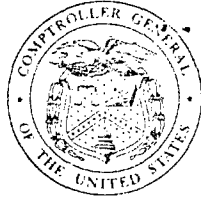


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-194445.3

DATE: December 21, 1979

MATTER OF: / Aero Corporation ^{C-2256}

DIGEST:

1. Even though protesting firm with considerable experience in maintaining C-130 aircraft could perform many tasks under contract involving replacement of parts to extend service life of aircraft with data and tooling available under its maintenance contract, procuring agency did not act arbitrarily in determining that specifications could not be provided to achieve competition. Consequently, determination to make sole-source award to original manufacturer is not legally objectionable.
2. Where agency's choice of procurement method reflects its own uncertainty as to technical risks which may be overcome during contractor's performance of work on initial quantity of aircraft to be serviced, sole-source determination should be reviewed before exercise of option for increased quantity or award of follow-on contract.
23. Referral to Small Business Administration for ² Certificate of Competency (COC) is inappropriate where small business was excluded because agency was not in position to provide specification believed necessary for performance and is required to make sole-source award to original manufacturer in the absence of such specifications. COC procedure does not affect agency's determination of its technical needs, e.g., the extent to which specifications are considered necessary to reduce risk to acceptable level.

[Propriety of Decision To Award Sole-Source Contract]

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This case concerns the propriety of the Navy's decision to award a sole-source contract for extending the service life of its C-130 aircraft. The Navy believes that the highly complex and technical work required in the circumstances must be performed only by the original aircraft manufacturer, and that award to another firm would involve unacceptable risks. The decision is challenged by a company which has long performed maintenance on the Navy's C-130 fleet and which believes it can do the service life extension work. We find the Navy's position to be reasonable.

3 The case arises as a protest filed by Aero Corporation of the award of a letter contract to Lockheed-Georgia Corporation (Lockheed) to perform the C-130 aircraft Service Life Extension Program (SLEP). Aero, a current contractor for performance of Standard Depot Level Maintenance (SDLM) for the C-130 aircraft, believes it can perform the life extension work and filed a companion suit for injunctive and declaratory relief in the United States District Court for the District of Columbia (Aero Corporation v. Department of the Navy, Civil Action NO. 79-2944). ^{D 1060} ₇₄₈

5 On November 21, 1979, the Court entered a declaratory judgment for Aero, permitting the Navy to proceed with the award at its own risk while preserving Aero's right to have its complaint decided as though award had not been made. Noting that planning for SLEP had been underway for several years, that the Navy anticipated making a sole-source award to Lockheed for at least four months, and that the Navy was fully aware that a protest or litigation was likely, the court concluded that the Navy in the circumstances had breached a duty to facilitate preaward GAO and court review and to maintain the status quo pending review. Aero's request for a preliminary injunction against award was denied because the first aircraft will not be inducted into SLEP at Lockheed until May 1980, and because the award can be terminated for convenience earlier, if required. However, the court's order enjoined the Navy from inducting any aircraft into SLEP prior to January 1, 1980, and in effect, estops the Navy from asserting post-award

status or partial performance as a basis for refusing to terminate the contract, should termination be appropriate. We are deciding this matter because the court has requested our opinion. See 4 C.F.R. 20.10 (1979).

The SLEP program (or more completely, SLEP/CILOP, i.e. Service Life Extension Program/Conversion in Lieu of Procurement) consists of a series of tasks affecting major structural areas of Lockheed-manufactured C-130 aircraft. SLEP is defined by the Navy as "the restoration and/or replacement of primary aircraft structure that has reached [its] fatigue life limit." CILOP involves improving the capabilities of the aircraft. Accomplishment of these objectives, according to the Navy,

"entails the production and incorporation of components/subcomponents into the airframe to the extent of remanufacturing portions of the airframe structure, such that the service life of the aircraft is extended by approximately 10,000 flight hours."

