

DEFENSE

Procurement

**Agreement Between the
UNITED STATES OF AMERICA
and ESTONIA**

Signed at Washington
September 23, 2016



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.”

ESTONIA

Defense: Procurement

*Agreement signed at Washington
September 23, 2016;
Entered into force September 23, 2016.*

A RECIPROCAL DEFENSE PROCUREMENT AGREEMENT
BETWEEN THE
GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE
GOVERNMENT OF THE REPUBLIC OF ESTONIA

SHORT TITLE: U.S. - ESTONIA RECIPROCAL DEFENSE
PROCUREMENT AGREEMENT

PREAMBLE

The Government of the United States of America and the Government of the Republic of Estonia, 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 procurements of the other;

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

DESIRING to promote the exchange of defense technology consistent with their respective national policies;

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

DESIRING to remove discriminatory barriers to procurements of supplies and 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

1. This Agreement covers the acquisition of defense capability by the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Estonia through:
 - a. Research and development;
 - b. Procurements of supplies, including defense articles; and
 - c. Procurements of services, in support of defense articles.

2. This Agreement does not cover either:
 - a. Construction; or
 - b. Construction material supplied under construction contracts.

ARTICLE II
Principles Governing Mutual Defense Procurement Cooperation

1. 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 that its processes are consistent with the procurement procedures in Article V (Procurement Procedures) of this Agreement.

2. Each Party undertakes the obligations in this Agreement with the understanding that it will obtain reciprocal treatment from the other Party.

3. Each Party shall, consistent with its national 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.

4. Consistent with its national laws, regulations, policies, and international obligations, each Party shall:
 - 4.1. Facilitate defense procurement while aiming at a long term equitable balance in their purchases, taking into consideration the capabilities of its defense industrial and research and development bases.

 - 4.2. Remove barriers both to procurement and to co-production of supplies produced in the other country or services performed by sources (herein 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 any buy-national requirements, both Parties agree to waive the buy-national requirement.

- 4.3. Utilize contracting procedures that allow all responsible industrial enterprises of both countries to compete for procurements covered by this Agreement.
 - 4.4. Give full consideration to all responsible industrial enterprises in both the United States and the Republic of Estonia, in accordance with the policies and criteria of the respective procuring 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, the procuring Party shall give full consideration to all applications for qualification by industrial enterprises of the other country, in accordance with the national laws, regulations, policies, procedures, and international obligations of the procuring Party.
 - 4.5. Provide information regarding requirements and proposed procurements in accordance with Article V (Procurement Procedures) of this Agreement to ensure adequate time for industrial enterprises of the other country to qualify for eligibility, if required, and to submit an offer.
 - 4.6. Inform industrial enterprises choosing to participate in procurements covered by this Agreement of the restrictions on technical data and defense items (defense articles and services) made available for use by the other Party. Such technical data and defense items made available by the contracting Party shall not be used for any purpose other than for bidding on, or performing, defense contracts covered by this Agreement, except as authorized, in writing, by those owning or controlling proprietary rights, or furnishing the technical data or defense items.
 - 4.7. 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.
 - 4.8. Exchange information on pertinent laws, implementing regulations, policy guidance, and administrative procedures.
 - 4.9. 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 jointly decided.
 - 4.10 Provide appropriate policy guidance and administrative procedures within its respective defense organizations to implement this Agreement.
5. This Agreement 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 by one or the other Party according to its applicable export control laws and regulations. Further, any export subject to any applicable national export control laws and regulations of one of the Parties must be compliant with such laws and regulations.
6. Nothing in this Agreement may be cited to prevent the implementation of necessary export control provisions in individual cooperative project agreements or arrangements.

ARTICLE III
Offsets

This Agreement does not regulate 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, Taxes and Duties

When allowed under national laws, regulations, and international obligations of the Parties, 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 Agreement applies.

ARTICLE V
Procurement Procedures

1. Each Party shall proceed with its defense procurements in accordance with its national laws and regulations and international obligations.
2. To the extent practicable, each Party shall publish, or have published, in a generally available communication medium a notice of proposed procurements in accordance with its laws, regulations, policies, 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:
 - a. Subject matter of the contract;
 - b. Time limits set for requesting the solicitation and for submission of offers; and
 - c. An address from which solicitation documents and related information may be requested.
3. 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 procurements. A solicitation shall constitute an invitation to participate in the competition and shall include the following information:
 - a. The nature and quantity of the supplies or services to be procured;
 - b. Whether the procurement is by sealed bidding, negotiation, or some other procedure;
 - c. The basis upon which the award is to be made, such as by lowest price or otherwise;
 - d. Delivery schedule;

- e. The address, time, and date for submitting offers as well as the language in which they must be submitted;
 - f. The address of the agency that will be awarding the contract and will be responsible for providing any information requested by offerors;
 - g. Any economic requirements, financial guarantees, and related information required from suppliers;
 - h. Any technical requirements, warranties, and related information required from suppliers;
 - i. The amount and terms of payment, if any, required to be paid for solicitation documentation;
 - j. Any other conditions for participation in the competition; and
 - k. The point of contact for any complaints about the procurement process.
4. Consistent with its laws, regulations, policies, and international obligations, the procuring Party shall, upon request, inform an industrial enterprise that is not allowed to participate in the procurement process of the reasons why.
5. Consistent with its laws, regulations, policies, and international obligations, the procuring Party shall:
- 5.1. Upon award of a contract, promptly provide notification to each unsuccessful offeror that includes, at a minimum:
 - a. The name and address of the successful offeror;
 - b. Price of each contract award; and
 - c. The number of offers received.
 - 5.2. Upon request, promptly provide unsuccessful offerors pertinent information concerning the reasons why they were not awarded a contract.
6. 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 Agreement shall be equitably and expeditiously resolved.

