

Boeing Information, Space & Defense Systems Group

Date: 8/13/97

EXHIBIT A-1

NATO PROVISIONS FOR SUPPLIERS WITH EURO-CANADIAN SUBCONTRACTORS PRIME CONTRACT **F19628-91-C-0088**

1. PROVISIONS FOR EURO-CANADIAN SUBCONTRACTS

(a) Definitions. For the purposes of this clause and the clauses referenced herein, the following definitions shall apply:

(1) Subcontract - Any purchase order, license or other contractual arrangement awarded by the Seller to industrial firms of contributing nations. These industrial firms will hereinafter be referred to as Euro-Canadian (E-C) subcontractors.

(2) U.S. Subcontractor - Any first tier subcontractor to the Buyer having a subcontract with an E-C subcontractor.

(3) National Audit Authority - Audits will be performed by the respective Ministries of Defense.

(4) NATO AEW Modernization Programme - The modernization programme planned by the NATO AEW&C Programme Management Organization to acquire the near term NATO E-3A enhancements.

(b) None of the provisions hereof shall relieve the Seller of the need to comply with the International Traffic

in Arms Regulation, the Industrial Security Manual, or other laws and regulations governing foreign procurement and disclosure of information to foreign nationals.

(c) Contract clauses requiring flow down to subcontractors shall be flowed down to E-C subcontractors unless exempted by the provisions of this clause, Exhibit A or by the FAR instructions regarding applicability of the clause. Unless specifically exempted as described above or in d. below, all clauses of this contract shall be applicable to E-C subcontractors to the same extent as these clauses will apply to U. S. subcontractors, with the following exceptions/modifications:

(1) Examination of Records by the Comptroller General - In the provision to be included in subcontracts, as required by subparagraph (c) of the clause, the term "Comptroller General of the United States or any of his duly authorized representatives" shall be replaced by the term "national audit authority of the respective E-C nation or its duly authorized representative."

(2) Audit-Negotiation - The requirement in (b) of the clause shall, for E-C subcontracts, be applied with the term "Contracting Officer or his representatives (who are employees of the United States Government)" replaced by "National Audit Authority or in exceptional circumstances, the USG DCAA."

(3) Filing of Patent Applications - Classified Subject Matter - Applications may be filed with the host nation.

(4) Restrictive Markings on Technical Data - The Seller will assure that the intent of this clause is satisfied by E-C subcontractors.

(5) ST/STE - For purposes of the clauses, "Special Tooling" and "Special Test Equipment" items for E-C suppliers presented for approval of acquisition as ST/STE shall be classified in accordance with those ST/STE definitions which are applicable to military contracts between the E-C subcontractor and its government as approved by the PCO.

(d) The following FAR and DFARS clauses which are included in the General Provisions or Special Provisions do not apply to E-C subcontractors:

Equal Opportunity (FAR 52.222-4)

Cost Accounting Standards (FAR 52.230-3)

Administration of Cost Accounting Standards (FAR 52.230-4)

Disclosure and Consistency of Cost Accounting Practices (FAR 52.230-5)

(e) Pricing and Audit

(1) Pricing of E-C subcontractor proposals shall be in accordance with the pricing instructions of this contract; however, the allowability and allocability of E-C subcontractor costs including Termination costs shall be in accordance with national pricing policies applicable as if the subcontractor's government issued the contract for defense purposes, regardless of whether or not such costs would be allowable under a U. S. Government contract. Allowability pursuant to non-U.S. laws shall be determined between the Contracting Officer and the appropriate National Audit Authority.

(2) In order to assure a proper audit trail of cost or pricing data to the prime contract level, and to meet the requirements normally satisfied by subcontractor submission of SF Forms 1411, the Seller shall require that all E-C subcontractor price proposals substantially meet the normal SF Form 1411 standards.

(a) E-C subcontractor price proposals will provide detailed cost information with supporting information, adequately cross-referenced, suitable for detailed analysis. A supporting breakdown must be furnished for each cost element, consistent with the offeror's accounting system.

(b) Depending on the offeror's system, cost support shall be provided for the following basic elements of cost, as applicable:

(i) Materials - Provide a consolidated priced summary of individual material quantities included in the various tasks, orders or contract line items being proposed, and basis for pricing (vendor quotes, prices, etc.)

(A) Subcontracted Items - Include parts, components, assemblies and services to be produced or performed by other than the subcontractor in accordance with the contracted design, specifications or

directions and applicable only to the prime contract. For each subcontract over \$100,000.00, the support should provide a listing by source, item, quantity, price, type of subcontract, degree of competition and basis of establishing source and reasonableness of price, as well as results of review and evaluation of subcontract proposals when required.

(B) Standard Commercial Items - Consists of items which the subcontractor normally fabricates, in whole or in part, and that generally are stocked in inventory. Provide appropriate explanation of basis of pricing.

