

Acuerdos Bilaterales

Clasificación: 73-2004

Fecha de Ingreso: 31 de agosto de 2004

Nombre de Acuerdo: Contribution Agreement between the Department of Foreign Affairs and International Trade of Canada and the General Secretariat of the Organization of American States for the Program to Support the Drug Control Activities of the GS/CICAD

Materia: Donaciones

Partes: SG/OEA y Canadá

Referencia: Canadá

Fecha de Firma: 28 de junio de 2004

Fecha de Inicio:

Fecha de Terminación: 31 de marzo de 2005

Lugar de Firma:

Unidad Encargada: CICAD

Persona Encargada: David Beall

Original:

Claves:

Cierre del proceso:

CONTRIBUTION AGREEMENT
between
The Department of Foreign Affairs and International Trade of Canada
-and-
The General Secretariat of the Organization of American States
for
The Program to Support the Drug Control Activities of the GS/CICAD

THE PARTIES to this Agreement,

THE CONTRIBUTOR: Her Majesty the Queen in Right of Canada, herein represented by the Minister of Foreign Affairs (hereinafter referred to as "Department of Foreign Affairs and International Trade" or "DFAIT"); and

THE RECIPIENT: The General Secretariat of the Organization of American States herein represented by the Executive Secretariat of the Inter-American Drug Abuse Control Commission of the Organization of American States (hereinafter referred to as "GS/CICAD" or the "Institution"),

WHEREAS:

The General Assembly of the OAS, held in Guatemala City in November 1986, established the Inter-American Drug Abuse Control Commission (CICAD), composed of the member states of the OAS,

Pursuant to the mandate set out in the Inter-American Program of Action of Rio de Janeiro Against the Illicit Use and Production of Narcotic Drugs and Psychotropic Substances and Traffic Therein, it was determined that CICAD's objective would be to eliminate the illicit traffic in and abuse of drugs throughout the hemisphere;

AGREE:

1.0 THE PROJECT

- 1.1 Project Name: The Project funded under this Contribution Agreement is known as "Program to Support the Drug Control Activities of the GS/CICAD".
- 1.2 Objectives: The contribution will support GS/CICAD's ability to effectively fulfil its mandate, in the fight against drugs and drug related crime in the Americas.

- 1.3 Activities (hereinafter referred to as the "Project"): GS/CICAD will undertake to use this contribution for the following purposes:
- 1) Specific purpose funds to be applied to the projects and activities and for the amounts identified by DFAIT and set out in Annex A of this Contribution Agreement; and
 - 2) General purpose funds to provide funding for the operations of the GS/CICAD, for the amount identified in Annex A of this Contribution Agreement.

2.0 THE CONTRIBUTION

- 2.1 Subject to the provisions of this Contribution Agreement, DFAIT will make a contribution ("the Contribution") to the GS/CICAD for deposit in its Specific Fund to finance GS/CICAD activities in the sum of C\$900,000 (nine hundred thousand Canadian dollars), as follows:
- (1) a payment of up to \$625,000 within thirty (30) days of receiving a request for payment from the Institution, together with documentation of the accounting of the funds that the Institution has disbursed towards the Project which demonstrates that the Institution requires reimbursement of expenses incurred in implementing the Project;
 - (2) a final payment for up to the remaining amount, less any undisbursed funds, upon receipt from the Institution, no later than March 31st, 2005, of a request for payment, together with documentation of the accounting of the funds that the Institution has disbursed towards the Project which demonstrates that the Institution requires reimbursement of expenses incurred in implementing the Project, for the period ending March 31st, 2005.
- 2.2 The contribution will be used by the GS/CICAD to implement the Project in accordance with the provisions of this Contribution Agreement and with the terms specified in Annex "A", which forms an integral part of this Contribution Agreement.
- 2.3 The amount of this Contribution Agreement is definitive. DFAIT will not be responsible for any deficit incurred by the GS/CICAD or any other person associated with the Project.
- 2.4 The GS/CICAD shall between the effective date of this Contribution Agreement and the 31st day of March 2005, perform and complete with care, skill, diligence and efficiency the services that are described in the Contribution Agreement and attachments hereto.
- 2.5 DFAIT retains the right to conduct an audit even though an audit may not be performed.
- 2.6 This Contribution Agreement is not for the consideration of supply to the Crown, and as such, the Goods and Services Tax does not apply to any payment made under this Contribution Agreement.
- 2.7 DFAIT retains the right to hire an external monitor and/or evaluator.

