

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA

AND

THE DEPARTMENT OF NATIONAL DEFENCE OF CANADA

CONCERNING

PROCUREMENT OF DEFENSE SUPPLIES

MEMORANDUM OF UNDERSTANDING
(MOU)

CONCERNING

PROCUREMENT OF DEFENSE SUPPLIES

1. The Department of Defense of the United States of America and the Department of National Defence of Canada (hereinafter "the Participants"):
 - a. having examined their respective commitments pursuant to the joint Defense Production Sharing Program (hereinafter "the Program");
 - b. having determined that the principles contained in the Memorandum of Conversation dated 6 June, 1963, between the Secretary of Defense of the United States of America and the Minister of Defence Production of Canada are in need of updating and revision; and
 - c. recognizing the applicability, to this MOU, of the international agreement between Canada and the United States concerning the establishment of certain mutual defense commitments of 19 August, 1994,

HAVE CONCLUDED THE FOLLOWING UNDERSTANDINGS:

2. To achieve the intent of the Program referred to in paragraph 1, the following objectives are established:
 - a. Subject to national laws, policies and regulations, the United States will, in evaluating offers from Canadian sources on procurement for defense supplies, at both the prime and subcontract levels:
 - i) give full consideration, without application of the Buy American Act differentials, to all qualified Canadian offers; and
 - ii) not apply import duties.
 - b. Subject to national laws, policies and regulations, Canada will, in evaluating offers from United States sources on procurement for defense supplies, at both the prime and subcontract levels:

- i) give full consideration, without any discrimination, to all qualified United States offers; and
 - ii) until December 31, 1997, not apply import duties to procurements over 250,000 dollars (Canadian), and not apply import duties to any procurements after that date.
3. The Participants will continue the Program, consistent with the above understandings.
4. Any dispute arising between the Participants concerning the interpretation or implementation of this MOU will be resolved only by consultation and will not be referred to any national or international tribunal or any other party for settlement.
5. This MOU may be amended only upon the mutual written consent of the Participants.
6. This MOU may be terminated at any time by the mutual consent of the Participants. Either Participant may withdraw upon 180 days written notification to the other Participant.
7. This MOU will come into effect on the date of the last signature.

For the Department of
Defense of the United
States of America

Paul G. Kaminski

Paul G. Kaminski
Under Secretary of Defense
(Acquisition & Technology)
of the United States of
America

Date: 9 Jun 96

For the Department
of National Defence of
Canada

P. L. Lagueux

P. L. Lagueux
Assistant Deputy Minister
(Materiel)

Date: 15 May 96

CANADIAN

LETTER OF AGREEMENT

1. This agreement applies to all contracts placed, on or after October 1, 1956, by any of the Military Departments with the Corporation. It shall remain in force from year to year until terminated by mutual consent; however, it can be terminated on the 31st day of December or the 30th day of June in any year by either party provided that six months notice of termination has been given in writing. In addition, this agreement provides for certain reciprocal arrangements facilitating procurement by each of the parties in the country of the other.

2.(a) The Corporation agrees that it will cause all first-tier subcontracts under contracts covered by this agreement to be placed in accordance with the practices, policies, and procedures of the Government of Canada covering procurement for defence purposes; and agrees that if the aggregate profit realized under such subcontracts by any first-tier subcontractor exceeds that which is allowed by the Government of Canada under the above mentioned practices, policies, and procedures, the amount of such excess will be refunded by the Corporation to the Military Departments. There shall also be refunded profits on any subcontract in excess of amounts which the Minister of Defence Production (Canada) in the exercise of said practices, policies and procedures considers to be fair and reasonable, recovered by the Minister pursuant to Section 21 of the Defence Production Act (Canada) from any individual subcontractor of any tier. It is recognized that the practices, policies and procedures of the Government of Canada referred to above permit various rates of profit in accordance with the terms of the said practices, policies, and procedures as from time-to-time amended; however, in no case will the rate of profit be allowed to exceed any limit prescribed by statute of the Government of the United States. For the purpose of this paragraph, the Corporation will cause to be conducted such audits in accordance with the Costing Memorandum (DDP-31) of the Department of Defence Production (Canada) and such verifications of cost as are in accordance with the said practices, policies, and procedures. The Corporation will render to the Military Departments its certificate that the provisions of this paragraph have been observed.