(C) Interorganizational Transfers (at other than cost) - Provide explanation of pricing method used.

(D) Raw Material - Consists of material which is in a form or state that requires further processing. Provide priced quantities of items required for this proposal.

(E) Purchased Parts - Include material items not covered above. Provide priced quantities for items required for the proposal.

(F) Interorganizational Transfers (at cost) - Include separate breakdown of cost by element.

(ii) Direct Labor - Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category and furnish basis for estimates.

(iii) Indirect Costs - Indicate the method of computation and application of your indirect costs, including cost breakdowns, and showing trends and budgetary data, to provide a basis for evaluation of the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

(iv) Other Costs - List all other costs which are not otherwise included in the categories described above, (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, and spoilage rework) and provide basis for pricing.

(c) There is a clear distinction between "submitting" cost or pricing data and merely "making available" books, records and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the contractor has been

submitted, either actually or by specific identification. As later information comes into the contractor's possession, it should be promptly submitted to the Buyer. The requirement for submission of cost or pricing data continues up to the time of final agreement on price.

(d) The E-C subcontractor will grant to the National Audit Authority (see e.(3) below), the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the proposed price. This right may be exercised at any time prior to award.

(e) The E-C subcontractor will submit as soon as practicable after final agreement on price, a Certificate of Current Cost or Pricing Data wherein the E-C subcontractor will certify that cost or pricing data as defined above are accurate, current and complete as of the date of agreement on price.

(3) Audit Authority

(a) If other than a firm-fixed price contract is to be awarded to an E-C subcontractor, the allowability of categories of costs for the purpose of final price determination shall comply with national price regulations. The national pricing regulations may be

supplemented by mutual agreement between the Contracting Officer and a representative of the participating government. The Contracting Officer shall advise the Seller of such action prior to consent to such subcontract by the Contracting Officer.

(b) Additional detailed guidance on audit arrangements will be provided by the Contracting Officer.

(4) Requests for E-C Subcontractor assist audits will be directed by the Seller through the Buyer to the Contracting Officer.

f. Contract Administration Services

Contract Administration Services (CAS) as described in the Federal Acquisition Regulation for the E-C subcontracts will be performed by the Defense Contract Management Area Operation (DCMAO) in accordance with the delegation issued by the Contracting Officer. The respective national CAS agencies

will become involved only to the extent that CAS activities are delegated by the DCMAO for that nation.

g. Security and Fire Protection

It is understood and agreed that the price hereof contemplates that the Seller will comply with security and fire protection requirements currently imposed under military contracts with their own respective government. The Seller, however, is responsible for insuring that the minimum Security and Fire Protection requirements imposed in the E-C subcontracts are consistent with contract requirements and satisfy the Seller's requirements consistent with its management responsibility.

h. National Standards and Regulations

It is recognized that in the performance of this contract, E-C subcontractors may desire, in the interests of minimizing program costs, to substitute appropriate standards, regulations, or other documents of the E-C subcontractor's government where it is demonstrated that such standards, regulations or other documents are equivalent to the standards, regulations or other documents required by the provisions of this contract. The Seller's demonstration of equivalency must be specifically approved in writing by the Buyer to permit such substitution.

2. Euro-Canadian Subcontracts

a. For the purposes of this clause, Euro-Canadian subcontractors are identified as critical. The Government's Contracting Officer reserves the right to review and consent to critical subcontracts prior to award of definitive instruments. Consent by the Contracting Officer to any critical subcontract or any provisions thereof shall not be construed to be a determination of the acceptability of any subcontract price or any amount paid under any subcontract or to relieve the Seller of any responsibility for performing this contract.

b. It is contemplated that the Contracting Officer's review of Euro-Canadian subcontracts may include participation by the NAPMO staff and representatives of the respective host government as well as the particular Euro-Canadian subcontractor in order to assure full understanding by all of the above of the terms, conditions and contract administration arrangements which pertain to the NATO AEW Modernization Program. The review will include:

(i) Flow down of terms and conditions.

(ii) Verification that the Euro-Canadian subcontract has been priced in accordance with national pricing regulations as defined by the applicable National Audit Authority.

(iii) Verification that the audit findings of the applicable National Audit Authority have been utilized in the negotiated agreement.

c. The Seller shall notify the Buyer and Contracting Officer reasonably in advance of entering into a Euro-Canadian subcontract. The advance notification shall comply with the requirements of FAR 52.244-1, "Subcontracts-Fixed Price Contracts", paragraph (c).