3.0 PAYMENTS AND REPORTING

- 3.1 Subject to the provisions of Annex A to this Contribution Agreement, DFAIT shall provide the contribution of C\$900,000 (nine hundred thousand Canadian dollars) to the GS/CICAD in reimbursement based on receipts from the GS/CICAD of expenditure of the funds. An initial payment of up to C\$625,000 (six hundred and twenty-five thousand Canadian dollars) will be provided upon receipt of documentation which demonstrates that the GS/CICAD requires reimbursement of expenses incurred in implementing the Project. DFAIT will retain final payment for the remaining amount, less any undisbursed funds, until receipt of narrative and financial reports on the use of the whole contribution.
- 3.2 GS/CICAD shall provide a narrative report and financial report on the whole of the contribution, both dated and signed by GS/CICAD not later than the 31st day of March 2005.
 - a. The narrative report will include, but not be limited to, a descriptive analysis of: all work undertaken under this Contribution Agreement; the activities and achievements of the project; a comparison of planned versus actual activities, including an explanation of variances; successes and failures of the project in terms of meeting its objectives; problems encountered, actions taken, results and lessons learned; and conclusions and recommendations.
 - b. The financial report will provide a complete list of funds spent as compared to the original project budget line items. A request for payment of the final amount due, less any undisbursed funds should be included.
- 3.3 Income derived from investment of the Contribution by the GS/CICAD shall be used solely for the purposes of the Project as defined above.
- 3.4 The GS/CICAD will return to the Receiver General of Canada via DFAIT, funds which are not disbursed or accounted for, under the terms of the Project agreed to by DFAIT, and overpayments and disallowed expenses shall constitute debts to the Crown. Such a debt would require repayment, via DFAIT, to the Receiver General for Canada, unless there is agreement between Canada (DFAIT) and the GS/CICAD on how the overpaid or unexpended money can be re-directed by the GS/CICAD for other purposes that are supportive of the Program and in accordance with this Contribution Agreement. No profit is to be derived from the contribution.
- 3.5 The Institution agrees to make available to DFAIT information on any other sources of funding for elements of the Project, in addition to the funds received under this Contribution Agreement.

4.0 ACCOUNTING AND AUDITING

- 4.1 GS/CICAD shall keep proper accounts and records of the cost to GS/CICAD of the Project and of all expenditures or commitments made by the GS/CICAD in connection therewith, and shall keep all invoices, receipts and vouchers relating thereto. GS/CICAD shall not, without the prior written consent of DFAIT, dispose of any such accounts, records, invoices, receipts or vouchers until the expiration of five (5) years after final payment under this Contribution Agreement, or until the settlement of all outstanding claims and disputes, whichever is later.
- 4.2 All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the retention period referred to in clause 4.1 be open to audit, inspection and examination by the authorized representatives of DFAIT, who may make copies and take extracts thereof.
- 4.3 GS/CICAD shall provide all DFAITilities for such audits and inspections and shall furnish all such information as the representatives of DFAIT may from time to time require with respect to such accounts, records, invoices, receipts and vouchers.

5.0 ANNOUNCEMENTS AND CEREMONIES

- 5.1 Where appropriate, the GS/CICAD will acknowledge the Contribution in any reference made by it with respect to the Project in publications, speeches, press releases or other similar matters.

6.0 TERMINATION OR SUSPENSION

- 6.1 DFAIT may, by giving notice to GS/CICAD, terminate or suspend the work with respect to all or any part or parts of the Project not completed. More particularly, DFAIT may withhold or cancel any payments under this Contribution Agreement if the GS/CICAD does not use the Contribution in accordance with the provisions of the Contribution Agreement. GS/CICAD shall proceed to complete parts of the Project not affected by the termination notice. Additional notices for different parts of the Contribution Agreement may be given subsequently.
- 6.2 Any part of the Project completed by the GS/CICAD to the satisfaction of DFAIT before the giving of such notice shall be paid for by DFAIT in accordance with the provisions of the Contribution Agreement.