The envisioned program anticipates replacing a number of components with parts of current design, and in the case of certain series aircraft, increasing permissible gross weight. SLEP also encompasses several miscellaneous tasks, including upgrading field manuals and related functions, to assure that logistical needs are met.

Three aircraft series are included in the program: the C-130 itself, as well as KC-130s (tankers used primarily by the Marine Corps), and EC-130s. The Navy views SLEP on at least three EC-130s as a matter of immediate urgency due to the role planned for these aircraft which are to be used to provide airborne communications to the Trident fleet under the TACAMO program. The Navy plans to induct these aircraft into SLEP so that special communications equipment will be removed prior to SLEP and replaced upon completion of SLEP. This schedule is considered inflexible because of the limited number of aircraft available and the operational demands of the TACAMO mission.

SLEP as proposed here also includes SDLM. SDLM is defined by the Navy as "rework performed at a military rework facility or commercial contractor's facility at specific intervals during the service life of an aircraft." Normally, SDLM includes a comprehensive inspection of an aircraft, focusing on specific aircraft structures and materials. Critical defects are corrected when found and required preventive maintenance is performed. SDLM routinely includes any other work which must be performed to assure that the aircraft complies with all outstanding technical directives before it is returned to service.

The Lockheed letter contract for SLEP calls for negotiation of a formal contract providing for a modification of 13 aircraft, with an option to increase the total number inducted to 20 aircraft. The Navy proposes to induct 29 additional aircraft under contracts it would award Lockheed in the future. The numbers of various series aircraft are summarized in Table 1.

Series	Number of Aircraft Covered by Letter Contract	Optional Aircraft Covered in Contract	Other Aircraft (Future Contracts)
EC-130	3	2	5
KC-130	8	5	19
C-130	2	-	5
Total	13	7	29

Table 1

All of the aircraft listed in Table 1 have met, or are close to meeting, their original 15,000 hour service life limit.

The C-130 SLEP was initiated in 1975. At that time, NAVAIR projected a need for SLEP on 61 aircraft which it expected to perform over a seven-year period, from 1976

through 1982. In 1977 the Navy initiated a study "to assess the current aircraft fuselage and empennage condition [of C-130 aircraft]; determine service life extension requirements and consider appropriate modification, logistics and maintenance alternatives." The Naval Air Rework Facility at Cherry Point (NARF) was designated to manage and staff the project, and in that regard to:

"Conduct an evaluation utilizing all available data * * * to determine cost effective modifications and/or replacement components to provide the desired aircraft service extension. Evaluation shall be conducted on the fuselage and empennage structure and their components * * *."

Lockheed was asked to perform a fuselage and empennage fatigue study. By the fall of 1977, Lockheed had been asked under an existing contract to submit an engineering change proposal (ECP) to identify long lead items which would be needed. In early 1978, the Navy also asked Lockheed to submit an ECP regarding performance of the C-130 SLEP, incorporating the results of its earlier fatigue study and reflecting its own studies of SDLM and other maintenance records. Lockheed did so, eventually preparing two proposals assuming: (1) that all of the work would be performed at Lockheed, and (2) alternatively, that Lockheed would prepare a so-called Military Specification kit (Mil. Spec. kit) for installation of SLEP replacement parts by another contractor.

The record shows that a work requirements specification was developed by the Navy which merely identifies the structural and system components which require replacement to achieve the desired service life extension. The Navy believes the specification is not suitable for competitive procurement because it does not describe how the work is to be done, e.g., provide installation procedures (technical directives) and the tools and parts necessary to accomplish the replacements.

Essentially, the Navy contends it would be forced to assume an unacceptable degree of technical risk

unless: (1) Lockheed performs the work, or (2) the work is performed by a contractor using a Mil. Spec. kit prepared by Lockheed. It believes that sound practice requires use of a Mil. Spec. kit to assure that the airworthiness of the aircraft is not affected over the proposed extended service life. The Navy believes that it did what it could to compete its requirement. Indeed, in July 1979 NAVAIR had approved a draft procurement plan (the "July plan") which envisioned competition for a portion of the work. As proposed, NAVAIR would have made an initial sole-source award to Lockheed, because: (1) award to Lockheed was the most expeditious means of satisfying SLEP, (2) Lockheed was believed to be the only firm which could satisfy SLEP using a modification program without kits, and (3) Lockheed in any event would have to accomplish non-recurring engineering, manufacture parts, and produce any kits that would be used for competitive procurement. Significantly, the plan provided that kits would be procured to facilitate future modifications by a firm or firms other than Lockheed.

