DEFENSE

Procurement

Memorandum of Understanding
Between the
UNITED STATES OF AMERICA
and LUXEMBOURG

Signed at Brussels October 14, 2010

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

LUXEMBOURG

Defense: Procurement

Memorandum of understanding signed
at Brussels October 14, 2010;
Entered into force October 14, 2010.

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE GOVERNMENT OF THE GRAND-DUCHY OF LUXEMBOURG

AND

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

CONCERNING

RECIPROCAL DEFENSE PROCUREMENT

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Rev 1, 8/12/10

PREAMBLE

The Government of the Grand-Duchy of Luxembourg and the Government of the United States of America, hereinafter referred to as "the Parties",

BEARING in mind their partnership in the North Atlantic Treaty Organization;

DESIRING to promote the objectives of rationalization, standardization, interoperability, and mutual logistics support throughout their defense relationship;

DESIRING to develop and strengthen the friendly relations existing between them;

SEEKING to achieve and maintain fair and equitable opportunities for the industry of each country to participate in the defense procurement programs of the other;

DESIRING to enhance and strengthen each country's industrial base;

DESIRING to make the most cost-effective and rational use of the resources allocated to defense;

DESIRING to promote the exchange of defense technology consistent with their respective national laws, regulations, policies, and procedures; and,

DESIRING to remove discriminatory barriers to procurements of defense supplies or services produced by industrial enterprises of the other country to the extent mutually beneficial and consistent with national laws, regulations, policies, and international obligations;

HAVE agreed as follows:

ARTICLE I
Applicability

This Memorandum of Understanding (MOU) covers the acquisition of defense capability by the Ministry of Foreign Affairs of the Grand-Duchy of Luxembourg and the Department of Defense of the United States of America through:

1. Research and development;
2. Procurements of supplies, including defense articles; and
3. Procurements of services, including defense services.

This MOU does not cover:

1. Construction; or
2. Construction material supplied under construction contracts.

ARTICLE II
Principles Governing Mutual Defense Cooperation

A. Each Party recognizes and expects that the other uses sound processes for requirements definition, acquisition, and procurement and contracting, and that these processes both facilitate and depend on transparency and integrity in the conduct of procurements. Each Party shall ensure its processes are consistent with the procurement procedures in Article V.

B. Each Party shall, consistent with its laws, regulations, policies, and international obligations, give favorable consideration to all requests from the other Party for cooperation in defense capability research and development, production, procurement, and logistics support.

C. Consistent with its laws, regulations, policies, and international obligations, each Party shall:

1. Facilitate the mutual flow of defense procurement for their armed forces, aiming at an equitable balance in their purchases, taking into consideration the relative technological level of such procurement, and consistent with their national policies. An equitable balance in their purchases will not imply an equitable monetary flow of defense procurement but will take into account each country's financial, industrial, economic, and defense related possibilities.

2. Remove barriers to procurement or co-production of items of defense equipment produced in the other country or services performed by sources (hereinafter referred to as "industrial enterprises") established in the other country. This includes providing to industrial enterprises of the other country treatment no less favorable than that accorded to domestic industrial enterprises. When an industrial enterprise of the other country submits an offer that would be the low responsive and responsible offer but for the application of the buy-national requirements, both Parties agree to waive the buy-national requirement.

3. Utilize contracting procedures that allow all responsible industrial enterprises of both countries to compete for procurements covered by this MOU.

4. Exchange information on pertinent laws, implementing regulations, policy guidance, and administrative procedures.

5. Give full consideration to all responsible industrial enterprises in both the United States and Luxembourg, in accordance with the policies and criteria of the respective purchasing agencies. Offers must satisfy requirements for performance, quality, delivery, and cost. Where potential offerors or their products must satisfy qualification requirements in order to be eligible for award of a contract, each Party shall give full consideration to all applications for qualification by sources in the other country, in accordance with the laws, regulations, policies, and procedures and international obligations of the procuring Party.

6. Provide information regarding requirements and proposed procurements in accordance with Article V to ensure adequate time for industrial enterprises of the other country to qualify for eligibility, if required, and to submit an offer.

7. Ensure that technical data and defense items (defense articles and defense services) made available for use by its industrial enterprises by the other Party are not used for any purpose other than for bidding on, or performing, defense contracts covered by this MOU, except as otherwise authorized in writing.

8. Give full protection to proprietary rights and to any privileged, protected, export-controlled, or classified data and information. In no event shall such data, supplies or services be transferred to a third country or any other transferee without the prior written consent of the originating Party.

9. Annually exchange statistics demonstrating the total monetary value of defense procurements awarded to industrial enterprises of the other country

during the prior year. An annual summary shall be prepared on a basis to be decided jointly.