6.3 Any Project or part of any Project not completed before the giving of such notice shall be paid by DFAIT to GS/CICAD on the following terms:

- (a) The amount of any capital expenditures actually incurred only if they were specifically authorized under the Contribution Agreement or approved in writing by DFAIT for the purpose of the Contribution Agreement, less any depreciation in respect thereof already taken into account in determining cost, to the extent that the capital expenditures are properly apportionable to the performance of the Contribution Agreement;
- (b) All costs of, and incidental to, the termination of the Project or part thereof, including the cost of cancellation of obligations incurred by GS/CICAD with respect to the terminated work or part thereof; but not including the cost of severance payments or damages to employees whose services are no longer required by reason of the termination;
- (c) Where DFAIT pays for costs for inventory for inventory, the inventory shall vest with DFAIT.

6.4 Payment and reimbursement under the provisions of this Article shall be made only to the extent that it is established to the satisfaction of DFAIT that the costs and expenses were actually incurred by GS/CICAD and that the same are fair and reasonable and are properly attributable to the termination or suspension of the Project or the part thereof so terminated.

6.5 GS/CICAD shall not be entitled to be reimbursed any amount which, taken together with any amounts paid or becoming due to GS/CICAD under this Contribution Agreement, exceeds the Contribution Agreement price applicable to the Project or the particular part thereof.

6.6 GS/CICAD shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by DFAIT under the provisions of this Article except as expressly provided herein.

6.7 If at the time of termination of the Project the GS/CICAD has been paid an amount that, in the opinion of DFAIT exceeds the value of the work performed on the Project by GS/CICAD, to the date of termination, the GS/CICAD shall forthwith, upon demand by DFAIT, refund the excess to Her Majesty.

7.0 COMPLIANCE

7.1 DFAIT may withhold or cancel any or all payments to be made by DFAIT if the GS/CICAD fails to use the Contribution exclusively for the Project and in accordance with the provisions of this Contribution Agreement.

8.0 BUDGET REVIEW

- 8.1 If the Government of Canada directs DFAIT to proceed with a re-examination of its budget for the purpose of effecting reductions for specific financial years, this Contribution Agreement will be reviewed accordingly.

9.0 INDEMNIFICATION

- 9.1 GS/CICAD shall indemnify and save harmless Her Majesty and DFAIT from and against all claims, losses, damages, costs, expenses, actions and other proceedings, made, sustained, brought, prosecuted, threatened to be brought or prosecuted, in any manner based upon, occasioned by or attributable to any injury to or death of a person or damage to or loss of property arising from any wilful or negligent act, omission or delay on the part of GS/CICAD, GS/CICAD' servants or agents in performing the Project or as a result of the Project.
- 9.2 GS/CICAD shall indemnify Her Majesty and DFAIT from all costs, charges and expenses whatsoever that Her Majesty sustains or incurs in or about all claims, actions, suits and proceedings for the use of any copyright resulting from the performance of the GS/CICAD' obligations under the Contribution Agreement, and in respect of the use of, or disposal by, DFAIT of anything furnished pursuant to the Contribution Agreement.
- 9.3 GS/CICAD' liability to indemnify or reimburse Her Majesty under the Contribution Agreement shall not affect or prejudice Her Majesty from exercising any other rights under law.
- 9.4 GS/CICAD acknowledges that it is not a servant or agent of Her Majesty and will not represent or hold itself out to third parties in that capacity. To the extent that any third party, in reliance upon representations by GS/CICAD, considers the GS/CICAD to be an agent of DFAIT, the GS/CICAD agrees to indemnify DFAIT for any loss or damages and costs occasioned thereby by such third party.
- 9.5 Nothing in this Contribution Agreement constitutes a waiver, express or implied, of the privileges and immunities of the Parties.