Nevertheless, the Navy says it now has concluded that the kit preparation process cannot be completed in less than four to five years, because the process includes various requirements, including leadtime needed to obtain parts as well as difficulties which concurrent performance of SLEP and Mil. Spec. kit contracts would place on Lockheed's resources. The time required to complete kit preparation and validation of the kits would not permit, in the Navy's view, a SLEP induction and delivery schedule which would meet Navy requirements. (Validation is defined by the Navy as the process by which kits and technical directives are tested for accuracy and adequacy. Essentially, validation entails performance under Navy observation of all required tasks using the materials furnished with a kit.)

Aero has approximately 10 years experience working on Navy C-130 series aircraft as a contractor. During that period it has performed a variety of so-called "over-and-above" work, i.e. work which was required to

correct deficiencies discovered in performing SDLM. Pointing out that SDLM contract work has included aircraft modifications as well as crash damage, Aero maintains that it has accomplished at one time or another all but parts of two of the 39 SLEP tasks. It also argues that some of the work it has done was of equal or greater difficulty than is required for the two tasks which it has not completely performed.

Aero believes it does not need kits. In its view, the Navy should have, but failed to, recognize that at least a limited group of experienced SDLM contractors are capable of performing SLEP without kits. Aero says it could be ready to induct the first aircraft six weeks after award to it, that it can perform SLEP within 130 days after each aircraft is inducted, and that it can meet the Navy's projected delivery schedule over the life of the contract.

Indeed, Aero believes it is actually in a better position to perform SLEP than is Lockheed due to its SDLM experience. It can begin performance sooner than can Lockheed, it says, because it does not need to set up tooling, draft planning sheets, and prepare plant space -- tasks it has done in performing related SDLM functions. It states it would accept liquidated damages to guarantee its proposed performance schedule.

In addition to taking exception to the Navy's belief that up to five years is needed to produce kits, Aero states it is willing to serve as the contractor for any kit validation. On June 20, 1979, Aero submitted an unsolicited proposal to perform SLEP based upon Aero's then current understanding of the Navy's plans. Through the proposal Aero offered to perform verification of the technical directives which would be included with kits on three aircraft to perform SLEP/SDLM on 10 additional aircraft, and to perform logistics-related data requirements, developing necessary drawings, engineering notices, technical directive and C-130 manual revisions required.

Aero maintains that it is a small business and that Navy should not procure its requirements without referral

to the Small Business Administration (SBA) for a Certificate of Competency (COC). Aero's argument is twofold. It suggests that the rejection of its unsolicited proposal was founded in the Navy's belief that Aero is incapable of performing SLEP and further, that the Navy's decision to "direct" an award to Lockheed was based on its conclusion that only Lockheed is "capable" of performing the work in question.

As provided in 10 U.S.C. § 2304(g) (1976), unless exigency or other special (and here, inapplicable) circumstances require, when a procurement is negotiated:

"proposals, including price, shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured, and written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price, and other factors considered * * *." (Emphasis added.)

Thus, the question here is whether the Navy, in light of the statutory preference for maximum practical competition, had a reasonable basis for directing award to Lockheed on a sole-source basis.

While presumably no contracting activity will make a sole-source award in good faith without believing that the action taken is in the Government's best interest, a sole-source award may not be justified on that basis or on the basis that the awardee is the best qualified firm. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. The agency must show that it reasonably believed that there could be no competition. Control Data Corporation, 55 Comp. Gen. 1019, 1024 (1976), 76-1 CPD 276; cf. Constantine N. Polites & Co., B-189214, December 27, 1978, 78-2 CPD 437.

