

**MEMORANDUM OF AGREEMENT
BETWEEN
THE INTERNATIONAL NARCOTICS AFFAIRS AND LAW
ENFORCEMENT AFFAIRS
AND
THE DEPARTMENT OF THE ARMY
OF THE UNITED STATES OF AMERICA**

ARTICLES I - PURPOSE AND AUTHORITY

This Memorandum of Agreement (MOA) is entered into by and between the U.S. Department of the Army (DA) and the U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs (INL), (the parties) for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA technical services through the U.S. Army Corps of Engineers (Corps) outside the Continental United States (OCONUS). This MOA is entered into pursuant to Sections 632 (a) and 632 (b) of the Foreign Assistant Act (FAA) of 1961, as amended, and 10 U.S.C. 3036 (d).

ARTICLES II- SCOPE

Goods and services which the DA may provide under this MOA include delivering technical assistance involving planning, engineering, construction, procurement, project management, contract management, water resource development, infrastructure development and environmental protection related to counternarcotics activities, and such other related work as may be agreed upon in the future.

Nothing in this MOA shall be construed to require INL to use the DA or to require the DA to provide any goods or services to the INL, except as may be set forth in work orders (WO (s)).

ARTICLES III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the DA and INL, each party shall appoint in writing a Principal Representative to serve as the central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on WOs.

ARTICLE IV- WORK ORDERS

In response to requests from INL for DA assistance under this MOA, the DA and INL shall conclude mutually agreed upon written WOs, which shall include the following:

- detailed scope of work statement;
- a work schedule;
- the amount of funds required and available to accomplish the work;
- payment arrangements;
- identification of individual project managers;
- procedures for coordinating with representatives of INL;
- identification of types of contracts to be used (if known);
- types and frequencies of reports;
- a statement concerning any intellectual property rights granted to INL by the Corps as appropriate;
- identification of which party is to be responsible for contract administration, records maintenance and contract audits;
- procedures for amending or modifying the WO; and
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

Goods and services shall be provided under this MOA only after an appropriate WO has been signed by a representative of each party authorized to execute that WO. In the case of conflict between this MOA and a WO, this MOA shall control.

ARTICLE V- RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

The DA shall provide INL with goods and services in accordance with the purpose, terms, and conditions of this MOA and with the specific requirements set forth in WOs.

The DA shall:

- ensure that only authorized DA representatives sign WOs;
- use its best efforts to provide goods or services either by contract or by in-house effort;
- provide detailed periodic progress, financial and other reports to INL as agreed to in the WO. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures;
- inform the INL of all proposed contracts to be entered into under each WO; and

- inform INL of all equipment and materials to be shipped into the host country prior to shipment.

B. Responsibilities of INL

INL shall:

- identify in writing INL official (s) authorized to sign WOs;
- pay all costs associated with the DA's provision of goods or services under this MOA and shall certify at the time of signature of a WO, the availability of funds necessary to accomplish that WO;
- except as otherwise agreed in a WO, INL shall be primarily responsible for performing all coordination required for obtaining any permits and licenses from U.S. and host country Federal or local agencies as necessary for projects under each WO;
- use its best efforts to obtain in an expeditious manner duty free importations of materials, equipment, supplies, and services and other items that may be provided by the DA or its contractors for the purpose of work performed under WOs. INL shall reimburse the DA for any duties or other charges imposed;
- use its best efforts to ensure exemption of any U.S. or third-country contractors that may be employed by the DA for purpose of this MOA and subsequent WOs from host country corporate, personal and other tax liabilities, whether imposed at the Federal, state, or municipal level;
- use its best efforts to ensure that all Corps contractors shall be exempt from value-added taxes. In the event taxes are imposed, the INL shall reimburse the DA for any taxes or other charges imposed;
- make any material, equipment, and data available to the INL available to the DA to expedite individual WOs;
- assist the DA in obtaining logistical and administrative services as agreed to in individual work orders;
- unless existing agreements otherwise provide for the status of DA personnel, INL shall seek accreditation of the administration and technical staff of the diplomatic mission of the U.S. in the host country. INL shall notify the DA in any case when the DA personnel, including contractor personnel, cannot be accredited, at a minimum, as members of the administrative and technical staff of the diplomatic mission of the U.S. in the host country. In the event INL is unable for any reason to secure such accreditation for the DA personnel or contractor personnel, the DA may terminate the applicable WO;
- obtain for the DA both necessary real estate interests and access to all work sites and support facilities. Except as otherwise agreed in a WO, INL shall be primarily responsible for performing all coordination necessary for obtaining any permits from the U.S. and the host country agencies, as necessary, during the execution of each WO; and

