



**HOUSE OF COMMONS
CANADA**

PROCUREMENT AND ASSOCIATED PROCESSES

Report of the Standing Committee on National Defence

**Rick Casson, MP
Chair**

FEBRUARY 2008

39th PARLIAMENT, 2nd SESSION



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THE STANDING COMMITTEE ON NATIONAL DEFENCE

has the honour to present its

SECOND REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has studied Procurement and associated processes.

Introduction:

In May 2002, the Standing Committee on National Defence and Veterans Affairs (SCONDVA) tabled its report *Facing Our Responsibilities: The State of Readiness of the Canadian Forces*. Therein, the Committee argued that the status quo with regard to the equipping and funding of the Canadian Forces (CF) was no longer acceptable. At the same time, the Committee, in making its recommendations, was careful to note that realism and common sense must be brought to bear on any acquisition program; such exercises are no place for the self-indulgence of perfect solutions or visionary schemes. The report recommended, inter-alia, the acquisition of strategic lift and new replenishment ships. These recommendations were a reiteration of similar recommendations made in a report tabled in November 2001, entitled *State of Readiness of the Canadian Forces: Response to the Terrorist Threat*. These reports had been undertaken in response to the dramatically changing strategic environment.

Both reports came on the heels of a study done by SCONDVA on defence procurement, tabled in June 2000. In part, the study was undertaken because of concerns voiced by the then Auditor General Mr. Denis Desautels and because of concerns the Committee itself had heard about the procurement process. For example, during its “quality of life study” (1998), the Committee heard many complaints about the lack of goods and equipment, the length of time it took to acquire new goods and equipment, the often poor quality of these, and about the generally cumbersome nature of defence procurement.

The Auditor General was concerned that the CF was procuring low-end capability as a result of its design-to-capability strategy. That is, the Department of National Defence had for too long been purchasing partial capabilities or equipment that did not meet the original military operational requirements.

In light of this the Committee went on to recommend that the Department of National Defence move to a system of performance based specifications when purchasing equipment; something which it has done. The conclusion drawn by SCONDVA was that

funds need to be determined by what the CF is required to do. The latter, in turn, is set by official policy.¹

At the time the Committee was conducting its study the Department of National Defence was already working on ways to streamline the acquisition process. Given what we have heard, it would be fair to say that matters have improved. By having streamlined statements of requirements, by doing away with excessively detailed technical specifications and by moving to a capability based approach, the procurement system has become more efficient; though this is not to say that further improvements cannot be made.

According to Mr. Dan Ross, Assistant Deputy Minister of Materiel, the department is moving to a performance based best-value competitive process where industry is provided broad, high-level, mandatory performance criteria and invited to propose their solutions. The new system also seeks to ensure that there is single point accountability within performance based procurement, where a single prime contractor is responsible not only for the provision of the equipment but for the long term effective operation of that equipment. And finally, wherever possible that the option of procuring proven off-the-shelf equipment, as opposed to somewhat riskier and lengthy development technologies, always be an option.²

Ross also went on to assure the Committee that, while these initiatives are intended to improve the existing procurement system, they are not meant, in any way, to circumvent the rules and processes put in place by Treasury Board and Parliament. He went on to note that departmental and interdepartmental approvals and oversight processes remain exactly the same. According to Ross, the basic tenets of fairness, openness, and transparency have not changed and continue to be the cornerstone of the procurement process.

¹ SCONDVA, *Procurement Study*, June 2000, p.3-4.

² Standing Committee on National Defence (NDDN), Evidence, February 8, 2007, p. 3.

Recent Success:

The equipping of our troops for the mission in Afghanistan is proof that with a degree of political will and bureaucratic initiative, the procurement process can indeed work effectively. As we noted in our recent *Report on Afghanistan* "...Canadian soldiers in Afghanistan have been provided with some of the best equipment in the world and, perhaps of more importance, the national defence procurement process has been dramatically successful in delivering new, important operational equipment quickly. Where it traditionally took up to 10 or more years for major equipment to reach the troops in the field, new artillery guns, new mine-resistant armored personnel carriers, uninhabited aerial vehicles and additional armor plating for trucks all arrived in Afghanistan within one year of the request by commanders." Thus, "...in November 2005, the M777 lightweight howitzer was an urgent operational requirement purchase. It was deployed in February 2006 – a mere four months later. DND is now negotiating for six additional M777s, with options on 15 more. Precision munitions that use a Global Positioning System (GPS) to steer precisely to the target are being purchased for the new howitzers."

Furthermore, in 2006 the CF deployed a squadron of Leopard tanks, as a consequence of "lessons learned" from the nature of the operational environment in which forces personnel found themselves. Canada is the only ISAF contingent to have tanks in Afghanistan. The LAV III armored personnel carriers have proven most effective when confronted with machine gun fire, RPG rocket launchers and in cases of Improvised Explosive Devices (IED) explosions. To meet the increased IED threat the CF acquired the South African made RG-31 Nyala wheeled vehicle, which has a specifically designed hull to withstand the shock of a mine explosion from underneath. This most important acquisition only took a little over a year from first request to operations in theatre. The speedy acquisition of medium lift helicopters will only further enhance the combat capability of our troops.

Basic Elements of the Procurement Process:

In a very basic sense, there are twelve steps to the procurement process. These are:

- The Canadian Forces identifies a capability deficiency.
- The CF establishes capability requirements to address the deficiency.
- The Department of National Defence (DND) confirms the capability is justified by defence policy and identifies the capital funds and other resources required to undertake the Major Crown Project (MCP).
- The Minister of National Defence (MND) sponsors the MCP in Cabinet, seeking Approval-in-Principle.
- The MND sponsors the MCP at Treasury Board (TB) seeking Preliminary Project Approval and Expenditure Authority to begin the project.
- When Cabinet Approval-in-Principle and related Expenditure Authority have been granted, DND forms a project team, that includes DND, Public Works and Government Services Canada (PWGSC) and Industry Canada (IC) personnel who cooperatively work with industry to complete the Project Definition Phase which defines the number, location, and type of equipment, how it will be operated, personnel, operating and support costs, contractual Terms and Conditions and Industrial and Regional Benefits (IRBs), etc.
- When MCP Project Definition is Complete, the MND returns to Cabinet for Effective Project Approval for the Implementation Phase.
- The MND then returns to Treasury Board for further expenditure authority to continue with the project and tender a Request for Proposal (RFP) to industry.
- When both Effective Project Approval and Expenditure Authority are granted PWGSC proceeds with formally releasing the RFP and, once bids are received after a specified time frame with bid evaluation.
- Bids are evaluated against pre-set evaluation criteria and done in three separate parts – technical (by DND, contractual Terms and Conditions (by PWGSC) and Industrial and Regional Benefits (IRBs) by Industry Canada. A bid roll-up of all parts for each bidder determines the overall winner.
- Approval for Contract Award from Cabinet is sought and, once granted, PWGSC awards a contract on behalf of the government.
- Thereafter, DND takes on overall responsibility for managing project implementation (aided by PWGSC and IC staff) until project completion.