10.0 REPRESENTATIVES/NOTICE

- 10.1 For purposes of the Contribution Agreement and any notices hereto, any notice or communication shall be addressed to the following official with copies to the Permanent Mission of Canada to the Organization of American States:

Director, International Crime and Terrorism Division (AGC)
Foreign Affairs Canada
111 Sussex Drive
Ottawa, Ontario, Canada, K1A 0G2

- 10.2 For purposes of this Contribution Agreement and any notices hereto, the GS/CICAD

hereby designates the Executive Secretary of CICAD. Any notice or communication shall be addressed to;

The Executive Secretary of CICAD
Organization of the American States
1889 F Street, NW
Washington DC, 20006

- 10.3 Where in the Contribution Agreement any notice, request, direction, or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person, sent by registered mail, by telegram, or by telex/facsimile addressed to the party for whom it is intended at the address mentioned in the Contribution Agreement and any notice, request, direction or other communication shall be deemed to have been given if by registered mail, when the postal receipt is acknowledged by the other party; by telegram, when transmitted by the carrier; and, by telex/facsimile when transmitted. The address of either party may be changed by notice in the manner set out in this provision.

11.0 EVALUATION

- 11.1 Results of all evaluations carried out under the terms of this Contribution Agreement will be communicated to DFAIT.

12.0 AMENDMENT

- 12.1 No amendment to this Contribution Agreement will be deemed valid unless it is effected in writing and it is signed and dated by the duly authorized representatives of both Parties. No waiver of any terms and conditions shall be valid unless signed and dated by the duly authorized representative of the waiving party.

13.0 DISPUTE RESOLUTION:

- 13.1 The Parties share the objective of quickly identifying any disputes arising out of or in connection with this contract and of resolving them in the most efficient and effective manner possible. The parties therefore agree that if such a dispute arises, they will meet to pursue resolution through negotiation or other appropriate dispute resolution procedure.
- 13.2 All information exchanged during the meeting referred to in Article 13.1 or any subsequent dispute resolution procedure shall be regarded as "without prejudice" communications for the purpose of settlement negotiations and shall be treated as confidential by the parties and their representatives unless otherwise required by law.

14.0 COPYRIGHT LICENSES

- 14.1 Subject to applicable confidentiality agreements between GS/CICAD and the Member States participating in the Project, DFAIT shall have a non-exclusive perpetual, irrevocable, world/wide, gratuitous copyright license to publish, distribute, or use for any public purpose the financial and narrative reports provided to DFAIT under this Contribution Agreement.
- 14.2 The copyright arising from any translation of the reports referred to in Article 14.1 made by or for Canada shall vest in DFAIT or in such person as DFAIT shall decide; provided, however, that copyright shall not infringe upon GS/CICAD' right to translate the reports into its four official languages for its official purposes.

15.0 CONFLICT OF INTEREST

- 15.1 No Canadian public office holder who is not in compliance with the post-employment provisions of the *Conflict of Interest and Post-Employment Code for Public Office Holders* shall derive a direct benefit from this Contribution Agreement;
- 15.2 During the term of the Contribution Agreement any Canadian persons engaged in the course of carrying out this Contribution Agreement shall conduct themselves in compliance with the principles of the *Conflict of Interest and Post-Employment Code of Public Office Holders*. Should an interest be acquired during the life of the Contribution Agreement that would cause a conflict of interest or seem to cause a departure from the principles, the Public Office Holder shall declare it immediately to the Departmental Representative.
- 15.3 GS/CICAD shall not be deemed by DFAIT to have participated in the breach of the foregoing provisions if, after having exercised due diligence, it has not knowingly and intentionally provided a Canadian public office holder with a direct benefit under this Contribution Agreement or knowingly and intentionally assisted a Canadian person breach the Conflict of Interest and Post Employment Code of Public Office Holders with respect to this Contribution Agreement.

16.0 LOBBYING

- 16.1 Any person lobbying at the request of GS/CICAD in Canada pursuant to this Contribution Agreement shall register with the appropriate governmental authority in accordance with the requirements under Section 5(1)(a)(v) of the Lobbyist Registration Act of Canada.

17.0 EQUIPMENT AND MATERIAL PURCHASES

- 17.1 Equipment and materials purchased with project funds will be vested in the Project, the care and security of which is the responsibility of the GS/CICAD, and will become the property of the beneficiaries of the relevant part of the Project at the conclusion of the Project or, should an alternate disposition be warranted, such disposition shall be approved in writing by DFAIT.

