocation base of direct costs less the costs of commercial aircraft engines and used helicopters. But Sikorsky concluded that its allocation method only partially mitigated the distortion of costs associated with government furnished material. So after January 1, 1999, Sikorsky allocated the indirect material costs by using a direct labor cost base.

The Government claimed that Sikorsky's overhead cost accounting between 1999 and 2005 did not comply with the Government's cost accounting standards, and the parties brought that dispute to the U.S. Court of Federal Claims. In response to that dispute, Sikorsky changed its accounting methods in 2006, giving the Government an alternative argument that Sikorsky's change in accounting practices constituted an unlawful voluntary change in violation of the Cost Accounting Standards. The Government claimed that it was entitled to recover almost \$80 million in increased costs under its alternative theory.

Sikorsky succeeded in the initial case, and the CFC held that the 1999 to 2005 accounting methods were lawful. But when the Government continued to press its alternative claim, Sikorsky filed a new lawsuit in the CFC, arguing that the Government's claim was barred under the doctrine of claim preclusion. The Government responded that it could not have brought the counterclaim in the first round of litigation because the contracting officer had yet to assert the alternative claim. The CFC rejected that argument, explaining:

The information used to pursue the alternative claim was already available to the government's contracting officer when he asserted the government's claim alleging noncompliance . . . Yet the government's contracting officer waited three years before issuing the alternative claim in the 2011 final decision, and only did so after this court had rejected the government's interpretation of [the accounting regulations.] It was within the government's control to assert the alternative claim earlier, and its choice to wait does not avoid the application of claim preclusion in this action.

Read Judge Lettow's decision [here](#).