Considerations:

One of the issues that has been raised with regard to this process is whether or not the contracting functions of PWGSC should be integrated directly into the Department of National Defence. On the surface, there would seem to be both positive and negative aspects to such an action. As noted by the Honorable Michael Fortier, Minister of Public Works and Government Services, "...Canada is one of only a few countries where this separation exists...in both the United States and the United Kingdom...the military does its own procurement." He went on to note that this separation has existed for nearly 70 years and that it is a crucial aspect of ensuring that the process is not only fair but also that it is seen to be fair. By keeping the needs identification and contracting functions separate, the approach allows for appropriate civilian oversight throughout the procurement process.³ However, a single agency handling defence procurement could also lead to a simpler process with a clearer line of ministerial responsibility.

It should also be noted that Canada is not the only country to have long dealt with the issue of defence procurement reform. The United States, Australia the United Kingdom and others have engaged in reform exercises. As here, these countries also have those who want to entirely reform their system. In this regard your Committee finds itself agreeing with Mr. Pierre Lagueux, former Deputy Minister of Materiel, when he urged caution about such ventures. According to Legeaux, the system is not entirely broken and we do not need to create a radically new organization. Mr. Lagueux then disagreed with a recommendation put forth by Mr. Alan Williams, also a former Deputy Minister of Materiel. Williams argued on behalf of the creation of what he termed "Defence Procurement Canada" (DPC), an organization that would combine the procurement resources from DND and the contracting resources of PWGSC. This new structure would become the sole organization accountable for defence procurement. DPC would report to the Minister of National Defence who would be accountable for all elements in the procurement cycle, "...from the preparation of the statement of requirements, through

³ NDDN, Evidence, February 20, 2007, p. 2.

the request for proposals, through the evaluation, and through the contract signing and administration.”

Rather than engage in grand institutional restructuring, Mr. Lagueux presented the Committee with a series of very practical common sense solutions that we commend to the Government for consideration. These are:

- No acquisition should start without a clearly understood and accepted statement of the capability deficiency that is to be rectified, and limited by a clear understanding of what it is not intended to do. “Statement of Requirement creep” is a major contribution to added time and complexity to procurement.
- There must be early industry involvement in identifying possible solutions to the capability deficiency. Indeed the solution to the capability deficiency may in the end, not even be equipment procurement.
- The process should employ well trained, knowledgeable, and experienced cross-departmental integrated project teams, as soon as the requirement has been well defined.
- Procurement strategies must not just identify risk, but strategies that inherently minimize risk need to be adopted.
- Contracting processes that support greater use of performance specifications as opposed to overly detailed specifications should be encouraged. However, there will still often be occasions where there is a need for detailed technical specifications.
- In awarding contracts, potential suppliers past performance should be a considered factor.
- Procurement strategies will vary from project to project, but the rationale for selecting a particular strategy must be consistent and understood, and recognize industry as a partner in the process with legitimate expectations and costs. They are too often viewed as the adversary.
- Most importantly, underpinning the whole of Defence procurement, there should be a government stated Defence Industrial Base Strategy, such as the UK and Australia has each recently published.

- There should be greater use of positive contractor incentives – not just penalties.
- DND must have a realistically stable future funding line; before being allowed to proceed, each project should present a realistic cash flow profile; and projects should be gated under specific cash/timeline targets, subject to cancellation for failure to meet the agreed gates.

Elements of these principles were also found in the testimony of other witnesses. We find them to be based on sound argument. Bureaucracies are cumbersome institutions not easily turned to completely new ways of doing things. Their strength lies in predictability and practiced methods established over long periods of time. It is because of this that bureaucratic institutions are able to deliver the goods and services we ask of them, and to do so in a consistent and dependable manner. Reform is certainly possible, and often times necessary. There are five core objectives that a defence acquisition strategy must satisfy. These are:

- The strategy must ensure that the Armed Forces receive the equipment that meets their approved and defined operational requirements.
- It must do so in a timely manner.
- Value for money must be, and be seen to be obtained.
- Risk must be managed equitable with industry.
- The strategy must facilitate government's ability to use defence procurements as a lever to achieve other worthwhile wider objectives (industrial benefits, technology transfer, regional development, and so on).⁴

We firmly believe that these objectives can be achieved by DND's acquisition system if the foregoing ten points come to inform the reform process. The Committee therefore recommends that:

1. These ten points also be used by the Government as fundamental guiding principles in the reform of the defence procurement system.

⁴ Pierre Lagueux, "A National Defence Acquisition Strategy," in *Creating An Acquisition Model That Delivers*, Conference of Defence Associations Institute (CDA), Vimy Paper 1, April 2006.

Currently, pressures on the procurement system come predominantly from the CF's operational mandates -- primarily Afghanistan. The exigencies facing our troops in Afghanistan dictate that they be provided with needed equipment as quickly as possible. At times, this will mandate a degree of flexibility in the procurement process not otherwise necessitated. However, we must be careful to ensure that exceptions do not become the rule. That is, there may be times when sole source contracting is used as an expedient because a lengthier competitive process could jeopardize the well being of our troops.

Here it is important to remind ourselves of the cautionary note offered by the Auditor General (AG) when appearing before our Committee. She argued that while DND is "...looking to introduce new platforms into service very quickly -- much faster than they have been able to in the past...government regulations require that a fair and open bidding process be followed and that there is transparency in the selection of successful contractors. Following regulations takes time, and Defence cannot skip steps or cut corners to speed up delivery. Senior management from all the departments that are involved in defence acquisitions must be accountable for ensuring the fidelity of the process and for demonstrating that all steps were taken to obtain the best value."⁵

An open and competitive process is what should be striven for whenever possible. Exceptions should not be matters of convenience but should rather be governed by clear regulations and principles. Therefore the Committee recommends that:

- 2. The Department of National Defence investigates ways of making sole source contracting more transparent and accountable, with the aims of substantially reducing procurement wait times for major capital projects necessary for Canada's national security.**

⁵ NDDN, Evidence, March 1, 2007, p. 11.

