

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

NORTHROP GRUMMAN CORPORATION

Plaintiff,

vs.

THE UNITED STATES,

Defendant.

No. 19-1950 C

**COMPLAINT**

Plaintiff Northrop Grumman Corporation, inclusive of its wholly-owned subsidiary Northrop Grumman Systems Corporation (together, “Northrop Grumman”), through undersigned counsel, files its Complaint against the United States (the “Government”) to appeal two contracting officer’s final decisions (“COFDs”) issued under the Contract Disputes Act of 1978 (“CDA”), 41 U.S.C. § 7101, *et seq.*

**INTRODUCTION**

In 2008, Northrop Grumman closed a segment of its business, triggering its right to recover from the Government pension costs resulting from the segment closing pursuant to Cost Accounting Standard (“CAS”) § 413-50(c)(12), incorporated into the parties’ contracts containing Federal Acquisition Regulation (“FAR”) § 52.230-2. A COFD issued in June 2019 (“COFD No. 1”) denied Northrop Grumman’s claim in its entirety for the pension costs resulting from the segment closing and constitutes a breach of contract, entitling Northrop Grumman to recover damages totaling \$6,937,877, plus interest under the CDA.

A second COFD (“COFD No. 2”), issued with COFD No. 1, asserts a Government claim against Northrop Grumman under FAR § 52.230-2 and CAS § 413-50(c)(12) that the Government is entitled to reduce its contractually obligated share of the CAS 413 segment closing pension cost

adjustment by \$2,406,600. This claim is a time-barred Government claim and, even if not time-barred, the amount of the Government claim is wrong.

### **STATEMENT OF THE CASE**

For its Complaint, Northrop Grumman alleges as follows:

#### **I. PARTIES**

1. Northrop Grumman is a Delaware corporation, with its principal place of business located at 2980 Fairview Park Drive, Falls Church, Virginia.

2. Defendant is the U.S. Government, acting by and through the Defense Contract Management Agency (“DCMA” or “Government”).

#### **II. JURISDICTION**

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1491(a) and the CDA, 41 U.S.C. § 7104.

4. On April 17, 2014, Northrop Grumman submitted a claim to Ms. Elizabeth Boyd, the cognizant DCMA Corporate Administrative Contracting Officer (“CACO”), pursuant to 41 U.S.C. § 7103(a).

5. Northrop Grumman’s claim was certified in accordance with the requirements of 41 U.S.C. § 7103(b).

6. On June 21, 2019, Ms. Elizabeth Imhoff, the cognizant DCMA CACO, issued COFD No. 1 under the CDA, 41 U.S.C. § 7103, denying Northrop Grumman’s claim in full.

7. On June 21, 2019, Ms. Elizabeth Imhoff also issued COFD No. 2 under the CDA, 41 U.S.C. § 7103(a)(3), asserting a Government claim of \$2,406,600.

8. Northrop Grumman’s appeal to this Court is timely because the appeal has been filed within 12 months of the COFDs, as required by 41 U.S.C. § 7104(b)(3).

### **III. FACTS**

#### **A. The Electro-Optical Systems Segment**

9. Northrop Grumman's Electro-Optical Systems ("EOS") Segment was a strategic manufacturer of the latest generations of night vision image intensifiers and systems for military, law enforcement, and search and rescue operations. In addition, the EOS Segment designed and manufactured advanced infrared sensors/cameras, thin film coatings, and advanced optical components.

10. The EOS Segment, prior to being a Northrop Grumman business unit, was a division of Litton Industries, Inc. ("Litton").

11. Effective April 2, 2001, Northrop Grumman acquired Litton by a stock acquisition. The EOS Segment was a division of Litton Systems, Inc. ("LSI"), which was a subsidiary of Litton. After the acquisition, in 2007, LSI changed its name to Northrop Grumman Guidance and Electronics Company Inc. and the EOS Segment was incorporated into Northrop Grumman's Electronic Systems sector.