We recognize, as the Navy and Lockheed contend, that the magnitude of work required at one time with SLEP is substantially greater than that which is typically required to perform SDLM on a single airplane. If SLEP involves

completion of some 39 tasks, a resulting 10,000 hour service life extension, and an increase gross weight of affected KC-130F aircraft, it requires, according to Lockheed, removal of parts totaling 45 percent of the basic empty weight of the aircraft, replacement of parts weighing a total of 2,000 pounds, and reassembly of the remainder (totaling some 32,000 pounds). Although there is some disagreement as to the exact percentage, the parties concur that a significant portion of the total effort will be absorbed by three tasks, involving replacement of (1) the wheel well side panels in affected aircraft, (2) the sloping longerons, and (3) the cab frame reinforcement doublers.

The parties agree that wheel well side panel replacement is the largest single task, albeit one which does not apply to the three TACAMO aircraft initially scheduled for SLEP. These panels -- a structure consisting of numerous parts -- carry bearing loads from the fuselage, wings and landing gear. The task involves removal and reinstallation of hundreds of parts.

Replacement of the aft fuselage sloping longerons (two per aircraft) constitutes the second largest operation. Lockheed anticipates that this will require disconnecting the entire aft fuselage structure, involving removal of approximately 100 parts. It views reassembly as a critical task, because the fit of the ramp and cargo door and improper alignment of the aft fuselage structure affect aerodynamic performance.

Windshield and cab frame doubler replacement, the third significant task, requires removal of outside skins in the cockpit area and careful reassembly to insure against air leaks (the area is pressurized) and windshield cracking over the extended service life.

Lockheed's perception of the work is illustrated by its comment in an early submission to our Office:

"Even assuming Aero's ability to perform these work items, the comparison it has drawn [to SDLM] is inappropriate. This is because of the difference between SDLM and SLEP: in

the former, work is done on an as-needed basis, with only a limited amount of structural work being performed at any one time. SLEP, however, is a systematic program whereby all work items are to be done simultaneously, and a majority of the work involves replacement of major structural members. Furthermore, there is a synergistic effect of the SLEP requirement for simultaneous work (i.e., the sum of the parts does not equal the whole because one work task affects the way another task is to be done.) For example, to remove the sloping longerons in SDLM, a rather simple support system is all that is needed to hold the aircraft stable. In SLEP, however, because of the other work being performed at the same time, a far more complex support system must be used."

Viewing SLEP as addressing aircraft structure as an integrated whole, Lockheed argues that SLEP can be completed successfully only if proper physical support, location tooling and methodology is used -- capabilities which it asserts are available only if the work is done by the original manufacturer. Location tooling refers to jigs and other devices used to position parts during assembly to assure that they are properly aligned.

Specifically, Lockheed focuses on three wheel well replacement related tasks and four additional work items (two related to the longeron and windshield doubler replacement tasks and two others) which it believes are critical, requiring use of location tooling if tolerances and interchangeability of parts and assemblies are to be maintained. These are as follows:

1. The wheel well side panels must be installed to tolerances of 0.030 inches (approximately 1/32 of an inch). Otherwise, at minimum, the main landing gear operation may be disrupted or excessive stress placed on components of the panel or adjoining structure.

2. Installation of so-called "porkchop fittings" (furnished as blank parts and mated together at the fuselage floor) and related wheel well attachments must be held in proper position to assure that excessive loads are not imposed.

3. Installation of wheel well beams (on EC-130 aircraft only) which support the landing gear tracks must be held to an accuracy of 0.25 degrees vertically and 0.005 degrees laterally to assure proper operation.

4. Lockheed sees installation of the longeron end fitting as critical because it not only controls the position of the sloping longeron but also affects the horizontal stabilizer attach fittings. Unless the position and hold dimensions of the vertical stabilizer attach fittings are maintained, the stabilizer will not match the aft fuselage fittings. (Lockheed admits that it does not have the tool required to assure that this match will be maintained, but intends to borrow it from a subcontractor.)