Continuing Concerns:

From the foregoing it is apparent that our Committee has a generally favorable view of the procurement process. However, there remain issues that we believe still need to be addressed. In the final analysis what we want to ensure is that the procurement process is transparent, fair and efficient. For us to be able to judge whether or not these norms are in effect we need to have a clear understanding of why certain equipment is being purchased, for both the short and long term. We fully understand the need for quick decisions made in respect of equipment purchased for our troops fighting in Afghanistan. Their safety and combat effectiveness must not be compromised. Here, needed equipment must be provided in the quickest way possible. We understand that at times it is simply necessary to bruise the preferred principles of competitive bidding with sole sourcing.

The Defence Capability Plan:

At the same time, there is the matter of long term strategic planning. Here, equipment purchases are based on assessments of future requirements and should therefore be readily subject to Parliamentary Committee oversight and competitive bidding. The oversight function is the most important role performed by Parliamentary Committees. At the same time, while we insist that we be accorded the right and tools to effectively carry out this function, our Committee, over the years and successive Parliaments, has never pretended that it was in a position to prescribe the types of equipment required by the Canadian Forces (CF). We have always believed this to be a matter for professionals.

While granting the above, we have also consistently argued that our Committee – we as Parliamentarians – need to be an integral part of the decision making process. The determination of capabilities is directly linked to policy. Policy tells us where we should or might be headed. Capabilities are the requisite components for getting us there. Yet, despite billions of dollars spent on equipment we are still awaiting the Defence Capability Plan. In the absence of such basic planning documents it is difficult for our Committee to assess the credibility of current policy and equipment purchases.

We fully appreciate the unpredictable nature of recent times and that capability planning can therefore not be an easy matter. However, as a Committee we believe it is important for us to know both the status and content of the document. We therefore recommend that:

- 3. Out of concerns for transparency and accountability, the National Defence Capability Plan be made public and tabled with the Standing Committee on National Defence by the end of the current fiscal year.**
- 4. Further to the basic elements of the procurement process that the Defence Capability Plan be considered a foundation of that process.**

The Committee's Role:

As already noted, the Committee believes that the procurement process must be transparent and accountable. Again, it is we as Parliamentarians, through the medium of our Committee work that helps make the principle of accountability a reality. Furthermore, we also have an important policy role, as well exercised through our Committee work.

Thus, when major capital defence projects are being considered we believe it imperative that the Standing Committee on National Defence be part of that process. Its role in this regard needs to be made more meaningful. We therefore recommend that:

- 5. All major crown projects valued at more than \$100 million proposed by the Department of National Defence be reported to the Standing Committee on National Defence for examination before the contract is awarded.**

It is important to note that we are not looking for a veto over proposed crown projects. Nor are we in any way suggesting that we are the ones who best know what equipment it

is that the CF require in order to sustain their capabilities. While fully recognizing the principles of company confidentiality and privacy, we do believe that the Committee could be given wider access to relevant documentation than it currently enjoys. We are simply arguing that, as an integral and important part of the policy process, our Committee be given the opportunity to voice its opinion before rather than after the fact. It is therefore important that once major projects are being considered and before contracts are awarded that the Committee be able to make its views known.

This is the third time our Committee is putting forth this recommendation. We first proposed it in June 2000 in our *Procurement Study* and again in April 2005 in our study *Procurement of Canada's Victoria Class Submarines*. In both instances we found the arguments made in support of rejecting the recommendation evasive.

Checks and Balances:

We fully recognize that there is a system of checks and balances in place that governs the procurement process. Thus, it is Treasury Board which, under the *Financial Administration Act*, is authorized to make procurement policy. It is this policy that, in turn, governs departmental procurement. Public Works and Government Services Canada (PWGSC) is responsible for ensuring the integrity of the purchasing process. PWGSC has been the supply organization for the Department of National Defence for almost 70 years and acts as a separate center of authority on contracting. The Department of National Defence, as the sponsoring department is responsible for defining operational requirements and the day-to-day management of its procurements. Added to these is Industry Canada, which administers the government's industrial and regional benefits (IRBs) policy in concert with the regional agencies – the Atlantic Canada Opportunities Agency, Western Economic Diversification, and Canada Economic Development for Quebec Regions. The Department of Foreign Affairs and International Trade oversees the trade agreements that frame procurement within a liberalized international trade regime. However, all defence weapon systems and support for the same are exempt from the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO).

In the evaluation part of the procurement process once the various companies have submitted their bids, the technical, price, and IRB parts of the bid packages are separated to ensure that one does not unduly influence another. The Department of National Defence completes the technical evaluation; PWGSC, the price; and Industry Canada, the IRB package. Once all three parts are evaluated, they are combined to determine which contractor has the best technical and price proposal, accompanied by an acceptable industrial and regional benefits package. A contractor who is displeased and believes that the process was unjust has the option of challenging the results before the Canadian International Trade Tribunal (CITT).

This separation of authority for contracting has been considered crucial in ensuring that the process is not only fair but it is also seen to be fair. At the same time there are those who lament the fact that this separation leaves one without a single clear line of authority – without that one individual or agency that bears ultimate responsibility and can therefore be held directly accountable. It is also important that both industry and DND share clear performance measurements for deciding between competitors.

While this committee believes that the current system of splitting the procurement process and functions between departments has many excellent qualities, including acting as a check and balance between departments, we understand there are strong arguments to the contrary, including timelines, a clearer line of ministerial accountability, and a simpler process. The Committee therefore recommends that:

- 6. The Government of Canada investigate ways of changing Department of National Defence procurement processes with the aim of substantially reducing procurement wait times for major defence capital projects necessary for national security. This reevaluation should include investigating an “in-house” departmental procurement process (i.e. a Defence Department procurement agency), an open and transparent sole**

sourcing process where appropriate, and a heavier reliance buying “off the shelf” equipment when suitable.