12. When Northrop Grumman acquired Litton, Northrop Grumman by law became the successor-in-interest in Litton's EOS Segment contracts. Additionally, the entirety of the Litton EOS Segment pension assets and actuarial accrued liabilities were transferred by law to Northrop Grumman.

13. On April 21, 2008, Northrop Grumman divested the EOS Segment through a sale of the segment's assets to L-3 Communications.

14. Under the terms of the asset purchase and sale agreement between Northrop Grumman and L-3 Communications, Northrop Grumman retained the entirety of the EOS Segment pension plan assets and actuarial accrued liabilities.

15. On April 21, 2008, Northrop Grumman closed its EOS Segment.

**B. EOS Employees' Pension Benefits**

16. When the EOS Segment was a division of Litton, EOS Segment employees participated in the Litton Plan B pension plan, a defined benefit pension plan.

17. After Northrop Grumman's acquisition of Litton, Litton Plan B became Northrop Grumman Retirement Plan B ("Plan B"), a defined benefit pension plan.

18. On April 21, 2008, the market value of the Plan B pension plan assets applicable to the EOS Segment was \$29,323,925.

19. On April 21, 2008, the Plan B pension plan actuarial accrued liabilities applicable to the EOS Segment were \$38,221,824.

20. On April 21, 2008, Plan B had 892 EOS employee participants, 334 vested terminated participants, and 134 retirees.

**C. Northrop Grumman's CAS 413 Pension Segment Closing Adjustment**

21. Pursuant to statute, negotiated prime contracts with the government or subcontracts relating to government acquisition with appropriated funds shall require that the Government and the contractor comply with CAS requirements, unless a contract is exempt from CAS. 41 U.S.C. § 1502.

22. Pursuant to statute and regulation, negotiated prime contracts with the government or subcontracts relating to government acquisition with appropriated funds that are not exempt from CAS and that exceed a stated monetary threshold must contain FAR § 52.230-2 ("CAS-covered contracts").

23. On April 21, 2008, Northrop Grumman was performing CAS-covered contracts that contained FAR § 52.230-2.

24. Among other requirements, FAR § 52.230-2 requires compliance with CAS 413-50(c)(12) when a segment is closed.

25. Under CAS 413, a segment closing occurs when the segment has “(i) been sold or ownership has been otherwise transferred, (ii) discontinued operations, or (iii) discontinued doing or actively seeking Government business under contracts subject to [CAS 413].” 48 C.F.R. § 9904.413-30(a)(20).

26. CAS § 413-50(c)(12), as relevant, provides:

If a segment is closed, if there is a pension plan termination, or if there is a curtailment of benefits, the contractor shall determine the difference between the actuarial accrued liability for the segment and the market value of the assets allocated to the segment, irrespective of whether or not the pension plan is terminated. The difference between the market value of the assets and the actuarial accrued liability for the segment represents an adjustment of previously-determined pension costs.

...

(vi) The Government's share of the adjustment amount determined for a segment shall be the product of the adjustment amount and a fraction. The adjustment amount shall be reduced for any excise tax imposed upon assets withdrawn from the funding agency of a qualified pension plan. The numerator of such fraction shall be the sum of the pension plan costs allocated to all contracts and subcontracts (including Foreign Military Sales) subject to this Standard during a period of years representative of the Government's participation in the pension plan. The denominator of such fraction shall be the total pension costs assigned to cost accounting periods during those same years. This amount shall represent an adjustment of contract prices or cost allowance as appropriate. The adjustment may be recognized by modifying a single contract, several but not all contracts, or all contracts, or by use of any other suitable technique.

(vii) The full amount of the Government's share of an adjustment is allocable, without limit, as a credit or charge during the cost accounting period in which the event occurred and contract prices/costs will be adjusted accordingly.

27. Northrop Grumman's sale of the EOS Segment on April 21, 2008, was a segment closing under CAS 413.

28. At the time that Northrop Grumman closed its EOS Segment, Northrop Grumman's CAS-covered contracts, pursuant to CAS § 413-50(c)(12) as incorporated by FAR § 52.230-2, required Northrop Grumman to determine the Government's share of the adjustment of previously-determined pension costs of the EOS Segment ("CAS 413 Submission").