ARTICLE VI
Industry Participation

1. Successful implementation of this Agreement shall involve both Parties. To ensure that the Agreement benefits each Party's industrial enterprises choosing to participate in the procurements covered by this Agreement, each Party shall provide information concerning this Agreement to its industrial enterprises.
2. Each Party shall be responsible for informing the relevant industrial enterprises within its country of the existence of this Agreement.
3. The Parties understand that primary responsibility for finding business opportunities rests with the industrial enterprises of each country.
4. The Parties shall arrange for their respective procurement and requirements offices to be familiar with the principles and objectives of this Agreement so that, consistent with their normal practices and procedures, those offices may assist industrial enterprises 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

1. Any classified information or material exchanged under the provisions of this Agreement shall be used, transmitted, stored, handled, and safeguarded in accordance with the Agreement between the Government of the United States of America and the Government of the Republic of Estonia concerning Security Measures for the Protection of Classified Military Information, signed in Tallinn on February 23, 2000.
2. Both Parties shall take all necessary steps to ensure that industrial enterprises within their respective country comply with the applicable regulations pertaining to security and safeguarding of classified information.
3. Each Party shall take all lawful steps available to it to keep unclassified information exchanged in confidence under this Agreement free from disclosure unless the other Party consents in writing that the first party need not take all lawful steps to keep such information free from disclosure.
4. 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 contractors, provided that the visit is authorized by both Parties and the employees have appropriate security clearances and a need-to-know.
5. Requests for visits will be coordinated through official channels and will conform to the established visit procedures of the host Party. All visiting personnel shall comply with security and export control regulations of the host country. Any information disclosed or made available

to authorized visiting personnel shall be treated as if supplied to the Party sponsoring the visiting personnel and shall be subject to the provisions of this Agreement.

ARTICLE VIII Implementation and Administration

1. 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 Agreement. The Undersecretary for Defence Investments shall be the responsible authority in the Government of the Republic of Estonia for implementation of this Agreement.
2. Each Party shall designate points of contact to represent its responsible authority.
3. The representatives of each Party's responsible authority shall meet on a regular basis to review progress in implementing this Agreement. The representatives shall discuss procurement methods used to support effective co-operation in the acquisition of defense capability; annually review the procurement statistics exchanged as agreed under subparagraph 4.8. of Article II (Principles Governing Mutual Defense Procurement Cooperation) of this Agreement; identify any prospective or actual changes in national laws, regulations, policies, procedures, or international obligations that might affect the applicability of any understandings in the Agreement; and consider any other matters relevant to the Agreement.
4. Each Party shall, as required, review the principles and obligations established under this Agreement in light of any subsequent changes to its national laws, regulations, policies, and international obligations, including but not limited to European Union directives and regulations, and shall consult with the other Party to decide jointly whether this Agreement should be amended.
5. Each Party shall endeavor to avoid commitments that could conflict with this Agreement. If either Party believes that such a conflict has occurred, the Parties agree to consult to seek resolution.

ARTICLE IX Annexes and Amendments

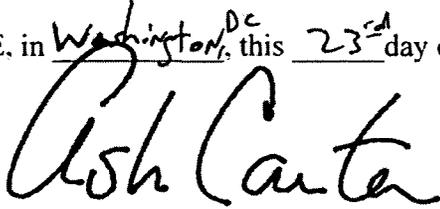
1. Annexes may be added to this Agreement by written agreement of the Parties. In the event of a conflict between an Article of this Agreement and any of its Annexes, the language in the Agreement shall prevail.
2. This Agreement, including its Annexes (if any), may be amended by written agreement of the Parties.

ARTICLE X
Entry into Force, Duration and Termination

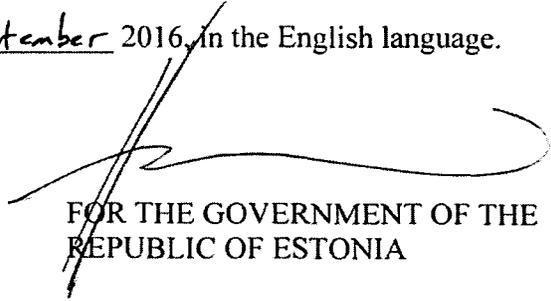
1. This Agreement shall enter into force upon signature by both Parties and shall remain in force for five years, and be extended automatically for successive five year periods unless terminated by either Party upon six months prior written notice to the other Party.
2. Termination of this Agreement shall not affect contracts entered into during the term of this Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have signed this Agreement.

DONE, in Washington, DC, this 23rd day of September 2016, in the English language.



FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA



FOR THE GOVERNMENT OF THE
REPUBLIC OF ESTONIA