10. Provide appropriate policy guidance and administrative procedures within its respective defense organizations to implement the provisions of this MOU.

11. Make every effort to avoid commitments that conflict with this MOU.

12. Establish, at the request of the procuring Party, arrangements and procedures concerning follow-on logistics support of defense capability purchased through procurements covered by this MOU. Both Parties shall make their defense logistics systems and resources available for this purpose as required and decided jointly.

D. This MOU is not intended to and does not create any authority to authorize the export of defense items (defense articles or defense services), including technical data, controlled on the U.S. Munitions List or U. S. Commerce Control List, the Luxembourg Grand-Ducal Regulation, dated October 31, 1995, relating to the import, export and transit of arms, munitions, and material serving a military purpose, and the related technology, or on the European Union (EU) Common List of Military Equipment. Further, any export subject to the U.S. Arms Export Control Act and the International Traffic in Arms Regulations, the U.S. International Emergency Economic Powers Act and Export Administration Regulations, and any other applicable laws and regulations governing exports, or in the case of defense items subject to the Luxembourg Grand-Ducal Regulation, dated October 5, 2000, regulating export of dual use goods and technologies, and other applicable laws and regulations governing exports, must be compliant with all such laws, regulations, decrees, and guidelines.

E. A Party is not obligated to take a particular action under this MOU if the other Party does not take reciprocal action.

F. Nothing in this MOU may be cited to prevent the implementation of necessary export control provisions in individual cooperative project agreements or arrangements.

ARTICLE III
Offsets

The Parties agree to discuss measures to limit any adverse effects that offset agreements have on the defense industrial base of each country.

ARTICLE IV
Customs and Duties

To the extent consistent with their national laws and regulations and international obligations, the Parties agree that, on a reciprocal basis, they shall not include customs, taxes, and duties in the evaluation of offers and shall waive their charges for customs and duties for procurements to which this MOU applies.

ARTICLE V
Procurement Procedures

A. To the extent practicable, each Party shall publish, or have published, in a generally available communication medium a notice of proposed purchases in accordance with its national laws, regulations, policies, and procedures, and international obligations. Any conditions for participation in procurements shall be published in adequate time to enable interested industrial enterprises to complete the bidding process. Each notice of proposed procurement shall contain, at a minimum:

   1. Subject matter of the contract;

   2. Time limits set for an application for solicitation or submission of offers; and

   3. An address from which solicitation documents and related information may be requested.

B. Upon request, and in accordance with its laws, regulations, policies, procedures, and international obligations, the procuring Party shall provide industrial enterprises of the other country copies of solicitations for proposed purchases. A solicitation shall constitute an invitation to participate in the competition and shall include the following information:

   1. The nature and quantity of the supplies or services to be procured;

   2. Whether the procurement is by sealed bidding, negotiation, or some other procedure;

   3. The basis upon which the award is to be made, such as by lowest price or otherwise;

   4. Delivery schedule;

5. The address, time, and date for submitting offers as well as the language in which they must be submitted;

6. The address of the agency that will be awarding the contract and will be responsible for providing any information requested by offerors;

7. Any economic requirements, financial guarantees, and related information required from suppliers;

8. Any technical requirements, warranties, and related information required from suppliers;

9. The amount and terms of payment, if any, required to be paid for solicitation documentation; and

10. Any other conditions for participation in the competition.

C. Consistent with its laws, regulations, policies, and international obligations, the procuring Party shall, upon request, inform an industrial enterprise that is not permitted to participate in the procurement process of the reasons why it is not permitted to participate.

D. Consistent with its laws, regulations, policies, and international obligations, the procuring Party shall:

1. Promptly provide notification to each unsuccessful offeror that includes:

a. The name and address of the successful offeror;

b. Items, quantities, and price(s) of each contract award; and

c. The number of offers received.

2. Upon request, promptly provide unsuccessful offerors pertinent information concerning the reasons why they were not awarded a contract.

E. Upon request, the procuring Party shall provide additional information to any unsuccessful offeror that is dissatisfied with the explanation for rejection of its offeror that may have further questions about the award of the contract. The additional information shall, consistent with the procuring Party's laws, regulations, policies, procedures, and international obligations, include information on the characteristics and the relative advantages of the offer selected.

F. Each Party shall have published procedures for the hearing and review of complaints

arising in connection with any phase of the procurement process to ensure that, to the greatest extent possible, complaints arising under procurements covered by this MOU shall be equitably and expeditiously resolved between an offeror and the procuring Party.

ARTICLE VI
Industry Participation

A. Implementation of this MOU shall involve both the Parties and the industrial enterprises of each country.

B. Each Party shall be responsible for informing the relevant industrial enterprises within its country of the existence of this MOU.

C. The Parties understand that primary responsibility for finding business opportunities rests with the industrial enterprises of each country.