29. On July 6, 2010, Northrop Grumman provided its CAS 413 Submission to the Government.

30. The CAS 413 Submission identified that, as of April 21, 2008, the market value of the Plan B pension plan assets applicable to the EOS Segment was \$29,323,925 and actuarial accrued liabilities applicable to the EOS Segment were \$38,221,824.

31. The CAS 413 Submission calculated the adjustment of previously-determined pension costs as the difference between the market value of the Plan B pension plan assets and actuarial accrued liabilities applicable to the EOS Segment as of April 21, 2008, an amount equaling an underfunded value of \$8,897,899 (the "Adjustment Amount").

32. The CAS 413 Submission further identified EOS Segment sales, percentage of government sales, and CAS costs between 1983 and 2008.

33. The CAS 413 Submission specifically contained columns, identifying for the years 1983 through 2008, EOS:

- a. Fixed price sales;
- b. Foreign Military sales;
- c. Other than fixed-price sales;
- d. Fixed Price Incentive sales;
- e. Total government sales;
- f. Non-US government sales;

- g. Commercial sales;
- h. Total sales;
- i. Percentage of fixed-price government sales;
- j. Percentage of other than fixed-price government sales;
- k. Percentage of total government sales;
- l. CAS costs;
- m. Funding from an advance agreement;
- n. Assignable cost deficit; and
- o. Final CAS costs allocated.

34. The CAS 413 Submission identified the Government's share of the Adjustment Amount as 78%.

35. The CAS 413 Submission identified that the Government owes to Northrop Grumman \$6,937,877, equaling the Adjustment Amount of \$8,897,899 multiplied by the Government share of 78%.

36. Upon receipt of Northrop Grumman's CAS 413 Submission, the Government did not adjust Northrop Grumman's contract prices or state that Northrop Grumman was not entitled to any contract price adjustment.

37. On April 17, 2014, Northrop Grumman submitted a certified claim to the cognizant CACO in accordance with the CDA, seeking the Government's share of the Adjustment Amount pursuant to CAS § 413-50(c)(12), as incorporated by FAR § 52.230-2, of \$6,937,877.

38. On June 8, 2014, at the Government's request, Northrop Grumman submitted actuarial data, including Northrop Grumman's 2008 CAS actuarial report and a Towers Watson Delaware Inc. report, dated June 3, 2014, measuring the EOS Segment pension deficit amounts.

39. On September 10, 2014, at the Government's request, Northrop Grumman submitted spreadsheets from the EOS Segment's incurred cost submissions by contract in order to provide confirming support for the Government's share (78%) within the CAS 413 Submission.

40. On November 25, 2014, Northrop Grumman received from the CACO the Government's Contractor Insurance Pension Review ("CIPR") report on the CAS 413 Submission.

41. The CIPR report evaluated Northrop Grumman's CAS market value of assets used to determine the Adjustment Amount and Northrop Grumman's calculation of its CAS actuarial accrued liabilities used to determine the Adjustment Amount.

42. The CIPR report did not address the Government's share calculation in Northrop Grumman's CAS 413 Submission.

43. After submission of its April 17, 2014 claim and receipt of the CIPR report, Northrop Grumman continued to request the CACO issue a final decision regarding Northrop Grumman's claim for the Government's share of the Adjustment Amount as a result of the EOS Segment closing.

44. On June 21, 2019, the CACO issued two COFDs.

45. On June 21, 2019, the CACO issued COFD No. 1, denying Northrop Grumman's April 17, 2014 claim for the CAS 413 segment closing pension cost adjustment of \$6,937,877 in full.

