

**APPENDIX D: March 2003 C-130J Contract, Section on Cancellation Under Multiyear
Contracts, between U.S. Force and Lockheed Martin**

PART IV. CONTRACT CLAUSES

A. CONTRACT TERMS AND CONDITIONS

1. The following Federal Acquisition Regulation contract clause is hereby incorporated by reference:

52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (FEB 2002)

2. The clause at FAR 52.212-4, Contract Terms and Conditions – Commercial Items (FEB 2002), incorporated by reference above, is amended as follows:

(a) Paragraph (a), Inspection/Acceptance is deleted and replaced with the following:

“(a) Inspection/Acceptance

1 Inspection

(i) The Contractor shall provide a quality control system covering all materials, fabrication methods and finished parts and assemblies. This system shall comply with ANSI/ASQC 9001-1994 and Part 21 of the Federal Aviation Regulation (FAR) "Certification Procedures for Products and Parts.

(ii) Additional Inspection Rights

(a) In addition to the Government's inspection rights in FAR 52.212-4(a), the Government has the right to inspect and test all supplies called for by this contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event prior to acceptance. The Government agrees, consistent with the commercial nature of the C-130J program that such inspections should not be performed on a routine basis, but only where the Government determines in its judgment that inspections are required.

(b) These additional inspection rights shall apply with respect to the Contractor's facilities. These rights shall not apply to Contractor's subcontracts unless the Contractor's subcontracting agreements permit such inspections. The Contractor is not under an obligation to modify subcontracts to provide for Government inspection rights at subcontractor facilities. In the event the Government desires to conduct an inspection at a subcontractor where the applicable subcontract does not provide such rights, the Contractor

23. FAR 52.217-2 – Cancellation Under Multiyear Contracts (Oct 1997)

a. The clause at FAR 52.217-2, Cancellation Under Multiyear Contracts (Oct 1997) is incorporated by reference and is hereby amended as follows:

(1) Paragraphs (a), (c), (d), and (e) are deleted and replaced with the following:

(a) "Cancellation," as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Multiyear Contract Funding clause, unless a later date is agreed to. The Contracting Officer must notify the Contractor if funds are not available for contract performance for any subsequent program year.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Cancellation Ceiling clause of this contract as applicable at the time of cancellation. Production effort for the delivery plan called out in this contract is included within the cancellation ceiling. Subject to required approvals, the contractor may include recurring costs that were reasonably incurred prior to cancellation. In the event the contract is cancelled, the contractor will be required to provide sufficient support to demonstrate that its cancellation proposal claimed costs, including any recurring effort costs claimed, were reasonably incurred to reflect the percentage of the work performed prior to cancellation. The contractor further agrees that its claimed cancellation charges shall not include any amount already paid the contractor, and will not include anticipated profit on the unperformed portion of the cancelled work.

(d) In the event of contract cancellation, as defined in paragraph 23.a of this clause, the Contractor shall submit a commercial cancellation proposal to the Government in accordance with paragraph 23.e of this clause.

(e) The cancellation charge shall be computed and the proposal/claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than one (1) year from the date of cancellation.

(b) Paragraphs (f), (g), (h), and (i) are deleted in their entirety.

24. Cancellation Ceiling

a. For the purposes of determining the cancellation ceiling, the contract assumes full funding by 15 November of each fiscal year. Should contract cancellation occur after 15 November, an equitable adjustment to the cancellation ceiling values shall be negotiated by the Government and the Contractor. The equitable adjustment shall be limited to a reasonable amount necessary to account for the additional contract performance required after 15 November and until the actual date of cancellation. No adjustment shall be made to the cancellation ceiling unless the actual date of cancellation occurs after 15 November of the affected fiscal year

b. The following cancellation ceilings are established:

Cancellation End of FY	Cancellation Ceiling Amount	Assumed Date of Cancellation
FY03	\$110,000,000	16 November 2003
FY04	\$474,200,000	16 November 2004
FY05	\$439,700,000	16 November 2005
FY06	\$383,300,000	16 November 2006
FY07	\$347,300,000	16 November 2007
FY08	\$0	

25. Economic Order Quantity (EOQ) and Advance Procurement (AP) Options and Release of Multiyear Configuration

a. The FY03 USMC KC-130J aircraft (SubCLIN 0002AA) includes funding in the amount of \$2.0 million for a one-time payment event – Release of Multiyear Configuration. This event will release the multiyear configurations into the Contractor’s ordering system. This event shall be invoiced as a separate event for the initial multiyear aircraft delivery lot (in addition to the initial payment event at contract award). Liquidation of this payment shall be included on the delivery event invoice in the amount of \$500,000.00 for four (4) each FY03 USMC KC-130J aircraft.

b. The Multiyear prices for the USAF and USMC are based in part on Economic Order Quantity (EOQ) funding of \$30.0 million for the USAF and \$8.0 Million for the USMC.

c. The parties understand and agree that the funding for such is not available at contract award. The Contractor agrees to grant the Government an option to obtain FY03 EOQ procurement funding for USAF aircraft in the amount of \$30.0 million. The Contractor further agrees to grant the Government an option to obtain FY03 EOQ procurement funding for USMC aircraft in the amount of \$8.0 million. Funding will be provided within 90 days of contract award and the contract option shall be exercised at that time. All Multiyear aircraft prices will remain in effect up to the expiration date of the option. If the option is not exercised and the \$30.0 Million USAF EOQ and \$8.0 Million USMC EOQ is not provided by the expiration date the aircraft prices will be renegotiated.

d. In addition to the Economic Order Quantity funding referenced above, the parties understand and agree that the USAF will provide \$39.9 million in FY03 Advance Procurement funding for FY04 CC-130J aircraft. The Contractor agrees to grant the Government an option to obtain FY03 USAF AP for FY04 USAF CC-130J aircraft in the amount of \$39.9 million. The contract option for this Advanced Procurement funding shall be exercised within 90 days of contract award. If the option is not exercised and the \$39.9 Million USAF AP is not provided by the expiration date the aircraft prices will be renegotiated.

e. Any Contractor effort to obtain EOQ or AP described above prior to the Government's purchase (option exercise) of these items is undertaken solely at the Contractor's risk. If this contract is cancelled or terminated prior to the Government's purchase of these items, the Contractor shall not recover any costs related to said Contractor efforts. The Government's contracting authority for FY03 is presently limited to purchasing four (4) USMC KC-130J aircraft.