Perceptions:

There still remains public perception that the defence industry is too closely linked to the department through lobbyists who at one time were senior ranking CF officers. We are not suggesting that former CF personnel not work for defence lobby firms or defence contractors, but, are concerned that the public’s understanding of the procurement process be an accurate one. We therefore recommend that:

- 7. When large capital projects are awarded the Department of National Defence provide a clear public accounting of why certain contractors were chosen over others, with the obvious exception of classified and proprietary information.**

ITARs:

A further issue that raised some concerns was that of the application of the United States International Traffic in Arms Regulations (ITARs). In the post 9/11 era, the major irritant has been the increasingly restrictive application of the ITAR on U.S. exporters as it relates to access for Canadian citizens with another nationality. The U.S. Department of State began limiting access to ITAR controlled material to Canadian citizens, and denying access to Canadian citizens who possess dual nationality with a U.S. proscribed country. Compliance with these restrictions would be incompatible with the Canadian Charter of Rights and Freedoms and human rights legislation, which prohibit discriminatory treatment of Canadian citizens, regardless of their country of origin or nationality.

Talks between the Department of Foreign Affairs and International Trade (DFAIT), DND and the Department of State has led to an arrangement whereby access to defence articles and services exported under ITAR will be granted to DND personnel who are Canadian citizens, including dual nationals, who have a need to know and a minimum secret-level

security clearance. DND personnel include Canadian Forces members, civilian employees, embedded contractors, and employees of other government departments working within DND.

While we are encouraged by this initial step we firmly believe more needs to be done to ensure that the rights of Canadian workers are protected. Included in the arrangement should be any Canadian citizen or landed immigrant working for government or industry and possessing the requisite security clearances as set by Canadian standards and procedures. We therefore recommend that:

- 8. The Department of National Defence and the Departments of Foreign Affairs and International Trade continue discussions with the U.S. Department of State to put in place a system that can be considered just for all Canadian citizens and landed immigrants.**

Industrial and Regional Benefits:

It is not our intention here to revisit the entire debate over industrial and regional benefits; we accept them as part of the procurement process and as beneficial to our economic and industrial interests. Given that they are an accepted part of doing business it is important that they are played to our advantage to the greatest extent possible.

On this issue the Committee heard from Mr. Ken Rowe, Chairman and Chief Executive Officer, I.M.P. Group International Inc., who shared his concerns over recent practices relating to in-service-support (ISS) for future aircraft acquisitions. These include four C-17 Globemaster aircraft, a tactical airlift capability of 17 C-130J Hercules aircraft and 16 medium to heavy lift CH-47 Chinook helicopters. Mr. Rowe was concerned with the effects that recent changes in policy regarding the provision of ISS would have on the Canadian aerospace industry. He argued that the decision to contract future ISS directly with the manufacturer in the U.S. for the Hercules fixed wing and Chinook helicopter fleets would significantly hurt Canadian companies in such an enterprise.⁶ This decision

⁶ NDDN Evidence, April 17, 2007, p. 1-3.

was, of course, based on the new principle of single point accountability whereby the contractor is responsible both for the provision of the equipment and its long term operation, i.e. maintenance.

Previously, the practice had been for the Government to negotiate license agreements for engineering and data separately – thereby allowing Canadian companies to provide ISS directly to DND without relying on the manufacturer. According to Rowe this practice allowed aerospace companies, such as IMP and Spar, to leverage their ISS capability, generate foreign business and create thousands of jobs in different parts of the country.

While equipment manufacturers are required to provide a dollar value amount of industrial offsets to Canadian industry, this, according to Rowe will not be as beneficial as having Canadian companies directly and independently supporting DND. This loss of advantage will also make Canadian ISS companies less competitive with respect to getting foreign contracts.⁷

Our Committee takes Mr. Rowe's cautionary warning seriously. Yet, it will take some time to see exactly how these matters will work themselves out. We therefore recommend that:

9. The Government continue to evaluate the new practice, taking into consideration the intention to sustain, promote, and enhance Canadian regional industries and their participation.

Finally, we would like to note that we very much appreciate the fact that the Auditor General has accepted the essence of a motion passed by our Committee on March 1, 2007 and will proceed with an audit of major capital projects, including the procurement process at National Defence.

⁷ Ibid.

APPENDIX A LIST OF WITNESSES

39th Parliament, 1st Session

Organizations and Individuals	Date	Meeting
<p>Department of National Defence Ward Elcock, Deputy Minister Gen R.J. Hillier, Chief of the Defence Staff</p>	2007/02/06	33
<p>House of Commons Gordon O'Connor, Minister of National Defence</p>		
<p>Department of National Defence MGen J.D.A. Hincke, Chief of Programs Dan Ross, Assistant Deputy Minister (Materiel) MGen M.J. Ward, Chief of Force Development</p>	2007/02/08	34
<p>As an individual LGen (Retired) George Macdonald, Former Vice Chief of the Defence Staff</p>	2007/02/13	35
<p>Aerospace Industries Association of Canada Ron Kane, Vice-President, Defence and Space</p>		
<p>Armed Forces Communications and Electronics Association of Canada Gilles Dupont, Chairman and Chief Executive Officer</p>		
<p>Canadian Association of Defence and Security Industries Timothy Page, President</p>		
<p>Conference of Defence Associations Institute Gen (Retired) Paul Manson, President</p>		
<p>Department of National Defence Col D. C. Burt, Director Air Requirements LGen J. S. Lucas, Chief of the Air Staff</p>	2007/02/15	36
<p>Public Works and Government Services Canada Len Bradshaw, Director, Airlift Capabilities Projects Terry Williston, Director General, Land, Aerospace and Marine Systems and Major Projects Sector</p>		
<p>Public Works and Government Services Canada David Marshall, Deputy Minister Terry Williston, Director General, Land, Aerospace and Marine Systems and Major Projects Sector</p>	2007/02/20	37

