

**MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF STATE
AND
THE DEPARTMENT OF THE ARMY

FOR
CONSTRUCTION
OF
AIR OPERATIONS CENTER
SANTA CRUZ, BOLIVIA**

ARTICLE 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 Department of State (DoS) for the purpose of establishing a mutual understanding of the respective responsibilities of the said parties for planning, project management, design, construction management, and other related work as may be agreed upon in the future, in support of the U.S. Embassy, Bolivia, Narcotics Affairs Section's (NAS) project for the design and construction of Air Operations Center, Santa Cruz, Bolivia. This MOA is entered into pursuant to the Economy in Government Act, Pub. L. 97-258, as amended (31 U.S.C. 1535) and 10 U.S.C. 3036(d).

ARTICLE II - SCOPE

Goods and services which the DA may provide under this MOA include delivering technical assistance and guidance, project management, design, construction management, and such other related work as may be agreed upon in the future, relevant to the above described project.

Nothing in this MOA shall be construed to require DoS to use the DA or to require the DA to provide any goods or services to the DoS, except as may be set forth herein.

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the DA and the DoS, each party shall appoint in writing a Principal Representative to serve as its central point of contact on matters relating to this MOA.

ARTICLE IV - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

1. **Design** - Complete construction plans, specifications and cost estimates will be accomplished by the DA. The DA intends to use the services of a Bolivia Architect Engineer firm with which it currently has an Indefinite Delivery Type Contract. This contract will be exclusively managed by the DA. Reviews will be accomplished and functional comments by NAS and other interested parties will be considered. The DA will be responsible for the technical review and technical quality of the design. Complete plans and specifications will be provided for solicitation of bids or proposals from prospective contractors.

2. **Construction** - During construction the DA will provide technical assistance to the U.S. Embassy Contracting Office for NAS in the administration of their construction contract. Specific activities of the DA will include:

(a) Written evaluation of bids and recommendation for selection of a contractor.

(b) Monthly project status reports.

(c) Weekly contractor Quality Control reports and DA Quality Assurance reports.

(d) Certification of contractor pay requests on a monthly basis.

(e) Written recommendations concerning possible changes in the contract or potential claims.

(f) One complete set of marked up drawings showing the project "as built".

(g) Appropriate operations and maintenance literature as required by the contract.

3. **Schedule** - Design schedules will be negotiated with the A-E and communicated to NAS. Construction schedules will be determined during the design phase and coordinated with NAS.

The NAS shall either authorize or provide the additional funds to the DA within thirty (30) days, require that the scope of the assistance be limited to that which can be financed by the available funds, or direct termination of the DA involvement in the project.

C. DA - The DA services are provided on an actual costs basis. All unexpended funds will be returned to the NAS. Should the NAS elect to terminate design activities under the Note 8 of this agreement, activities will be terminated as directed by NAS and all unexpended funds will be returned to NAS. Upon completion of all services under the Agreement, the DA shall conduct a final accounting within 120 days of project completion to determine the actual costs of the assistance provided. The DA shall return any funds advanced by the NAS in excess of the actual costs within 90 days of the final accounting. Such a final accounting shall in no way limit NAS's duty in accordance with Article IX to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

ARTICLE VI - 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 United States. Unless otherwise required by law, all contract work undertaken by the DA shall be governed by DA policies and procedures.

ARTICLE VII - CONTRACT CLAIMS AND DISPUTES

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

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 terms 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 Contract Disputes Act of 1978 (41 U.S.C. 601-613). The U.S. Army Corps of Engineers Board of Contract Appeals ("ENG BCA") is designated as the appropriate board of contract appeals. In lieu of appealing to the ENG BCA, the contractor may bring an action directly to the United States Court of Federal Claims.

The DA shall be responsible for litigating all disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify the DoS of any such litigation and afford the DoS an opportunity to participate in the litigation and any resulting settlement negotiations.

The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The DoS or the DA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to this MOA.

ARTICLE XII - MISCELLANEOUS

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

Survival: The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

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.

ARTICLE XIII - AMENDMENT 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, the DoS shall continue to be responsible for all costs incurred by the DA under this MOA and for the costs of closing out or transferring any on-going contract.

ARTICLE XIV - EFFECTIVE DATE

This MOA shall become effective when signed by both the DoS and the DA.

Department of State

By: James J. Kessinger
(Signature)
Name: James J. Kessinger
(Print)
Title: NAS Director
Date: 1 June 1994

Department of the Army

By: Gordon S. Quesenberry
(Signature)
Name: Gordon S. Quesenberry
(Print)
Title: Acting District Engineer
Date: 24 May 1994