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

B-194445.4

March 27, 1981

The Honorable Louis F. Oberdorfer
United States District Judge
The United States District Court
for the District of Columbia

Dear Judge Oberdorfer:

We refer to your order issued August 15, 1980 directing the Deparment of the Navy to request our further opinion in connection with Aero Corporation v. Department of the Navy and to your order of February 26, 1981. Your later order, recognizing that some issues raised are not yet ripe for review, seeks our opinion on those issues which are amenable to being decided and asks that we advise the court as to when a decision regarding the remaining issues might be expected.

The questions asked are ripe for review insofar as they relate to the EC-130G/Q TACAMO aircraft. No determination has yet been made by the Navy concerning SLEP for the remaining KC-130F and C-130 aircraft, since its review of the work required to perform SLEP on them is incomplete. A decision regarding those aircraft would be premature. We are addressing the questions submitted regarding the TACAMO aircraft on an expedited basis. We regret that it was not possible to meet your March 20 target date.

Question 1-B of your February 1981 order raises the following question:

> "If there is no rational basis for the sole-source award of some aircraft that have already been awarded to Lockheed, is it legally and practically feasible for the Navy to terminate that contract with Lockheed for those aircraft?"

The enclosed decision addresses this question with respect to the KC-130F option quantity. On the record before us there is no legal or practical impediment to contract termination for aircraft awarded arbitrarily on a sole source basis.

As framed question 1-B presupposes that some of the 20 aircraft included in the original Lockheed contract and option quantities might be included in any SLEP competition. The Navy strongly objects to this suggestion, arguing that the issue was decided by the court and should remain settled. The enclosed decision points out that we did not intend in our December 21, 1979 decision to "approve" automatic exercise of the Lockheed contract options if competition were to become feasible. Rather:

> 1. We accepted the Navy's planned 13 original aircraft contract quantity as reasonably founded because we viewed a modest size initial program as justified pending further Navy evaluation of technical risk during the initial phase of a Lockheed SLEP program. Nothing which has since been brought to our attention has altered our view in this regard.
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> 2. We took no exception to the Navy's intended contract with Lockheed, even though it included option quantities for seven additional aircraft, because the Navy must conform to Defense Acquisition Regulation requirements governing the exercise of contract options. Similarly, we see no reason to object at this time to the Navy's recent decision to add follow-on aircraft as additional option quantities under the Lockheed contract.

We remain of the view that the Navy had a rational basis for award of an initial 13 aircraft lot to Lockheed while it gained a better understanding of the technical risks involved in having a firm other than Lockheed perform the work. To the extent that question 1-B is meant to address the initial two EC-130G/Q option quantity aircraft, the concern involved would be similar to those

considered in our enclosed decision regarding the five KC-130F option quantity. However, as the Navy has exercised its EC-130G/Q option, termination would be required if those aircraft are to be competed.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

Enclosure