(b) Contracts for communication and transportation services, and the supply of power, water, gas and other utilities shall be excepted from the provisions of subparagraph (a) above, provided the rate or charges for such services or utilities are fixed by public regulatory bodies; and provided further the Military Departments are accorded any special rates that may be available to the Canadian Government with respect to such contracts.

(c) The Canadian Government, its Department and Agencies, including but not limited to the Corporation and Canadian Arsenals Limited, a Crown Company wholly owned by the Canadian Government, shall not be entitled to any profit on any contract or contracts covered by this agreement. Any profits which may be realized shall be returned to the Military Departments except as hereinafter provided: Before refunding profits realized from the following sources:

(i) net profits of the Canadian Government, its Departments and Agencies, as defined above, with respect to contracts and subcontracts covered by this agreement.

(ii) excess profits referred to in paragraph (a) above, and

(iii) renegotiation recoveries from subcontracts of any tier under contracts covered by this agreement, which recoveries the Military Departments would otherwise be entitled to receive in accordance with the provisions of subparagraph (a) above;

the Corporation shall be entitled to deduct any losses it may sustain with respect to contracts covered by this agreement.

(d) Interim adjustments and refunds under this paragraph 2 shall be made at such time or times as may be mutually agreed upon but at least once a year as of June 30th. Such interim adjustments shall apply only to completed contracts. The final adjustment and refund shall be made as soon as practicable after the expiration of this agreement.

(e) The profit and loss provisions of this paragraph 2 shall not apply to contracts awarded to the Corporation as the result of formal competitive bidding (initiated by Invitation for Bids).

3.(a) All contracts placed by the Military Departments with the Corporation, except those placed as the result of formal competitive bidding, shall provide for prices or cost reimbursement, as the case may be, in terms of Canadian currency, and for payment to be made in such currency. Therefore, quotations and invoices shall be submitted by the Corporation to the Military Departments in terms of Canadian currency, and such cost data, vouchers, etc., as the contracts require shall also be submitted in terms of Canadian currency. However, the Corporation may elect in respect of any of such contracts to quote, submit the said cost data, vouchers, etc., and receive payment in United States currency, in which event such contracts shall provide for payment in United States currency and shall not be subject to adjustment for losses or gains resulting from fluctuations in exchange rates.

(b) All formal competitive bids shall be submitted by the Corporation in terms of United States currency and contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

4. The Military Departments and the Corporation shall avoid, to the extent consistent with the declared policies of the Military Departments and the Canadian Government, the making of any surcharges covering administration costs with respect to contracts placed with the Corporation by any of the Military Departments and contracts placed by the Military Departments in the United States for the Canadian Government.

5. To the extent that contracts placed with the Corporation by the Military Departments provide for the audit of costs and profits, such audit will be made without charge to the Military Departments by the Cost Inspection and Audit Division of the Treasury of Canada in accordance with Costing Memorandum Form DDP-31 of the Department of Defence Production, Canada.

6. The Canadian Government shall arrange for inspection personnel of the Department of National Defence (Canada) to act on behalf of the Military Departments with respect to contracts placed by the Military Departments with the Corporation and with respect to subcontracts placed in Canada by United States contractors which are performing contracts for the Military Departments, and for the use of inspection facilities of the Department of National Defence (Canada) for such purposes, such personnel and facilities to be provided without cost to the Military Departments. The Military Departments shall provide and make no charge for inspection services and inspection facilities in connection with contracts placed in the United States by the Military Departments for the Canadian Government and with respect to subcontracts placed in the United States by Canadian contractors which are performing contracts for the Department of Defence Production* (Canada). The Department of National Defence (Canada) or any Military Department may provide liaison with the other's inspection personnel in connection with the foregoing. It is understood that either the Department of National Defence (Canada) or any Military Department may in appropriate cases arrange inspection by its own inspection organization in the other's country.