46. COFD No. 1:

- a. Does not dispute the market value of the Plan B pension plan assets as of April 21, 2008 as equaling \$29,323,925;
- b. Asserts the EOS Segment's actuarial accrued liability at closing is \$36,140,824;

- c. Asserts the Government's share is 67.1%;
- d. Asserts that the Adjustment Amount is \$6,816,899;
- e. Determines the Government's share of the Adjustment Amount, exclusive of COFD No. 2, is \$4,570,695;
- f. Asserts, based on COFD No. 2 (discussed below), the Government is entitled to an equitable adjustment, resulting in a Government share of the Adjustment Amount of \$2,164,095; and
- g. Asserts it "does not constitute an obligation of funds" and that the CACO "does not have authority to adjust Northrop's contracts on behalf of the Government to compensate Northrop for the \$2,164,095 Government share of the adjustment amount" and "do[es] not have authority to make a cash payment to Northrop," thus denying Northrop Grumman's claim in full.

47. On June 21, 2019, the CACO also issued COFD No. 2 asserting an affirmative Government claim for "an equitable adjustment in the amount of \$2,406,600 for the EOS deficit amount attributable to fixed-price contracts awarded prior to the effective date of Revised CAS 413.50(c)(12)."

48. COFD No. 2 asserts the Government is entitled to "an equitable adjustment pursuant to FAR 52.230-2(a)(4)(i)."

### **COUNT I - BREACH OF CONTRACT**

49. Northrop Grumman alleges and incorporates each of the foregoing paragraphs of this Complaint as though fully set forth herein.

50. Northrop Grumman, prior to and during 2008 (including through April 21, 2008), performed CAS-covered contracts that contained FAR § 52.230-2.

51. FAR § 52.230-2 requires that the Government and Northrop Grumman comply with CAS § 413-50(c)(12) when the EOS Segment closed on April 21, 2008.

52. Northrop Grumman complied with its CAS § 413-50(c)(12) obligations triggered when it closed the EOS Segment and determined, as documented in the CAS 413 Submission, the Government's share of the Adjustment Amount.

53. CAS § 413-50(c)(12) requires the Government, when plan liabilities exceed plan assets when a segment is closed, to reimburse contractors for the Government's share of the adjustment amount.

54. Northrop Grumman's CAS 413 Submission sets forth the Government's payment obligation to Northrop Grumman pursuant to CAS § 413-50(c)(12) because of the EOS Segment closing.

55. The Government has not paid Northrop Grumman the Government's share of the Adjustment Amount.

56. COFD No. 1 denied in full Northrop Grumman's claim for the Government's share of the Adjustment Amount under CAS § 413-50(c)(12), as incorporated into FAR § 52.230-2.

57. The Government's failure to reimburse Northrop Grumman for the Government's share of the Adjustment Amount is a breach of the Government's obligation, that exists pursuant to FAR § 52.230-2 and its incorporation of CAS § 413-50(12), contained in Northrop Grumman's CAS-covered contracts.

58. Northrop Grumman is harmed in the amount of \$6,937,877, plus CDA interest, as a result of the Government's breach of contract.

59. Northrop Grumman is entitled to recover breach of contract damages in the amount of \$6,937,877, plus CDA interest.

**COUNT II - THE GOVERNMENT'S CLAIM HAS NO LEGAL BASIS  
BECAUSE IT IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS**

60. Northrop Grumman alleges and incorporates each of the foregoing paragraphs of this Complaint as though fully set forth herein.

61. COFD No. 2 asserts a Government claim for an equitable adjustment of \$2,406,600 because CAS 413, prior to 1995, did not provide recovery for segment closing pension cost adjustments under fixed-price contracts.

62. The Government's claim is based upon the facts that when Northrop Grumman closed the EOS Segment on April 21, 2008 certain pension plan assets and liabilities existed and that the EOS Segment had performed CAS-covered fixed-price contracts awarded prior to March 1995, as explained in the CAS 413 Submission.

63. Pursuant to 41 U.S.C. § 7103, each claim by the Federal Government against a contractor relating to a contract shall be submitted within six years of the date of the accrual of the claim.

64. Pursuant to FAR § 33.201, the accrual of the claim occurs on the date when all events that fix the alleged liability were known or should have been known.

