



DEPARTMENT OF DEFENCE

OFFICE OF THE SECRETARY

CANBERRA, A.C.T. 2600
TELEPHONE 265 2851

SEC 127/1995

19 April 1995

His Excellency Mr Graham Fortune
High Commissioner
New Zealand High Commission
Commonwealth Avenue
CANBERRA ACT 2600

Dear High Commissioner

I refer to the agreement between Australia and New Zealand concerning Collaboration in the Acquisition of Surface Combatants for the Royal Australian Navy and the Royal New Zealand Navy done at Canberra on 14 December 1989 ("the ANZAC Frigates Agreement") and to recent discussions between officials of the two Governments concerning the desirability of amending the ANZAC Frigates Agreement to simplify procedures for payment under it.

I understand that during the course of those discussions, the Government of New Zealand emphasised the importance to its participation in the Project of its payment obligations being denominated in the currencies, being payable at the time, and being payable in respect of work intended to be carried out in New Zealand, as set out in the Planning Packages forming part of the Prime Contract as at 10 December 1989. I further understand that the Government of New Zealand recorded its intention that, in reliance on its rights in the ANZAC Frigates Agreement, it will not consent to any amendment to the Prime Contract which would derogate from those aspects of the Prime Contract, unless there are compensating benefits. I can confirm that the Government of Australia understands and accepts the position of the Government of New Zealand on these matters, in respect of the ANZAC Frigates Agreement and the proposed amendments to it.

I propose that the ANZAC Frigates Agreement be amended as follows:

- (1) The following shall be added to Article 2, paragraph (1) and the subsequent sub-paragraphs shall be renumbered accordingly:
 - "(d) Base Date Contract Price means that part of the Contract Price set out in Clause 5.1 of the Prime Contract."

- (2) Article 8 shall be deleted and replaced by the provisions set out in Appendix 1 to this letter;
- (3) Parts 1, 2, 3 and 4 of Annex D to the ANZAC Frigates Agreement shall be deleted;
- (4) Part 1 of Annex D to the ANZAC Frigates Agreement shall be replaced by the provisions set out in Appendix 2 to this letter; and
- (5) Part 5 of Annex D to the ANZAC Frigates Agreement shall be renumbered as Part 2.

If the foregoing is acceptable to the Government of New Zealand, I propose that this letter together with your reply to that effect shall constitute an Agreement to amend the ANZAC Frigates Agreement which shall, from the date of your letter in reply, be deemed to have entered into force on 1 January 1991.

Yours sincerely



A.J. AYERS

APPENDIX 1

Article 8
Payment Obligations

- (1) Australia shall make all payments due under the Prime Contract on behalf of Australia and New Zealand.
- (2) Australia shall pay for Joint Project Costs on behalf of Australia and New Zealand.
- (3) Each Participant shall itself pay any costs incurred by it in respect of items associated with the Joint Project but which are not Joint Project Costs or Prime Contract costs.
- (4) Without derogating from any other provision of this Agreement, New Zealand shall pay Australia for:
- (a) New Zealand's total payment obligations for Supplies and other benefits procured under the Prime Contract for New Zealand ("the New Zealand Prime Contract Payment Obligations"); and
 - (b) New Zealand's share of the Joint Project costs, as set out in this Article.
- (5) The New Zealand Prime Contract Payment Obligations provided for in paragraph (4)(a) of this Article shall be the aggregate of the amounts in each currency set out in Part 1 of Annex D adjusted in accordance with the following provisions of this Article. Payment by New Zealand of the whole of the New Zealand Prime Contract Payment Obligations in respect of any particular currency shall be the limit of New Zealand's payment obligation in respect of that currency.
- (6) The Base Date Contract Price component of the New Zealand Prime Contract Payment Obligations in each currency set out in Part 1 Annex D shall be met by New Zealand paying the amounts calculated in accordance with the following formula, each such amount being referred to below as a New Zealand Payment:

$$A = B \times \frac{C - C_1}{D - D_1}$$

Where:

- A means the amount of each such New Zealand Payment;
- B means the amount of each Base Date Contract Price Payment in that currency payable to the Prime Contractor under a Planning Package;
- C means the total amount of that currency expressed in Base Date Prices set out in Part 1 of Annex D;
- C₁ means the total amount of all previous New Zealand Payments, expressed in Base Date Prices, already paid or payable in that currency;

- D means the total amount of the Base Date Contract Price expressed in that currency; and
- D₁ means the total amount of the Base Date Contract Price expressed in that currency already paid or payable to the Prime Contractor.