- provide security necessary to protect the work site, material, equipment, and DA personnel and contractors present in the host country to perform work pursuant to this MOA. INL shall pay all of the costs related to reasonable requests by the DA for adequate protection. In the case that adequate protection is not provided by INL, the DA shall provide the same and the INL shall pay the costs.

ARTICLE VI - FUNDING

INL shall, on a reimbursable basis, be responsible for all costs associated with the DA's provision of services. Reimbursements provided shall be in U.S. currency. INL shall provide authority for the services requested in the amount agreed upon in the approved WO, and in accordance with the payment schedule set out in the individual WO. If during DA's provision of services the actual cost to the DA for the services is forecast to exceed the total amount of funds available under the WO, the DA shall promptly notify INL of the amount of the additional funding that is necessary. INL shall either provide the additional reimbursable authority to the DA within thirty (30) days, require that the scope of the services be limited to that which can be financed by available authority, or direct termination of the WO.

Within ninety (90) days of completing the work under a WO, the DA shall conduct a final accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, the DA shall return to INL any reimbursable authority in excess of the actual cost as then known, or INL shall provide any additional reimbursable authority necessary to cover the actual costs as then known. Such a final accounting shall in no way limit INL's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

ARTICLE VII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the U.S. Unless otherwise required by law, all contract work undertaken by the DA shall be governed by DA policies, procedures and regulations. To the extent consistent with U.S. law, all work performed under this MOA shall conform to applicable host country law. In the event of conflict with host country law, the DA may terminate any affected WO or portion thereof. INL shall remain responsible for all costs, including liabilities, incurred by the DA under the above-referenced affected WOs.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with U.S. Federal law and the term of the individual contract. The DA shall have dispute resolution authority for these claims.

Any contracting officer's final decision may be appealed by the contractor pursuant to the Contractor Disputes Act of 1978 (41 U.S.C. 601-613). The Corps' Board of Contract Appeals (EN BCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the EN BCA, the contractor may bring an action directly to the U.S. Court of Federal Claims.

The DA shall be responsible for litigating all disputes and appeals arising under or related to contracts awarded by the DA, and for coordinating with the U.S. Department of Justice as appropriate. The DA shall notify INL of any such litigation and afford INL an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE IX - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, INL and the DA shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

ARTICLE X - LIABILITY

INL will hold and save the DA harmless and free from all damages arising from the assistance provided by the DA.

If liability of any kind is imposed on the U.S. relating to the DA's provision of goods and services under this MOA, INL shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability and all related costs.

ARTICLE XI - ADVERSE CONDITIONS

In the event the DA determines that, due to war, armed conflict, insurrection, civil or military strife, or other adverse condition, the safety, health, or welfare of the DA officials, employees, contractor personnel, or family members are threatened, INL shall be responsible for any additional costs incurred by the DA to retain such personnel or secure replacement thereof, as applicable. In lieu of retention or replacement, the DA may elect to terminate the service being provided by those personnel including terminating any applicable WOs. Whether to retain, replace, or terminate services of such personnel under the foregoing circumstances shall be within the sole discretion of the DA.

ARTICLE XII - INTELLECTUAL PROPERTY

Unless otherwise prohibited by law, the DA shall have the sole right and responsibility to apply for, obtain, and maintain protection in the U.S. or other countries

for technology or intellectual property developed by DA employed or under contracts awarded by the DA pursuant to this MOA.

The DA shall retain and distribute any royalties or other income from any such protection to the extent allowed by law.