65. COFD No. 2:

- a. Asserts EOS Segment fixed-price sales between 1983 and 1995 equal \$1,181,801;
- b. Uses EOS Segment's fixed-price sales from 1983 to 1995 divided by total sales over the same period to calculate a Government share of 35.3% related to fixed-price contracts during this period;
- c. Multiplies the Government's share associated with fixed-price contracts, 35.3%, by the Adjustment Amount it calculated, \$6,816,899, to determine

\$2,406,600 of the adjustment amount is associated with pre-1995 fixed-price contracts; and

- d. Asserts the Government is entitled to an equitable adjustment of \$2,406,600.

66. The \$1,181,801 COFD No. 2 used to determine the Government's share of the adjustment amount associated with pre-1995 fixed-price contracts is the equivalent of the summation of the fixed-price sales between 1983 and 1995 Northrop Grumman identified for the EOS Segment in the CAS 413 Submission.

67. The Government knew or should have known of its claim for an equitable adjustment by no later than July 6, 2010, when Northrop Grumman provided the required CAS 413 Submission to the CACO.

68. The statute of limitations for the Government's claim asserting an equitable adjustment, therefore, expired no later than July 6, 2016.

69. The Government asserted its affirmative claim for equitable adjustment in COFD No. 2 on June 21, 2019.

70. The Government's claim for equitable adjustment to its share of the adjustment of previously-determined pension costs based on the EOS Segment closing is time barred by the CDA statute of limitations.

71. This Court may grant the relief it considers proper, including declaratory relief, in any dispute concerning rights in tangible or intangible property and/or compliance with cost accounting standards. 28 U.S.C. § 1491(a)(2).

72. Northrop Grumman, therefore, is entitled to a declaratory judgment that the Government's claim for equitable adjustment, asserted in COFD No. 2, is time barred by the applicable statute of limitations.

**COUNT III - THE GOVERNMENT'S CLAIM IS OVERSTATED**

73. Northrop Grumman alleges and incorporates each of the foregoing paragraphs of this Complaint as though fully set forth herein.

74. COFD No. 2 asserts a Government claim for an equitable adjustment of \$2,406,600 because CAS 413, prior to 1995, did not provide recovery for segment closing pension cost adjustments under fixed-price contracts.

75. The Government's claim for equitable adjustment improperly inflates the Government's share of the adjustment amount in its calculation of an equitable adjustment based on pre-1995 fixed-price contracts.

76. This Court may grant the relief it considers proper, including declaratory relief, in any dispute concerning rights in tangible or intangible property and/or compliance with cost accounting standards. 28 U.S.C. § 1491(a)(2).

77. Northrop Grumman, in alternative to a judgment in its favor under Count II, is entitled to a declaratory judgment that the Government's claim for equitable adjustment, asserted in COFD No. 2, is overstated.

**PRAYER FOR RELIEF**

WHEREFORE, Northrop Grumman respectfully requests that the Court enter judgment for Plaintiff in this Complaint and further grant the following relief:

A. That the Court enter Judgment under Count I in favor of Plaintiff and require the payment of \$6,937,877;

B. That the Court enter Judgment under Count II in favor of Plaintiff and find that the Government's claim for equitable adjustment to the EOS Segment pension funding deficit attributable to fixed-price contracts awarded prior to the effective date of Revised CAS § 413-50(c)(12) is time barred by the CDA statute of limitations;

C. In the alternative, that the Court enter Judgment under Count III in favor of Plaintiff and find that the Government's claim for equitable adjustment to the EOS Segment pension funding deficit attributable to fixed-price contracts awarded prior to the effective date of Revised CAS § 413-50(c)(12) is overstated;

D. That the Court enter Judgment that Northrop Grumman is entitled to interest under the CDA from the date of April 17, 2014, until the date of the Government's payment of unreimbursed allowable costs and related damages; and

E. That the Court award to Northrop Grumman such other relief as the Court deems proper.

Respectfully submitted this 23rd day of December, 2019.

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