7. Because of the varying arrangements made by the Canadian Government and the Military Departments in furnishing Government-owned facilities (including buildings and machine tools) to contractors, it is recognized that the matter of inclusion in contract prices of charges, through amortization or otherwise, for use of such facilities will be determined in the negotiation of individual contracts. However, there shall be avoided, to the extent consistent with the policies of the Canadian Government and Military Departments, any such charges for use of Government-furnished facilities.

8.(a) The Corporation agrees that the prices set out in fixed-price type contracts covered by this Agreement will not include any taxes with respect to first-tier subcontracts; nor shall prices include custom duties to the extent refundable in accordance with Canadian law, paid upon the import of any materials, parts, or components incorporated or to be incorporated in the supplies, with respect to first-tier subcontracts.

(b) The Corporation agrees that under cost-reimbursement type contracts the Corporation shall, to the extent practicable with respect to first-tier subcontracts, exclude from its claims all taxes and to the extent refundable in accordance with Canadian Law, customs duties, paid upon the import of any materials, parts or components, incorporated or to be incorporated in the supplies and that any amounts included in such claims representing such taxes and duties shall be refunded or credited to the Military Departments.

(c) The Corporation agrees that to the extent that such taxes and duties can be reasonably and economically identified it will use its best endeavors to cause such taxes to be excluded from all subcontracts below the first tier and if found to be included to be recoverable and credited to the Military Departments.

9. The Corporation recognizes that existing law of the United States prohibits the use of the cost-plus-a-percentage-of-cost system of contracting.

10. Each contract covered by this agreement shall be deemed to include the provisions required by (i) Public Law 245, 82nd Congress of the United States (65 Stat. 700; 41 USC 153(c)) and (ii) Section 719 of Public Law 458, 83rd Congress of the United States (68 Stat. 353) or similar provisions that may be required by subsequent legislation.

(End of Agreement)

*
now the Department of Supply and Services

MEMORANDUM OF UNDERSTANDING
BETWEEN THE UNITED STATES
DEPARTMENT OF DEFENSE AND
DEPARTMENT OF NATIONAL DEFENCE,
CANADA

1 APRIL 1984

1. Reference

1.1 Letter Agreement between Department of Defence Production Canada, and the United States Department of the Army, Navy, Air Force, and the Defense Supply Agency dated 27 July 1956, as amended. Originally issued as Memorandum of Understanding between the United States Department of Defense and Department of National Defence, Canada dated 8 July 1971 and further amended as dated above.

2. Purpose

2.1 To outline reciprocal methods and procedures necessary to implement technical services required on contracts and/or purchase orders with respect to United States Department of Defense and Department of National Defence, Canada procurement, and procurement by other Government Departments and Agencies when properly authorized by the requesting Agency.

3. Scope

3.1 Technical services covered by this memorandum include:-

- a. Contract administration in regard to industrial management of, and quality assurance on, contracts and/or purchase orders to the degree delegated.
- b. Government Quality Assurance.
 - (i) Pre-Award survey of contractor quality systems when requested.
 - (ii) Government procurement quality assurance.
- c. Production surveillance in regard to:-
 - (i) Production progress monitoring.
 - (ii) Production expediting.

d. Support functions:-

- (i) Post Award orientation.
- (ii) Spare parts provisioning.
- (iii) Verification of GFP in contractors' plants.

4. Responsibilities

4.1 The requirement for and provision of technical services at plant will be based on a written request from the appropriate DND or DoD Agency. Under normal circumstances, the agency performing the services will do so in accordance with its own procedures. However, by mutual agreement certain services may be defined for purposes of clarity and appended to this memorandum. Under special circumstances, specific instructions may be provided by the originating agency and such instructions will be complied with unless questioned or protested immediately in writing.

5. General Requirements

5.1 Requests for technical services together with contracts, sub-contracts or purchase orders will be forwarded in triplicate to the appropriate DCAS Regional District or Office by the Quality Assurance Division, Department of National Defence or their subordinate agencies. U.S. technical services requests will be forwarded in triplicate together with the procuring documents by DCASMA, Ottawa to NDHQ/DGQA.