Unless otherwise prohibited by law, the DA may grant nonexclusive, exclusive, or partially exclusive licenses under any form of protection obtained, royalty-free or for royalties or other consideration, and on such terms and conditions determined by the DA as appropriate in the public interest; however, the DA shall grant to INL a non-exclusive, royalty-free right to utilize the documents and work products produced under said WO.

The DA makes no express or implied warranty as to any matter whatsoever regarding technology developed by the DA, and shall not be responsible for any damages of any kind resulting from utilization of such technology.

ARTICLE XIII - PUBLIC INFORMATION

In general, INL is responsible for all public information. The DA may take public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. INL or the DA shall make its best effort to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to WOs under this MOA.

Justification and explanation of each of the signatory party's programs before the U.S. Congress and other agencies departments, and offices of the U.S. Federal Executive Branch, shall be the responsibility of that party. The other signatory may provide, upon request, any assistance necessary to support the justification or explanations of the programs conducted under this MOA.

ARTICLE XIV - MISCELLANEOUS

Other Relationships or Obligations: This MOA shall not affect any pre-existing or independent relationships or obligations between INL and the DA.

Survival: The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force and unaffected to the fullest extent permitted by law and regulation.

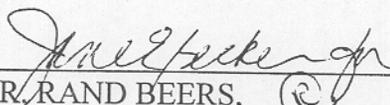
Severability: If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

Work Review: On a biannual basis, the parties shall review the work executed under this MOA.

ARTICLE XV - AMENDMENT, MODIFICATION AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination of this MOA or a WO here under, INL shall continue to be responsible for all costs the DA incurs under this MOA or the terminated WO and for the costs of closing out or transferring any ongoing contracts.

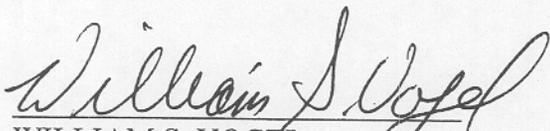
For the Bureau of International Narcotics and Law Enforcement Affairs.



R. RAND BEERS,
Acting Assistant Secretary for
International Narcotics and Law
Enforcement Affairs

4/7/98
Date

For the Department of the Army

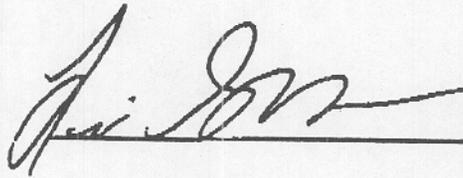


WILLIAM S. VOGEL
Colonel, Corps of Engineers
District Engineer

4/13/98
Date

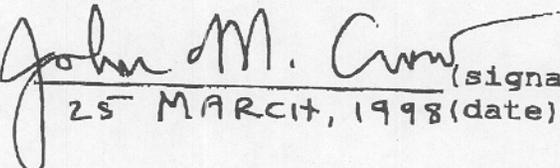
**OMB CIRCULAR A-76/FOREIGN ASSISTANCE ACT
§621 (A) CERTIFICATION**

I have reviewed the requirement for the design of an equipment wash area and water treatment system for operation at the Colombian National Police Base at San Jose de Guaviare, Colombia, that International Narcotics and Law Enforcement Affairs (INL) proposes to place with The United States Army Corps of Engineers (Corps) as an interagency order pursuant to FAA §632 and 10 U.S.C. 3036(d) and certify that there is no satisfactory source available from the private sector to provide these services and these services cannot be procured reasonably and expeditiously by the INL through ordinary business channels.


8/25/98
(signature)
(date)

**OMB CIRCULAR A-76/FOREIGN ASSISTANCE ACT
§621 (A) CERTIFICATION**

I have reviewed the requirement for construction of an additional rigid concrete parking apron adjacent to Pucallpa Support Facilities, Peru, that International Narcotics and Law Enforcement Affairs (INL) proposes to place with The United States Army Corps of Engineers (Corps) as an inter-agency order pursuant to FAA §632 and 10 U.S.C. 3036(d) and certify that there is no satisfactory source available from the private sector to provide these services and these services cannot be procured reasonably and expeditiously by the INL through ordinary business channels.

 (signature)
25 MAR 1998 (date)