(7) Each New Zealand Payment shall be escalated at the rates set out in the Prime Contract in respect of each Planning Package to which that New Zealand Payment relates. If the escalation thus calculated on a New Zealand Payment in Australian currency is based upon an escalation index incorporating any recognition of benefits which are site or project specific, Australia shall pay to New Zealand or New Zealand shall pay to Australia an amount calculated in accordance with Part 1 of Annex C which would have the same effect as though the escalation payment had been based on the alternative index set out in that Annex.

(8) New Zealand Payments shall be made at such times as they are required in respect of each Planning Package to which they relate under the Prime Contract and in the amount calculated under paragraph (6) above.

(9) The Participants acknowledge that early payment discounts are available under the Prime Contract. Any such early payment discounts shall be divided between the Participants in the same proportion as each Participant's contribution to the early payment.

(10) In the event that a Participant delays payment beyond the due date for such payment, such that an additional cost pursuant to the Prime Contract is incurred, that Participant shall bear the additional cost. Where such additional cost is incurred other than as a result of a delay by either Participant, the additional cost shall be borne by both Participants in proportion to their share of the payment to which the additional cost relates.

(11) An amount owed by one Participant to the other, calculated in Base Date Prices and payable during the month of January in each year until the completion of the Joint Project, shall be determined as follows:

- (a) on the date of signature of this Agreement and each anniversary thereof until the completion of the Joint Project (each an "Adjustment Date") the Participants, using a discount rate of six percent per annum in the manner set out in Part 2 of Annex C shall calculate the Net Present Value at 1 July 1989 of the following amounts
- (i) in respect of the payments set out in Part 2 of Annex D, firstly the amounts of the payments which at that Adjustment Date have been made to the Contractor and secondly, the amounts of the payments which at that Adjustment Date have yet to be made to the Contractor based on a reasonable estimate of the time at which those payments shall be made, and
 - (ii) in respect of New Zealand Payments, firstly the amounts of the payments which at that Adjustment Date have actually been made to the Contractor and secondly, the amounts of the payments which at that Adjustment Date have yet to be made to the Contractor based on a reasonable estimate of the time at which those payments shall be made;

- (b) if A exceeds B then New Zealand shall owe to Australia an amount representing that excess and if B exceeds A Australia shall owe to New Zealand an amount representing that excess, where
- (i) A is the balance of the amount calculated in accordance with sub-paragraph (a)(i) of this paragraph minus the amount calculated in accordance with sub-paragraph (a)(ii) of this paragraph, and
 - (ii) B is the balance of the amount calculated in accordance with sub-paragraph (a)(i) of this paragraph minus the amount calculated in accordance with sub-paragraph (a)(ii) of this paragraph when calculated on the previous Adjustment Date, or, in the case of such calculation carried out at the date of signing this Agreement, nil.

(12) The amounts payable in accordance with paragraph 11(b) of this Article shall be adjusted as follows:

- (a) if any amounts shall be payable by New Zealand to Australia under paragraph (11)(b) above which, when calculated after taking into account the effects of the amendment to this agreement which entered into force on 1 January 1991, shall exceed the amount calculated before taking those effects into account, then payment of any such excess shall be deferred until such time and to the extent that the New Zealand Payments calculated before the effects of that amendment are taken into account exceed the New Zealand Payments calculated after the effects of that amendment are taken into account.
- (b) the amounts calculated shall be increased by the application of interest at six percent per annum compounded annually from the Effective Date of the Prime Contract to the date at which the payment is made; and
- (c) the amounts calculated, together with the compound interest calculated in accordance with sub-paragraph (12)(b) above, shall be escalated to current prices by application of the escalation formula at Part 3 of Annex C up to the date at which the payment is made.

(13) If the Participants agree to amend the Prime Contract, the costs associated with ~~each amendment shall, unless the Participants agree otherwise, be allocated on the basis that:~~

- (a) each Participant shall bear those costs directly attributed to that Participant's Supplies; and
- (b) those costs not directly attributable to one Participant's Supplies shall be shared by the Participants in the proportion that their affected Supplies bear to the total affected Supplies.