5.2 Technical services requests will state the services required and include, as appropriate, specific instructions, methods to be followed and documents to be used. No action will be taken by either participating agency against the expressed direction of the other. Any request by either party to refrain from signing documents for any reason will be honoured.

5.3 The assumption of technical services responsibility by either party does not involve the assumption of financial liability in the event that defects are discovered after the equipment has been delivered.

5.4 Each country may coordinate with the other's technical staff and, in the appropriate case, may arrange for participation by its own staff in the other's country. Arrangements for visits, participation in technical actions, and technical assistance must be made by and through DCASMA, Ottawa and NDHQ/DGQA.

5.5 Correspondence relevant to policy, technical services requests and other matters of major significance will be directed by or through NDHQ/DGQA and DCASMA, Ottawa. Correspondence or communications of a purely routine nature will be passed directly between the QAR and the originating authority.

6. Specific Requirements

6.1 Contract Administration

6.1.1 Unless otherwise stated in the request for technical services, the agency receiving the request will as part of its normal operations, provide interpretation to the contractor of requirements covered by contracts, specifications, policies and procedures. U.S. DoD prime contracts in Canada are normally placed with Canadian Commercial Corporation (CCC), a Crown corporation. Sub-contracts issued by CCC are subject to the terms and conditions of the U.S. prime contracts and, in case of conflict, the terms and conditions of the U.S. contract shall prevail.

6.2 Quality Assurance

6.2.1 Quality Assurance will be requested only when it is impractical or impossible to satisfactorily verify quality after receipt. Adequate control will be maintained by both parties to preclude unnecessary requirements at plant.

6.2.2 NATO Quality Assurance Publications AQAP-1, AQAP-4 and AQAP-9 are used by Canada as national Quality Assurance specifications and are equivalent to U.S. Government Specifications MIL-Q-9858A, MIL-I-45208A and U.S. Defense Acquisition Regulations Chapter 14-302 respectively. Recognition and acceptance of contractors' quality programs and systems are covered by comparable procedures. Quality assurance functions in respect to these specifications will therefore be performed in accordance with the procedures of the country providing the quality assurance service. Changes or proposed changes to the above specifications will be evaluated by each country to ensure continuing compatibility.

6.2.3 The acceptability of non-conforming, reworked, or repaired material will be in accordance with terms of the contract or sub-contract and as delegated through arrangements made between the quality assurance and procuring authorities. Operations and functions of a Material Review Board will not be acceptable or legal unless allowed by the procuring document or as otherwise authorized in writing by the procuring authority.

6.2.4 Copies of specifications, drawings, or other data or facilities required for Government Quality Assurance functions will be provided by the contractor or sub-contractor in whose plant the QA functions are being performed.

6.2.5 Each country reserves the right to investigate or request the quality assurance agency to investigate complaints with respect to material found defective after delivery regardless of suspected cause.

6.3 Production Surveillance

6.3.1 The Defense Contract Administration Services Management Area, (DCASMA) Ottawa will designate those contracts requiring production surveillance in Canada, forwarding the assignment with each contract received in accordance with paragraph 5.1 above. Normally only contracts

bearing a high criticality designator, or contracts developing an unusual requirement or problem will be so designated.

6.3.2 Minimum service on assigned contracts will include systematic monitoring of production in accordance with the terms of the contract throughout its life. Any significant departures, actual or anticipated, from required delivery or quality will be reported, as a matter of urgency to the DCASMA, Ottawa.

6.3.3 The need for, and extent of, additional production surveillance will be stated as a specific request. Production surveillance will be requested only when essential or when the higher criticality designators have been established on U.S. contracts in Canada.

6.3.4- Production progress reporting to DCASMA will be accomplished on forms or in a format mutually agreeable to DND and DCASMA. In the event a requirement for a mandatory monthly Production Progress Report is imposed upon the contractor by the contract, the agency providing the service will review the report and provide comments prior to submission to DCASMA.