Organizations and Individuals	Date	Meeting
Senate Michael Fortier, Minister of Public Works and Government Services	2007/02/20	37
Department of National Defence Cmdre R.W. Greenwood, Director General Maritime Equipment Program Management CWO G. Lacroix, Land Forces Chief Warrant Officer LGen A. Leslie, Chief of the Land Staff Col J. F. Riffou, Director Land Requirements VAdm D. Robertson, Chief of the Maritime Staff	2007/02/22	38
Public Works and Government Services Canada Edward Lam, Director, Joint Support Ship Project Johanne Provencher, Senior Director, Major Projects Directorate Terry Williston, Director General, Land, Aerospace and Marine Systems and Major Projects Sector		
Department of Industry Richard Dicerri, Deputy Minister Tom Wright, Assistant Deputy Minister, Industry Sector	2007/02/27	39
House of Commons Maxime Bernier, Minister of Industry		
As an individual Alan Williams, Former Assistant Deputy Minister (Materiel)	2007/03/01	40
Office of the Auditor General of Canada Sheila Fraser, Auditor General of Canada Wendy Loschiuk, Principal Hugh McRoberts, Assistant Auditor General		
Queen's University Douglas Bland, Chair, Defence Management Studies Program, School of Policy Studies		
As an individual Pierre Lagueux, Former Assistant Deputy Minister (Materiel), Department of National Defence	2007/03/29	44
EADS CASA Antonio Rodriguez-Barberán, Vice-President, Sales and Marketing		
Lockheed Martin Aeronautics Company Jack Crisler, International Vice-President, Business Development, Air Mobility Peter Simmons, Communications Director, Air Mobility		

Organizations and Individuals	Date	Meeting
Pratt & Whitney Canada J. Richard Bertrand, Vice-President, Government Affairs	2007/03/29	44
Quebec Aerospace Association Stewart Bain, Board Member and President, Advisory Council, Board of Directors		
World Security Institute Philip E. Coyle, Senior Advisor, Center for Defense Information		
I.M.P. Group International Inc. Allen Conrad, Vice-President, Business Development, Aerospace Division Kenneth Rowe, Chairman and Chief Executive Officer	2007/04/17	45

APPENDIX B LIST OF BRIEFS

Organizations and individuals

Aerospace Industries Association of Canada

Airbus Military Company

Aviation International, Inc.

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meetings Nos. 2, 5, 6, 7, 8 and 9](#)) is tabled.

Respectfully submitted,

Rick Casson, MP
Chair

SUPPLEMENTARY OPINION FROM THE CONSERVATIVE PARTY OF CANADA

Introduction

The Canadian Forces have suffered from a “decade of darkness,” seeing their operational, personnel, and institutional infrastructures erode to a level unseen in our history. This steady erosion of capabilities was largely attributable to expenditure cuts from previous governments, due to both fiscal constraints and lack of policy prioritization. Indeed, a study from a recent Queen’s University Report stated that without urgent action the Canadian Forces would cease to exist as a credible security force.¹

This untenable situation was inherited by the current Government of Canada when it took office in February, 2006. It was certainly not of their choosing, but urgent action was and is still needed if we are to avoid the catastrophic scenarios envisaged from past inactions. The report stresses three general principles in any possible reform of the procurement process—transparency, fairness, and efficiency. These three essential elements of the procurement process form the basis of the recommendations and are accepted by all parties. However, our disagreements come from how these three principles are weighted and evaluated given the context of specific procurement needs and time constraints.

Items of Concerns

However, we feel the report inadequately examines the most serious problems facing defence procurement today—namely the efficient and timely acquisition of new equipment. There are several ways to address these time sensitive procurement issues—such as a greater reliance on sole source contracting and ACANS (advance contract award notices), buying proven “off-the-shelf” equipment, lessening the average procurement wait times in the competitive bidding processes through minor reform measures, and large scale structural—bureaucratic reform.

¹ Douglas Bland [editor], *Canada Without Armed Forces*, Montreal: Queen’s—McGill University Press, 2004.

The Government has wisely relied on the first two means for some equipment, namely the acquisition of strategic lift (C-17s) and also new Leopard II tanks for our troops in Afghanistan. We applaud the Government on these efforts.

However, the procurement process today is unacceptably long. The Senate interim report of 2005 noted that the average wait time for new equipment in Canada from the identification stage to the acquisition stage is over 15 years.² Long procurement wait times lock Canadian Forces into a constant game of technological “catch-up,” as equipment can become outdated before it is even deployed. Therefore, we recommend that the Government of Canada endeavour to substantially cut average defence procurement wait times for new equipment from their current levels.

The report recommended some ways to do this, namely in recommendation 6. The question of bureaucratic restructuring—from a tri-departmental procurement process currently to a single departmental process—is an important debate. However, we feel the committee has not heard enough evidence to make a truly informed recommendation in this direction. While we appreciate the rationale and goals contained in such a recommendation, we cannot support a system that without proper scrutiny could become a cure that is worse than the disease it seeks to remedy.

We are however concerned about recommendations 3 and 5.

Recommendation 3 asks the Government of Canada to release and make public the Canada First Defence Plan by the end of the fiscal year. While we earnestly look forward to its release, we cannot rush the process of a reevaluation of Canadian defence strategy. Recent years have witnessed dramatic changes in the international security environment, including the increase of [t]errorist organizations ...with members linked

² Senate Committee on National Security and Defence, “Wounded: Canada’s Military and the Legacy of Neglect, Our Disappearing Options for Defending the Nation Abroad and at Home: Part III Strategic Challenges,” 38th Parliament (1st Session), September 2005
<http://www.parl.gc.ca/38/1/parlbus/commbus/senate/com-e/defe-e/rep-e/repintsep05-e.htm#_Toc115156324>.

through technology and loosely linked groups or cells;³ the illicit possession and spread of nuclear, chemical and biological weapons, and their delivery systems;⁴ and the implementation of the responsibility to protect doctrine for oppressed people(s). These are just some of the international concerns that a new Canada First Defence Plan will have to address, along with salient domestic issues, such as NORAD, northern sovereignty, and domestic force structure and distribution. Many people spend years studying such questions—a relatively new Government can and should be given the needed time to effectively tackle these questions.

Recommendation 5 would seek a new role for the committee in terms of examining major defence procurement projects over \$100 million. The committee specifically envisions a role “before rather than after” procurement projects have been announced. Quite simply this recommendation does not work with our present system of Government—which is based upon cabinet confidentiality, parliamentary privilege, and blind contract bidding in the case of procurement processes. We are also concerned that this recommendation would add another layer of bureaucracy to the procurement process—lengthening a process we should be trying to shorten.