5. Accuracy of installation of the longerons is considered critical, as indicated, to assure interchangeability of the aft cargo door attachment and ramp.

6. Lockheed also points out that windshield and column frame openings must be held to prescribed dimensions to insure interchangeability of window and windshield components.

7. Likewise, Lockheed notes, replacement of two of the nacelle engine truss mounts is critical to assure interchangeability of other parts.

On the other hand, even the Navy recognizes that the difference between SDLM and SLEP is in part one of degree, as indicated in the deposition taken of Navy Captain Russell E. Davis, the Program Manager for SLEP:

"Q. * * * Is it correct that for a SDLM contract, the contractor inspects the airplane? He then makes a determination or a judgment as to what portions or parts of the airplane need to be replaced.

"He confers possibly with Navy representatives on the question of whether replacement is in order. An agreement is reached as to whether the part ought to be replaced. When that agreement is reached, then the contractor proceeds to make the replacement and he does that for every part that agreement has been reached upon.

"Then the aircraft is completed. You have a flight inspection and the SDLM task is performed for that particular aircraft. * * *

"A. That is a fair description. However, I would like to believe that a tooling requirement determination is made somewhere in the evaluation process, either as a recommendation by the SDLM contractor or as a determination by DCAS and the Navy engineers, and in some cases I believe that tooling is required on an extra order basis for SDLM contractors.

"Q. So SDLM contractors have a certain amount of tooling available to do these replacement tasks?

"A. You have a depot level outfit for tooling.

"Q. Assume that is a C-130 aircraft that comes into the SDLM contractor's plant. The inspection is done and for each and every [item] identified in the SLEP work statement, there is a deficiency found * * *.

"A. If he were to replace all of the parts at that particular time in whatever sequence is deemed appropriate by either his engineering group or the Navy engineers and the appropriate tooling is there to do the job and the quality assurance folks buy off on it and the airplane flies, then I think you could probably assume that a like operation to SLEP will [have been] done on that airplane."

This close relationship between SDLM and SLEP is also indicated by the Assistant Deputy Chief of Naval Material's memorandum approving the final procurement plan. At that time he directed that:

"C-130 series aircraft scheduled for SLEP * * * at Lockheed will be considered for induction at the then current SDLM contractor's facility in the event a substantial delay occurs in the scheduled SLEP [if] a SDLM is determined [to be] necessary to sustain the material condition of the aircraft."

The significance of this statement is disclosed by the deposition of Mr. Herman, the C-130 project engineer at Naval Air Research Facility, and OPNAV Instruction 3110.11M regarding "policies and peacetime planning factors governing the use of naval aircraft." The Navy admits that most if not all aircraft which reach the end of their original service life are not taken out of service permanently. Rather, the Navy has various procedures, including SDLM, to keep them in service, albeit possibly with increased operating cost and downtime.

Also, Aero does not agree that the magnitude of the total job is quite what Lockheed sets out. As explained by Aero, "The need for * * * simultaneous replacement of all SLEP items is the lynchpin of the Navy's argument that only Lockheed is currently able to perform the SLEP tasks." However, Aero states that it:

"* * * will not perform the SLEP tasks 'simultaneously,' as Lockheed proposes to do. Aero will perform the SLEP tasks in a sequenced group of tasks as it presently performs SDLM, and Aero has all of the tools available to do so. Moreover, Aero has the required technical directives or work instructions for 37 of the 39 tasks and the capability to develop this data for the remaining two tasks."