3. Requests for Visits

Seller shall process Requests for Visits in accordance with the procedures prescribed by the National Security Authority of its country to the appropriate U.S. User Agency (host Military Department) thirty (30) days - one (1) day in the event of a genuine emergency - in advance of any planned departure to visit any contractor or government facility located in the U.S. The Visit Request shall contain the full name, date of birth, citizenship and security clearance of each visitor, contractor or government facilities to be visited, date or period of visit, and purpose of visit to include program and/or information classified or unclassified, which access is required.

4. Payments to Euro-Canadian Subcontractors

The following procedures apply to all E-C subcontractors performing under this contract.

(1) Subcontracts with E-C Subcontractors will be priced and all invoices for payment will be in the E-C Subcontractor's national currency. E-C Subcontractors will be paid in their national currency by NAPMA.

(2) Payments to E-C Subcontractors may be based on the completion of contract milestones or progress payments.

(3) When an E-C Subcontractor has completed a contract milestone, it will submit an invoice to the National Auditor who will certify that the E-C Subcontractor has met the milestone completion requirements and that the amount being invoiced for the milestone is correct. The invoice must also contain the total price of the E-C Subcontractor's contract and the cumulative amount invoiced to date. After validation by the National Auditor the E-C Subcontractor will forward the invoice to the Buyer.

(4) Upon receipt of an invoice from an E-C Subcontractor the Buyer shall verify that the invoice is consistent with the requirements of the subcontract. The Buyer shall convert the amount of the invoice from the national currency to U.S. dollars based on the currency exchange rates specified in the "Currency Conversion" clause hereof. The invoice shall be submitted to the ACO for verification with the requirements of the prime contract. The ACO will then return the invoice to the Buyer.

(5) After receipt of the verified invoice from the ACO the Buyer shall forward by facsimile a copy of the invoice to the NAPMA Financial Controller. Concurrent with transmittal to NAPMA the Buyer shall submit an info copy of the invoice to ESC/AWIN. The Buyer shall also forward to NAPMA payment in U.S. dollars equivalent to the converted amount of the invoice. This payment shall be made to the NAPMA account at the AMRO Bank. The Buyer shall then mail the original certified E-C Subcontractor invoices to the NAPMA Financial Controller (copy to ESC/AWIN) for filing with the actual payment records.

(6) Following receipt of the facsimile invoice and payment in U.S. dollars from the Buyer NAPMA will convert the U.S. dollars to national currency and make direct payment to the E-C Subcontractor.

(7) The normal process for NAPMA will be to pay non-U.S. dollar invoices once per month on NAPMA's fifth working day. All properly certified facsimile(s)/invoice(s) received at least ten working days prior to that date will be included in the applicable month's payment. NAPMA will notify both the Buyer and ESC/AWIN by facsimile when payments have been executed. Such notice will include E-C Subcontractor's name, invoice number(s), amount(s) paid, and date paid.

(8) NAPMA will provide the NAPMA holiday schedule to the Buyer annually.

(9) In the event NAPMA fails to pay E-C Subcontractors' invoices as contemplated by paragraph b. of this clause, the Seller shall notify the Buyer within five (5) calendar days of becoming aware of such event. Such notification shall identify the invoices which have not been paid and shall state the monetary value of said invoices. The contract price shall be equitably adjusted for all damages or costs incurred, including costs associated with any subcontractor claims, suits, actions, liabilities, and damages, occasioned by failure of NAPMA to pay E-C Subcontractors' invoices as contemplated by this clause.

5. Currency Conversion

a. This clause is intended to protect E-C Subcontractors from financial loss or gain due to currency exchange rate fluctuations. The Seller agrees to require flowdown of the principles of this provision to first tier E-C Subcontractors who are required in support of the Industrial Benefits program. However, E-C Subcontractors shall not include this clause in lower tier subcontracts.

b. The Seller shall provide forecasts of required currencies, as requested by the Buyer. Forecasts shall also state the actual currency amounts which were invoiced for payment in all prior periods.

c. The face amount of this contract will administratively cite the mix of participating nation currencies required for contract total performance. The following fixed rates of exchange shall apply to this contract:

Belgium/LUX Franc _____

Canada Dollar _____

Denmark Krone _____

Germany Deutschemark _____

Greece Drachma _____

Italy Lira _____

Netherlands Guilder _____

Norway Krone _____

Portugal Escudo _____

Turkey Lira _____

d. The Seller is responsible for the selection of all subcontractors including Euro-Canadian subcontractors. The Seller shall employ competitive practices whenever possible in the selection of subcontractors. The evaluation of Euro-Canadian firms, whether on a competitive basis with each other, with U.S. firms, or as part of a make/buy analysis, shall be based on currency exchange rates, as described below.

e. Price evaluation for Euro-Canadian subcontractors for make/buy decisions shall be based on (the closing date of the bid) exchange rates. These exchange rates shall be defined as the Spot Rate published in the Wall Street Journal on (the closing date of the bid) for the selected subcontractor's national currency.