In addition, the committee has many powers that it has not chosen to use that could satisfy its request for more involvement in the process. For instance, the committee could ask when the contract is first tendered for departmental briefings on the policy rationale of the contract, and a similar process could be engaged in when the contract has been awarded. Such a system would be in keeping with our parliamentary system and historical committee roles. To date, the committee has not substantially used the powers it currently has. We are not convinced that additional powers (whose congruency with our parliamentary system is suspect at best) would aid in the efficiency, accountability, and transparency of the procurement system—especially when the committee has not thus far engaged the powers it has.

³ Royal Canadian Mounted Police (Government of Canada), “Strategic Priority: Terrorism,” *RCMP Website* <http://www.rcmp-grc.gc.ca/terrorism/index_e.htm>, 14 November 2007.

⁴ Foreign Affairs and International Trade: Non-Proliferation, Arms Control, and Disarmament Division, “Controlling Weapons of Mass Destruction,” *DFAIT Website* <<http://www.dfait-maeci.gc.ca/arms/menu-en.asp>>, 14 June 2007.

The report also briefly mentions perceptions that “the defence industry is too closely linked to the department through lobbyists.” We share the committee’s general concerns, but also note that the Government of Canada in its first bill in parliament—the Federal Accountability Act—brought in some of the most stringent accountability measures in the Western World. These measures will improve the transparency and accountability measures for all of Government—including the procurement process.

Conclusion

In conclusion, the report highlights some important issues that should help to reform the procurement process. However, many of the recommendations need to be further expanded and studied—particularly those surrounding major bureaucratic restructuring (recommendation 6) and an expanded committee role for procurement oversight (recommendation 5). We applaud the committee for tackling these issues, as the procurement process is deeply connected to the effectiveness and safety of our brave men and women in the field. Finding the proper balance between fairness, transparency, and efficiency will always be a difficult one. Canada’s Government should be applauded for its recent procurement decisions on strategic and tactical lift and also the Leopard II Tanks that were urgently needed to keep the Canadian Forces operationally effective. However, improvement in procurement timeliness is always possible, and we hope this report will aid the Government and Department of National Defence to that end.

SUPPLEMENTARY OPINION FROM THE LIBERAL PARTY OF CANADA

There is likely no more noble an act than putting your life at risk for your country. This is what our men and women in the military do. In theatre operations, whether they succeed or fail, whether they live or die, may depend on whether they have obtained the right equipment at the right time. Our report can have a dramatic impact on the answers to these questions. We must therefore spare no effort to make the Canadian defence procurement process the best it can be. We must not settle or compromise in our recommendations.

As we have heard the Canadian defence procurement process is complex, involving many organizations. If we are to optimize the process we must look at it comprehensively. In particular we must address not only the procurement process but as well the associated industrial and legal frameworks.

We do not think that the recommendations in this report go far enough in addressing the procurement process for military equipment. While we believe that our soldiers deserve the best, we nevertheless need to make sure that the quality-price ratio is above reproach. We are particularly concerned about the trend towards procurement without a tender process, because of purported urgent requirements. We cannot constantly use national security or mission imperatives as an excuse for bypassing for the tendering process, particularly when we know that the equipment will only be ready after the missions are over.

It is also essential for Canadian taxpayers to receive value for money, and for the spending to genuinely lead to reinvestment in our own industry and in our regions. We are particularly concerned about the extent to which the current government is abdicating our country's sovereignty by literally delegating its contracting authority to foreign companies in awarding maintenance contracts.

Our aerospace industry, which depends on such contracts, is completely at the mercy of these companies. We have also noticed that there is a trend towards turnkey solutions that

give the manufacturer control over maintaining the equipment being sold to our Armed Forces.

Lastly, we believe that it is important to introduce more satisfactory check and balance measures that would enable us to better evaluate the sustainability of our procurement evaluation policy. In order to do so, we recommend:

- a) introducing a new structure (military procurement agency)
- b) making the Minister of National Defence more accountable
- c) establishing a better balance between civilians and military personnel at the Department of National Defence, specifically with respect to the procurement decision-making process, and
- d) establishing the capacity to provide more than internal checks by creating a body that has full judicial authority to reopen contracts that have already been awarded and to be able to take civil and criminal action where appropriate (Inspector General).

Based on the evidence we have heard, the Liberal Party of Canada would recommend the following 6 recommendations be adopted. The first three deal with the defence procurement process, the fourth deals with the industrial dimension, the fifth deals with the legal framework and the last one deal with the creation of an Inspector General with full auditing and judicial powers with the capacity to lay charges and reopen contracts.

A) DEFENCE PROCUREMENT PROCESS

As we have heard, today no one minister is accountable for defence procurement. This is totally unacceptable. Accordingly,

RECOMMENDATION 1

The contracting resources from Public Works and Government Services Canada (PWGSC) and the procurement resources from National Defence (DND) should be combined into one agency called Defence Procurement Canada (DPC) reporting to the minister of National Defence.

This will finally establish one focal point of accountability for defence procurement. It will also, reduce the costs and shorten the cycle times for defence procurement. This recommendation is fundamental to reforming the defence procurement process.

Now that one minister would be accountable for defence procurement we can demand an accounting of performance. Accordingly,

RECOMMENDATION 2

The minister of National Defence should report annually:

A) On the full life cycle costs of its major capital programs, comparing actual vs. planned costs.

B) On actual vs. planned progress on its major capital programs.

Variances from plan should be identified under the headings:

a) Waiting for government approvals;

b) Internal delays;

c) Contractor delays; and

d) Change in scope.

C) On the planned vs. actual support (national procurement) costs.

It is essential for any decision-making process to be able to pass the smell test. Canadians must know that the whole process is transparent and that there is no appearance of conflict of interest at any step in the procurement process. Rightly or not, the procurement of equipment for the military by the military too often leaves people doubtful or even cynical about the validity of the process. Therefore:

RECOMMENDATION 3

Civilians should have more of a role to play in the decision-making process for procurement at the Department of National Defence. It is essential that we be able to strike a better civilian/military balance within the Department of National Defence.

B) INDUSTRIAL DIMENSION

With billions of dollars expended annually on defence procurement, it is only natural that our Canadian defence industry should reap significant benefits and that Canadians benefit from the addition of skilled job opportunities. Yet, our policy framework is virtually non-existent and decades old. At the present time only procurements involving munitions and shipbuilding are limited to companies in Canada. While other countries are reevaluating their defence industrial policy we are languishing behind. Accordingly,

RECOMMENDATION 4

The minister of Industry Canada should lead an evaluation of our industrial base with a view to recommending which capabilities should be retained in Canada.