In Aero's view, Lockheed's "simultaneous" approach is neither required nor desirable. Indeed, Aero views its sequential approach as superior because "it permits the aircraft to be [used as] its own master tool and eliminates the dangers of structural impairment and [residual] stress" which it argues otherwise would be a problem even if Lockheed's approach were used. Aero's

proposed technique involves making the parts fit by finishing them in place, e.g., by "backdrilling" holes using adjacent parts as guides. It argues, and Lockheed concedes, that aircraft which have been flown 15,000 hours have been subjected to stresses in flight and on landing that affect the alignment of parts throughout the airframe. The Navy assumes that every one of the affected aircraft has been operated beyond designed gross load limits. This means, Aero explains, that use of original tooling to "force" parts to conform to original manufacturing tolerances of itself introduces residual stresses and potential damage.

For just the same reasons, Lockheed characterizes the aircraft as an inaccurate locating tool, claiming that backdrilling techniques cannot replace proper location tooling in SLEP because the accuracy and precision obtained using such methods "can be no greater than that of the existing parts and holes." It emphasizes that:

"Where such parts and holes are deformed or out of alignment due to stress and wear, previous maintenance and repair work, or the process of disassembly, they will definitely not provide reliable guides or templates for the sort of work required by SLEP. The age and condition of the aircraft in question, as well as their broad exposure to several generations of depot level maintenance and repair work * * * strongly suggest the imprudence of using the backdrilling expedient in SLEP."

It seems clear from the preceding that the Navy believed that there was significant risk involved if a firm other than Lockheed was to perform the work. The record shows, however, some disagreement among responsible Navy personnel regarding the extent of that risk and the course which should be pursued as a result. NAVAIR contracting personnel believed that competition could be introduced, while throughout, Lockheed was favored by NARF personnel and others.

The minutes of the NAVAIR September 28, 1979 meeting approving sole-source procurement reflect this dichotomy of views:

"In recommending [sole-source to Lockheed], [Captain] Davis pointed out that it is the most responsive to Fleet needs and had the lowest cost, technical, and schedule risks, although it does preclude competition. * * * [Captain] C.M. Rigsbee, AIR-03, felt that NAVAIR should make a hard decision as to which option best serves the Navy's needs regardless of any potential protests. [Captain] N.P. Ferraro recommended that we get a firmer hold on the impact a competitive procurement with its prolonged schedule may have on the Fleet. [Rear Admiral] L.R. Sarosdy, AIR-04, and [Captain] W.J. Finnernan, AIR-05A, agreed that the prime contractor was the only plausible place to perform the SLEP, even if other contractors had installation kits."

As indicated earlier, the Navy considered the use of kits in order to have a competitive procurement and while it found the kits to be an acceptable approach, it also determined that the time frame involved for development and validation of the kits was unacceptable.

We find that the Navy had a reasonable basis for its belief that award to any firm other than Lockheed would involve unacceptable risk, even though we believe the Navy's reluctance may result in part from its inability to assess fully the risks taken.

First, as indicated above, there are significant differences between SLEP and SDLM and the risks involved in each. Although we are convinced that there are good faith differences of opinion regarding the amount of risk, nevertheless we find no abuse of discretion regarding the Navy's higher estimation of the risk in SLEP. Obviously, it is reasonable to expect greater risks in achieving the desired 10,000 hour service life extension for SLEP as opposed to the 3,000 hour extension obtained by SDLM,

particularly in view of the greater structural work which Navy categorizes as a remanufacturing process.

Second, we are not convinced that SLEP can be performed without some form of kit. Even though Aero has performed most of the tasks during SDLM, its methodology envisions less disassembling of the aircraft using more of the aircraft as its own locating tool. Lockheed, on the other hand, would provide more disassembling of the aircraft and use original manufacturer's tooling. While we believe SLEP might be performed using something less than a Mil. Spec. kit, we are not persuaded that the work can be accomplished entirely as Aero envisions. It is likely, in our opinion, that some "backdrilling" of holes using adjacent parts as guides, as proposed by Aero, would not be acceptable and that use of specialized tooling may be required where original manufacturing tolerances are considered necessary. Moreover, it is logical for the Navy to want to maintain greater control of the remanufacturing process it envisions so as to insure the higher quality of workmanship considered necessary for SLEP but not required for SDLM.