D. The Parties shall arrange for their respective procurement and requirements offices to be familiar with the principles and objectives of this MOU so that, consistent with their normal practices and procedures, those offices may assist sources in the country of the other Party to obtain information concerning proposed procurements, necessary qualifications, and appropriate documentation.

ARTICLE VII
Security, Release of Information and Visits

A. Any classified information or material exchanged under the provisions of this MOU shall be used, transmitted, stored, handled and safeguarded in accordance with the U.S. - Luxembourg General Security of Military Information Agreement (GSOMIA) of September 17, 1981. In the event of a conflict between the GSOMIA and this MOU, the terms of the GSOMIA shall prevail.

B. Each Party shall take all lawful steps available to it to keep information exchanged in confidence under this MOU free from disclosure under any legislative provision, unless the other Party consents in writing to such disclosure.

C. To assist in providing the desired protection, each Party shall mark such information furnished to the other Party with a legend indicating the country of origin, the security classification, the conditions of release, the fact that the information relates to this MOU, and, if unclassified, that it is furnished in confidence.

D. Information provided by either Party to the other in confidence, and information

produced by either Party pursuant to this MOU requiring confidentiality shall be safeguarded in a manner that ensures its proper protection from unauthorized disclosures.

E. In accordance with the GSOMIA security procedures, each Party shall permit visits to its establishments, agencies and laboratories, and contractor industrial facilities, by employees of the other Party or by employees of the other Party's contractor(s), provided that any visit is authorized by both Parties and the employees have appropriate security clearances and a need to know.

F. All visiting personnel shall comply with security and export control regulations of the host country. Any information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be subject to the provisions of this MOU.

ARTICLE VIII
Implementation and Administration

A. The Under Secretary of Defense (Acquisition, Technology, and Logistics) shall be the responsible authority in the Government of the United States of America for implementation of this MOU. The Ministry of Foreign Affairs shall be the responsible authority of the Government of the Grand-Duchy of Luxembourg for implementation of this MOU.

B. Each Party shall designate points-of-contact to represent its responsible authority.

C. Meetings to discuss problems arising under this MOU shall be called on an as-needed basis.

D. The representatives of each Party's responsible authority shall meet on a regular basis to review progress in implementing this MOU. The representatives shall discuss the research and development, production, procurement, and logistics support needs of each country and the likely areas of cooperation in the acquisition of defense capability; annually review the procurement statistics exchanged, as agreed under Article II.C. 9. of this MOU; identify any prospective or actual changes in national laws, regulations, policies, procedures, or international obligations that might affect the applicability of any understandings in this MOU; and consider any other matters relevant to this MOU.

E. Each Party shall, as required, review the understandings established under this MOU in light of any subsequent changes to its national laws, regulations,

policies, procedures, and international obligations, including but not limited to European Union directives and regulations, and shall consult with the other Party to jointly decide jointly whether this MOU should be amended.

F. Each Party shall endeavor to avoid commitments that could conflict with this MOU. If either Party believes that such a conflict has occurred, the Parties agree to consult to seek resolution.

ARTICLE IX
Settlement of Disputes

Disputes between the Parties arising under or relating to this MOU will be resolved only by consultation between the Parties and will not be referred to a national court, an international tribunal, or to any other person or entity for settlement.

ARTICLE X
Amendments, Annexes, and Implementing Arrangements

A. Annexes may be added to this MOU by written agreement of the Parties. Such Annexes shall be considered an integral part of this MOU.

B. This MOU, including its Annexes (if any), may be amended by written agreement of the Parties.

C. Implementing arrangements regarding the provisions of this MOU, including its Annexes (if any), may be negotiated by appropriate representatives of each Party. Such arrangements may involve procedural matters, administrative direction and guidance, but shall not create any substantive rights or obligations involving any Party. Provisions of any implementing arrangement should be consistent with this MOU. In the event of a conflict between this MOU and any implementing arrangement, this MOU shall govern.

ARTICLE XI
Duration and Termination

This MOU shall enter into force on the date of the last signature and remain in force for ten years. This MOU may be terminated by either Party upon six months prior written notice to the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Parties, have signed this MOU.

In two originals in the English language.

FOR THE GOVERNMENT OF THE GRAND-DUCHY OF LUXEMBOURG, THE MINISTER OF DEFENCE

Date: OCTOBER 14, 2010

Place: BRUSSELS, BELGIUM

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA, THE SECRETARY OF DEFENSE

Date: OCTOBER 14, 2010

Place: BRUSSELS, BELGIUM

FOR THE GOVERNMENT OF THE GRAND-DUCHY OF LUXEMBOURG, THE MINISTER OF DEFENCE

Jean-Marie Halsdorf

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA, THE SECRETARY OF DEFENSE

Robert M. Gates