C) LEGAL FRAMEWORK

The Canadian International Trade Tribunal (CITT) has been mandated to hear complaints stemming from defence procurements. The tribunal provides a valuable redress mechanism. However, as we have heard its mandate is too broad

(A company need not even bid in order to submit a complaint) and its standard for assessing conduct is too severe (reasonable behaviour is not good enough). Furthermore, in coming to decisions on these large, complex procurements it should be mandatory that those individuals making the determinations have procurement experience. Today none do. Accordingly,

RECOMMENDATION 5

The minister of Finance should:

- a) Modify the mandate of the CITT so that a standard of reasonableness be the basis of rulings and that to be accepted, a complainant must have bid and must show that were it not for the grievance, the complainant would have won; and**
- b) Appoint decision makers to the CITT that possess procurement experience.**

D) INSPECTOR GENERAL

Procurements have to pass the "smell test." We cannot continue to select equipment by "drawing a line in the sand" - to quote a phrase used by CDS General Hillier. We need to

know that what we are buying is the result of a genuinely competitive process that best meets long-term needs at the best cost.

The best way to achieve this is to appoint a defence department Inspector General with full powers to examine the actions of the government, the defence department and the contracts. This IG would audit operations to ensure they are in compliance with general established government policies. The office would have a mandate to seek out waste and investigate possible misconduct or misuse of funds. Furthermore, this new IG should have power to reopen contracts and lay charges if necessary. Accordingly,

RECOMMENDATION 6

The Department of National Defence should establish an Inspector General (IG) position, which would be provided with the tools and financing needed to function effectively. The position would report to the Minister of National Defence and have all the powers required to intervene, check and investigate at both military and judicial levels.

It is essential to have within the Canadian Armed Forces an independent body accountable to the Minister with the authority to evaluate and monitor every step in the procurement process to prevent any administrative tangles and ensure that the interests of taxpayers and the military converge. However, what is needed is a body that has powers beyond mere auditing and recommendation functions. In the public interest, what is needed is not only the power to prevent, but also to intervene and conduct judicial inquiries that could even reopen contracts and lay criminal and civil charges if there are abuses, or if there is any misappropriation, fraud or the inability to comply with the objectives set out in the procurement contract.

Many countries, including France, Great Britain, Poland, Romania and the United States, have a body like this, whether under the aegis of the Department of Finance, the National Police or the Department of Defence.

CONCLUSION

The Liberal Party of Canada recommends a set of additional recommendations to the report to ensure that the military equipment procurement process is more transparent, more effective, and more respectful of taxpayers. The approach should be a middle ground between the legitimate needs of our service personnel and an undeniable need to establish guiding principles for a procurement process that shows accountability, accompanied by a structure that can prevent and remedy any serious complications or blunders. Needless to say, we feel that the new structure we are proposing will allow for a flexible decision-making process that can deal with urgent (and special) requirements.

We believe we should provide good equipment for our troops, but we also believe in due diligence. We need to bring checks and balances to National Defence by reorganizing the department to create more transparency to the procurement process and ensure accountability for the decisions that are made. We need an independent expert agency that can give us confidence that any acquisition is based on true merits and not perceived as the result of individuals picking their personal favorites.

All of the additional measures proposed, under the authority of the Inspector General (IG) would improve the current procurement process, meet the military objectives established by the Government (and by our Armed Forces) and protect the public interest.

SUPPLEMENTARY AND DISSENTING OPINIONS FROM THE BLOC QUEBECOIS

Introduction

The Bloc Québécois is relatively satisfied with its contributions to the Defence Committee's examination of the military procurement process. Even though its input was taken into consideration by the Committee members, a few of the suggestions that were not retained will be discussed in a supplementary opinion; others, involving more fundamental issues, will be addressed in a dissenting opinion.

Supplementary opinion

1. Previous reports

The introduction to the report states that two previous reports have already suggested that the status quo is no longer acceptable and that realism and common sense must be brought to bear. One of these reports recommended the acquisition of strategic lift and new supply ships. The Bloc Québécois wishes to reiterate that it has opposed this type of acquisition in the past and has consistently maintained that the government must establish a defence policy and table a defence capability plan before any procurements are made.

2. Project management

Owing to time constraints, the Committee was not able to discuss the importance of ensuring that the Department of National Defence has a stable project management team, for the sake of civilians and military personnel alike. These teams must follow individual projects to completion. Moreover, the careers of military personnel assigned to these projects must continue to progress as though they were on active service.

Dissenting opinion

There are several suggestions defended by the Bloc Québécois but defeated in Committee regarding which we feel compelled to issue a dissenting opinion.

1. The Department of National Defence must assume overall responsibility for managing projects

The Bloc Québécois is not entirely convinced that the Department has full control of the procurement process. As we see it, a number of departments share this responsibility to varying degrees.

The Department of National Defence launches the process by identifying the requirements of the Armed Forces. Public Works is responsible for the contractual aspect of the tendering process, which can take various forms: with or without invitation to tender, advance contract or letter of intent, etc. Industry Canada addresses the economic spin-offs and Treasury Board ensures that the process complies with government rules.

Although several stakeholders indicated that, in principle, the Department of National Defence is responsible for managing projects to completion; the Bloc Québécois has reservations as regards the leadership provided by the Defence Minister. We would like to establish a clear line of accountability.

The Bloc Québécois established that the line of accountability for projects is often unclear. We found that a project could be blocked and that it was impossible to determine at which level or in which department the project was being held up or blocked altogether. By giving the Department of National Defence responsibility, the Department would then be accountable for project status and general progress.

2. The role of the Auditor General

In several countries, including Great Britain, the Auditor General is responsible for ensuring that projects are completed on budget and on schedule. The Bloc Québécois recommends that the Auditor General report annually on the cost and status of the ten largest projects.

This would make it possible to bring problem projects back under control before they waste taxpayer money and to ensure the high degree of transparency that is seriously lacking at the present time.

Some are opposed to this suggestion on the grounds that it will increase the Auditor General's spending. We do not deny this fact; however, the financial impact of increasing the Auditor General's budget is relatively insignificant when compared with the vast sums spent on military contracts.

SUPPLEMENTARY OPINION FROM THE NEW DEMOCRATIC PARTY

INTRODUCTION:

While we agree in principle with the report submitted by the Standing Committee on National Defence to the House of Commons on procurement, we feel that additional points must be made and expanded upon.