6.3.5 Production Expediting - The agency providing a service will, on the specific request of the originating authority, take action with the contractor to advance deliveries, referring contingent problems such as cost or adverse effects on other contracts to the originating authority. When delays or anticipated delays are attributed to late delivery from the prime contractor's supplier, the agency providing the service may request assistance from the originating authority when appropriate.

6.4 Support Functions

6.4.1 Support Functions to facilitate the above or otherwise aid the accomplishment of the contractual performance are as follows:-

a. Post-award conferences will be attended, and acted upon, by the agency performing the services. When known or suspected problems exist, DCASMA Ottawa or the agency performing the service may arrange a post-award conference requesting representation from the originating agency and other agencies concerned.

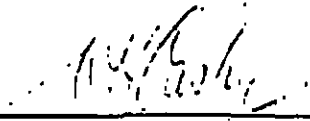
b. Spare parts provisioning.

Each country will, on request, provide such services as may be necessary in support of spare parts provisioning and related functions.

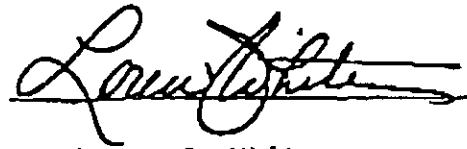
c. Each country will conduct inventory verifications of government property in contractor's custody to the degree delegated. The service provided will be mutually arranged.

7. Amendments

7.1 This Memorandum of Understanding is subject to review upon request of either party and may be changed by mutual agreement.



W. H. Casley
Director General Quality Assurance
National Defence Headquarters
Ottawa, Ontario



Loren J. White
Colonel, USA
Commander, DCASMA Ottawa

MEMORANDUM OF UNDERSTANDING IN THE FIELD OF
COOPERATIVE DEVELOPMENT BETWEEN THE UNITED STATES
DEPARTMENT OF DEFENSE AND THE CANADIAN DEPARTMENT
OF DEFENCE PRODUCTION

This Memorandum of Understanding complements the U.S. - Canadian Defense Production Sharing Program by establishing a cooperative program in defense research and development between the United States Department of Defense (DOD) and the Canadian Department of Defence Production (CDDP), called the Defense Development Sharing Program.

1. Objectives:

The principal objectives of the Defense Development Sharing Program are:

a. To assist in maintaining the Defense Production Sharing Program at a high level by making it possible for Canadian firms to perform research and development work undertaken to meet the requirements of U.S. armed forces.

b. To utilize better the industrial scientific and technical resources of the United States and Canada in the interests of mutual defense.

c. To make possible the standardization and interchangeability of a larger amount of the equipment necessary for the defense of the United States and Canada.

2. Description of the Program:

a. The Defense Development Sharing Program will consist of research and development projects (such program projects being hereinafter referred to as "projects"):

(1) which are performed by Canadian prime contractors;

(2) which are designed to meet specific DOD research and development requirements;

(3) in which the Military Department of DOD which is the United States party to the project agreement acts as the design authority; and

(4) which are jointly funded by DOD and CDDP, (where DOD undertakes the research and development of a weapons system composed of several components, work funded by CDDP on one or more of such components will be considered to be jointly funded).

b. The Defense Development Sharing Program will not include efforts referred to in paragraph 13.

3. Funding:

The financial contribution of DOD in each project will not be less than 25 percent of the costs incurred subsequent to the date of the project agreement, provided that in the case of work referred to in the parenthetical sentence of paragraph 2.a.(4), the financial arrangements shall be as agreed to by DOD and CDDP in the project agreement.

4. Selection of Projects:

A proposal to initiate a project may be made by CDDP to any of the Military Departments of DOD or by any of the Military Departments of DOD to CDDP. Each proposal will contain a complete and detailed description of the scope of the project and work to be performed and of the suggested cost sharing arrangement. Projects will be selected by mutual agreement of CDDP and the Military Department of DOD concerned.

5. Project Agreements:

The specific terms and conditions of each project will be governed by a project agreement between a Military Department of DOD and CDDP. The project agreement will inter alia set forth the scope of the projects, the work to be performed, types of reports to be submitted, the time and funding schedules, and the cost sharing arrangements.