Third, we are aware of no legal requirement for the Navy to provide kits specially tailored to a limited group of maintenance contractors, such as Aero, regardless of whether Navy could have or should have arranged for kits earlier. The Navy is required to seek competition where it can find it. However, in our opinion, the statutory preference for maximum practical competition is not disregarded where, as here, consideration is given to the feasibility of providing Mil. Spec. kits to facilitate competition on a broader basis which included maintenance contractors.

The question remaining is whether the Navy reasonably concluded that the development of kits is not feasible in the time frame for performing SLEP. In this connection, Aero argues that the development of kits does not require five years primarily because it believes kits covering all 39 SLEP tasks are unnecessary, having accomplished replacement of parts during SDLM for 37 out of the 39 SLEP tasks. Moreover, Aero argues, the Navy should exercise

its discretion to cut short the kit preparation process, e.g., by waiving the trial and validation phases. As explained above, we believe the Navy has not abused its discretion by seeking to control SLEP performance by firms other than the original manufacturer by requiring performance in accordance with Mil. Spec. kits. We base this conclusion on the Navy's efforts to obtain competition using kits, and on its uncertainty as to how technical risk otherwise should be contained, even though many of the tasks previously may have been performed by others during SDLM. Similarly, whether certain phases of the kit preparation process can be cut short or condensed is largely discretionary with the Navy and because of the technical risks involved we are not in a position to take issue with what may be the Navy's conservative views in this regard.

Aero also argues that the projected operating service life of the C-130 aircraft does not preclude competition because it is merely a projection of the minimum expected service life and the Navy has in fact extended the operating service life of a number of C-130 aircraft. However, as indicated above, the Navy has not sought to justify its sole-source award to Lockheed because of exigency precisely because it cannot certify that aircraft will be grounded after a predetermined number of hours without inspection.

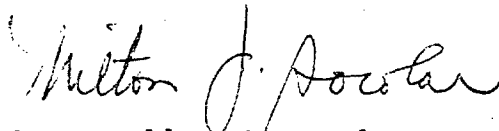
Moreover, we disagree with Aero that the record is inadequate to support Lockheed's time frame for furnishing Mil. Spec. kits and the Navy's conclusion that the kits cannot be designed, developed and produced in the required time frame. The Air Force Plant Representative Office at ¹⁰⁶¹ Lockheed was requested to evaluate Lockheed's schedules based on first hand knowledge of Lockheed's capabilities and performance on similar programs. Apparently, aerospace contractors are experiencing substantial increases in material leadtime and the Air Force plant representative considers Lockheed's schedules to be realistic, although somewhat conservative.

Nevertheless, it is possible that initial SLEP experience will allay much of the Navy's concern. Con-

sequently, we believe, the Navy should continue to evaluate the necessity for the course of action chosen and in this regard: (1) should include in any contract with Lockheed provisions which will afford the Government access to technical data which it may find necessary, and (2) should closely monitor Lockheed's initial performance and evaluate the methods used to determine whether an experienced maintenance contractor's performance would be acceptable. We recommend that the Navy review the sole-source determination before exercising any option or awarding a follow-on contract for all or part of the 29 remaining aircraft to Lockheed.

We conclude that a limited award to Lockheed on a sole-source basis is justified in the circumstances. Aero necessarily has been excluded from competing for this requirement because the Navy, in determining its technical requirements, refused to permit firms other than the original manufacturer to perform SLEP without Mil. Spec. kits. In these circumstances Aero had no basis for insisting that Navy must first refer the question of Aero's competency to perform SLEP without Mil. Spec. kits to the SBA for certification. The COC procedure does not affect a procuring agency's determination of what are its technical requirements, e.g., the extent to which specifications are considered necessary to reduce risk to an acceptable level. The COC procedure is inappropriate where an agency is not in a position to provide specifications believed necessary for performance and is required to make sole-source award to the original manufacturer. Applied Devices Corporation, B-187902, May 24, 1977, 77-1 CPD 362.

The protest therefore is denied.



For the Comptroller General
of the United States