CANADIAN INDUSTRY; CANADIAN JOBS:

The Department of National Defence has an obligation to spend the money of hard-working Canadians in an open way that provides the maximum benefit to security at the best price. The Department's spending must benefit the Canadian economy and create family-supporting jobs in Canada. We would encourage the Standing Committee on Industry to look at current military procurement, and how to better organize Industrial Regional Benefits.

ACCOUNTABILITY:

When the then Minister of National Defence appeared before our committee on February 6 2007 he stated "There is no final responsibility on defence procurement". This was in response to a question I posed on Ministerial Accountability.

The current system of one department which defines capabilities, another which manages contracts and yet another that hands out regional benefits is a situation that is uniquely Canadian and which has developed out of bureaucratic happenstance. While our inclination in public policy is to never have too much power invested in a small number of people, we have serious doubts as to whether the current system is one with checks and balances, or one of no accountability.

In our study we heard differing testimony as to the effectiveness of having requirements, contracts and industrial policy being run out of different departments. We think that the division is long overdue for review. We are particularly interested in the proposal of Mr. Alan Williams to create a “Defence Procurement Canada” which would oversee the defence acquisition process. We believe this proposal has merit, and that it should be more carefully considered.

PERFORMANCE-BASED SPECIFICATIONS:

While it is true that DND has moved towards performance-based specifications when tendering military contracts, in some cases, the Department has used these specifications to exclude specific contractors. Before embarking on an unprecedented acquisition of over \$20 billion it seemed that the government had already made up its mind as to which equipment it wanted. Commanders were known to favour particular aircraft or equipment and there was a disinclination within the Department to run a full competition, particularly regarding medium and heavy lift capabilities for the air force.

On certain occasions the government made the unprecedented step of invoking a national security exemption which resulted in awarding the contract to a foreign manufacturer.

In sum, while we agree that the move to performance-based specifications has been positive, DND still uses these specifications to favour particular models and exclude contractors who may offer more cost-effective or innovative solutions. Further oversight of DND’s SORs is required to avoid this problem.

IMMEDIATE OPERATIONAL ACQUISITIONS:

While the Department has considerably expedited the process by which it acquires equipment for immediate operational needs, acquiring based on operational requirements is not only problematic in terms of sole-sourcing and off-the-shelf, as identified in the Committee's report. It also allows the military to acquire equipment that does not necessarily fit with the long-term defence policy objectives of the Canadian government.

Treating all acquisitions as immediate or operationally necessary will undermine long term attempts to create a coherent National Defence policy. Future operations and maintenance budgets would be set based on what type of equipment was acquired in the past, not on what would make sense in the long term.

Of course, this is not to say that operational requirements should be ignored. Instead, every procurement made for operational reasons should also outline how the procurement in question could and will be used in future operations, how the procurement in question fits with the government's defence policy, and what the opportunity costs of that procurement are (ie: what is the CF not buying or replacing in order to acquire equipment for Afghanistan).

A case in point is the Leopard tanks purchased in 2006. By acquiring the tanks, the CF decided it will retain a tracked direct-fire capability. The 2005 Defence Procurement Strategy noted that this capability was no longer necessary. The Chief of Defence Staff also noted that this capability was no longer necessary.

Why did this change so drastically? Why do other forces in the south of Afghanistan operate without tanks? What were the opportunity-costs associated with the acquisition of the tanks? Even operational procurements should outline the long-term rationale of the acquisition, the opportunity costs involved and explain why alternatives were not

pursued. Otherwise, the CF can use the operational rationale to shape future deployments, policies, and expenditures without proper civilian oversight.

The failure to replace the Fixed-Wing Search and Rescue aircraft seems an obvious example of an opportunity cost. The FWSAR replacement was a stated priority, yet has been demoted on the list of priorities in favour of operational requirements. These issues need to be addressed.

THE CONTRACTING PROCESS:

We agree with the key suggestions proposed by some witnesses and would add an emphasis on competition and innovation.

- Every SOR should be explicitly linked with the most current defence policy.
- all relevant industries should be involved in proposing solutions. SORs should primarily consider end results (performance-based specifications), rather than restrictively detail the technology required. Innovative thinking is what allows performance-based acquisitions to function well. If only certain contractors are invited to be part of the identification of solutions, innovation will be stunted.
- Contractors should be permitted to submit proposals even if they do not fit with all technical specifications. This would allow contractors to offer plausible alternatives. It would also increase transparency and force DND to be cautious when putting forth technical specifications meant to exclude a specific contractor.

THE DEFENCE CAPABILITY PLAN:

For almost two years the Conservative government has neglected to release its “Canada First Defence Strategy” previously known as the Defence Capabilities Plan. It’s difficult for Parliamentarians to judge the course the government has taken with the Canadian Forces or intentions for the future without a plan that we can examine.

We feel that the Defence Committee can play a particularly important role in encouraging and ensuring civilian oversight of the procurement process. The Committee should also ensure that a strategic direction of defence procurement is set and followed by the Department.

Without a clear presentation of the government's defence policy, procurement will be open to abuse and lack proper civilian oversight. Without a clear policy, the government might build a force structure that is well-suited to the current operation in Afghanistan, but not to the protection of Canadians, or other expeditionary operations at the lower end of the spectrum of conflict.

Crucially, both the Defence Capability Plan and Canada First defence policy must clearly cost the procurements they outline. Only a fully-costed procurement plan and defence policy will tell Canadians how much they will be expected to pay for defence and why they need to pay that amount. This costing plan must be clear and accessible, and lay out not only the costs of purchases, but also the cost of the support and maintenance contracts and of the cancellation clauses.

Finally, the new strategy should set out a timeline for future procurement. For instance, Parliament should know when FWSAR aircraft, the CF-18s and the Halifax Class Frigates will need to be replaced.

There have been differing stories about what the full costs will be of the Conservative plan, but that information should be available now so Parliament will know what the effect of this will be on the fiscal framework.

CONCLUSION:

While the Committee's report makes major strides in encouraging a balance between accountability and fairness in the procurement process and the current and future needs of Canada and Canadian Forces, it does not go far enough in detailing the ways in which this should be done. Our report reflects real concern over the way in which the Department has and may use procurement to effect a change in the mandate and operations of the CF.