18.0 GENERAL TERMS AND CONDITIONS

- 18.1 Unless otherwise specifically provided, nothing in this Contribution Agreement shall imply the assumption of any responsibility by DFAIT, the Departmental Representative or their representatives for any aspect of the organization, management, or financing of the Project, including as it relates to the Institution entering into a loan, a capital lease or other long term obligations in relation to the Project. Notwithstanding anything in this Contribution Agreement, DFAIT does not by financial assistance to the GS/CICAD undertake any responsibility for errors, negligence, or mismanagement incurred by the GS/CICAD or any other person, group, or agent associated with it.
- 18.2 Payment of any monies by DFAIT under the terms of this Contribution Agreement is subject to there being an appropriation by Parliament for the particular service from the fiscal year (01 April - March 31) in which any commitment under this Contribution Agreement would come in the course of payment.
- 18.3 This Contribution Agreement shall ensure to the benefit of and be binding upon the Parties hereto and their lawful heirs, executors, administrators, successors and assigns.
- 18.4 No Canadian Member of Parliament shall be admitted to any share or part of this Contribution Agreement or to any benefits that may arise therefrom.
- 18.5 The Contribution Agreement shall not be assigned in whole or in part by the GS/CICAD without the prior written consent of DFAIT, and any assignment made without that consent will be void and of no effect. No assignment of the Contribution Agreement shall relieve the GS/CICAD from any obligation under the Contribution Agreement or impose any liability on Her Majesty or DFAIT unless otherwise agreed to in writing by DFAIT.
- 18.6 The effective date of this Contribution Agreement shall be the date on which it is signed by the last of the two parties to sign it.

- 18.7 The termination date of this Contribution Agreement shall be March 31st, 2005.
- 18.8 This Contribution Agreement together with Annex "A" constitute the entire Contribution Agreement between the Parties with respect to the Project.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Contribution Agreement in duplicate originals on the date and at the place indicated below.

FOR THE GS/CICAD



David Beall
Executive Secretary, GS/CICAD



Witnessed By

4/17/04
Date

Washington, D.C.
Place

FOR HER MAJESTY



Terry Cormier
Director, International Crime and Terrorism Division
Issued under Treasury Board Authority:

Witnessed By

28/6/04
Date

Ottawa
Place



Organización de los Estados Americanos
Organização dos Estados Americanos
Organization des États Américains
Organization of American States

June 15, 2004

SGE/CAD-358/04

To: Dr. César Gaviria, Secretary General, General Secretariat of the Organization of American States

From: David R. Beall, Executive Secretary, Inter-American Drug Abuse Control Commission (CICAD)

Subject: Delegation of Authority for signature of a Contribution Agreement between the General Secretariat of the Organization of American States on behalf of the Inter-American Drug Abuse Control Commission and the Government of Canada on behalf of Canada's Ministry of Foreign Affairs

The Inter-American Drug Abuse Control Commission (CICAD) receives voluntary contributions from some of its member states including Canada. The Department of Foreign Affairs Canada (FAC) administers one of the contribution funds that Canada provides to CICAD. The Contribution Agreement is the vehicle that defines the terms and conditions related to these funds.

The attached Contribution Agreement reflects the legal opinion and advice provided by Mr. William Berenson. The only exception to this relates to the use of the name "Department of Foreign Affairs and International Trade". Officials in Canada have informed us that this is the name that should appear in the Agreement rather than "Foreign Affairs Canada".

I would like to request delegation of authority for signature of the attached Contribution Agreement between the Department of Foreign Affairs Canada and the General Secretariat of the Organization of American States on behalf of CICAD regarding Canada's program to support the drug control activities of CICAD.

Attachment

- v) Support for the project Undercover Training Program (Caribbean) (up to \$50,000);
- vi) Support for the project Regional Targeting of Organized Criminal Groups (up to \$50,000);
- vii) Support for the project School of Nursing Program (up to \$50,000); and
- viii) Support for the project Drug Abuse Prevention for School Children and Teenagers (up to \$50,000).

The Institution will submit a report to DFAIT on the results of these financial expenditures.