6. Selection of Prime Contractors:

The selection of prime contractors for work to be performed under a project shall be subject to mutual agreement.

7. Contract Clauses for Projects:

The Canadian Government agencies responsible for placing and administering research and development contracts with Canadian firms, will insert suitable provisions in such contracts obtaining for DOD the same production rights, data, and information that DOD would obtain for itself if DOD were solely funding and placing the contract under its Armed Services Procurement Regulation.

8. Competitive Research and Development:

DOD will not engage in research and development which duplicate the work being carried out under any project unless DOD considers such research and development to be in the United States national interest. The appropriate DOD agency will notify CDDP before undertaking such duplicative research and development and will, if requested by CDDP, promptly enter into consultations with CDDP.

9. DOD Procurement of Project Developed Items:

Procurement by DOD from Canadian firms of items developed in a project will be made under the Defense Production Sharing Program and in accordance with the DOD Armed Services Procurement Regulation. Pursuant to that Regulation, procurement of items developed by *Canadian* firms under the Defense Development Sharing Program will not be "set aside" for small business or for labor surplus areas.

10. Security:

a. Information and materials developed within projects will be considered to be jointly developed, and classification and declassification thereof will be determined jointly.

b. Classified information and materials exchanged in connection with or developed within projects will be safeguarded in accordance with the United States - Canadian Security Agreement of January 30, 1962, and the United States - Canadian Industrial Security Agreement effected by an exchange of letters dated February 6 and March 31, 1952, as amended.

11. Disclosure of Classified Information:

a. Classified information and materials received by either Government under the Defense Development Sharing Program but not developed within a project will not be disclosed or transferred to third countries, or nationals of third countries, without the consent of the originating Government.

b. Jointly developed classified information and materials will not be transferred or disclosed to any third party by either Government or nationals thereof without the consent of the other Government.

12. Sales:

a. Sales or transfers to any third party of items developed in a project containing classified information or materials will be subject to the provisions of paragraph 11.

b. Sales or transfers to NATO, Commonwealth, and SEATO countries, or nationals thereof, of jointly developed unclassified items may be made in accordance with any applicable arrangements between Canada and the United States regarding munitions control. Sales or transfers to any other third party of jointly developed unclassified items will not be made without the consent of both parties to this agreement.

c. Sales or transfers to any third party of jointly developed unclassified rights, information, or data necessary for the production of an item developed in a project will not be made without the consent of both parties to this agreement.

13. Other Research and Development Efforts Not in Defense

Development Sharing Program:

a. Consistent with normal DOD source selection procedures, Canadian firms may bid for DOD research and development contracts which are to be funded solely by the United States. DOD will evaluate proposals from qualified Canadian firms on a parity with proposals received from United States firms. CDDP undertakes to ensure that Canadian firms comply with DOD procurement procedures.

b. CDDP may award and solely fund research and development contracts to Canadian firms for the purpose of satisfying existing or anticipated DOD requirements. DOD and its Military Departments will not act as Design Authority for such contracts. In the event that the results of any such contract become of sufficient interest to DOD to warrant joint funding, the contract work may, upon mutual agreement, be made the subject of a Defense Development Sharing Program project.

14. Canadian Access to United States Information:


Subject to United States legislation and national policy, the Government of Canada will have access to information on the future requirements of DOD research and development programs and Canadian firms will have the same access to DOD research and development program information as United States firms.

15. Supersession of Prior Arrangements:

This Memorandum of Understanding supersedes the memoranda between CDDP and the United States Departments of the Army, and Air Force, respectively, dated July 26, 1960 and December 22, 1961, except with respect to projects already entered into thereunder.


16. Effect and Duration:

This Memorandum of Understanding will remain in force indefinitely, subject to modification or termination at any time by mutual agreement or to termination six months after receipt by either party of written notice of the intention of the other party to terminate it.



Charles M. Drury
Minister of Defence Production

Date 21 Nov 63



Robert S. McNamara
Secretary of Defense

Date 11/16/63