(14) The Participants shall jointly consider and endorse or amend estimates of annual expenditure of Joint Project Costs prepared by the Joint Project Office and submitted to each Participant annually. Joint Project Costs incurred in respect of GFM and associated freight and other charges shall be allocated on the basis that each Participant shall pay all costs associated with GFM to be incorporated into that Participant's Supplies. Other Joint Project

Costs actually incurred shall be shared by the Participants in the proportion four fifths by Australia and one fifth by New Zealand.

(15) Each Participant shall either:

- (a) arrange for duty free entry into that Participant's country of either Participant's Supplies or Joint Project Supplies or components thereof; or
- (b) pay any import duties imposed by that Participant on either Participant's Supplies or Joint Project Supplies or components thereof.

(16) If New Zealand decides to order two Optional Ships and associated Supplies in accordance with Article 16, then the payment obligations of New Zealand shall be varied as follows:

- (a) Annex D shall be modified such that the total amount paid and payable by New Zealand is increased by \$A526 million at Base Date Prices plus the costs of agreed amendments to the Prime Contract applicable to the Optional Ships and the costs of agreed amendments to the Prime Contract applicable to the associated Supplies;
- (b) New Zealand shall meet one third, rather than one fifth of the shared Joint Project Costs referred to in the last sentence of paragraph (15) of this Article, from the date it serves notice on Australia giving effect to the exercise of the option until the date of delivery of the last Australian ship and thereafter shall meet all such costs; and
- (c) there shall be a payment obligation swap on the Optional Ships and associated Supplies adopting the same principles as have been applied by the Participants when determining the amount and currencies of New Zealand's contribution at the date when this Agreement was first executed in respect of New Zealand's first two ships, as at the date of the exercise of the option based on Base Date exchange rates. New Zealand currency components of unopened and unswapped Planning Packages payable by Australia at the time when New Zealand takes up the option to order the Optional Ships and associated Supplies shall be available for swapping.

(17) Without derogating from any other provision of this Agreement, the Participants note their mutual intention to manage the Joint Project such that each Participant's financial contribution to the Joint Project shall be as set out in the total project cost estimates expressed in Base Date Prices at Annex E to this Agreement.

NEW ZEALAND PRIME CONTRACT PAYMENT OBLIGATIONS

When changes to the Prime Contract made in accordance with Paragraph (5) of Article (3) affect the Base Date Price of the Prime Contract , the amounts shown in this Annex will be amended in accordance with Paragraph (6) of Article 3 to reflect such changes.

| COUNTRY | CURRENCY | AMOUNT |
|---------------|---------------|-------------|
| Australia | Dollar | 53,919,897 |
| New Zealand | Dollar | 486,908,101 |
| United States | Dollar | 36,069,762 |
| Britain | Pound | 3,223,682 |
| Germany | Deutsche Mark | 112,938,230 |
| France | Franc | 15,447,661 |
| Netherlands | Guilder | 2,019,796 |
| Sweden | Krona | 111,213,604 |
| Norway | Krone | 1,777,259 |

Canberra
24 April 1994

The Secretary
Department of Defence
CANBERRA

Dear Mr Ayers

I refer to your letter of 19 April 1994, concerning the proposed amendments to the Agreement between Australia and New Zealand concerning Collaboration in the Acquisition of Surface Combatants for the Royal Australian Navy and the Royal New Zealand Navy done at Canberra on 14 December 1989 ("the ANZAC Frigates Agreement"), which reads as follows:

"I refer to the Agreement between Australia and New Zealand concerning Collaboration in the Acquisition of Surface Combatants for the Royal Australian Navy and the Royal New Zealand Navy done at Canberra on 14 December 1989 ("the ANZAC Frigates Agreement") and to recent discussions between officials of the two Governments concerning the desirability of amending the ANZAC Frigates Agreement to simplify procedures for payment under it.

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I confirm that your letter and the proposed amendments to the ANZAC Frigates Agreement set out in that letter are acceptable to the Government of New Zealand and that your letter together with this reply shall constitute an Agreement to amend the ANZAC Frigates Agreement which shall be deemed to have entered into force on 1 January 1991.

Yours sincerely

G. Fortune *Graham Fortune*
High Commissioner
of New Zealand to Australia
