

DEFENSE

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

Signed December 18, 2019 and
April 2, 2020

Entered into force April 2, 2020



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.”

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE GRAND-DUCHY OF LUXEMBOURG
CONCERNING
RECIPROCAL DEFENSE PROCUREMENT

PREAMBLE

The Government of the United States of America and the Government of the Grand-Duchy of Luxembourg, 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;

RECOGNIZING their longstanding relationship as represented by the first signed Memorandum of Understanding Concerning Reciprocal Defense Procurement on December 2, 1982;

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 Party to participate in the defense procurement programs 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 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

1. This Agreement covers the acquisition of defense capability by the Department of Defense of the United States of America and the Directorate of Defence of the Grand-Duchy of Luxembourg 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 shall 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, and for so long as the other Party provides non-discriminatory treatment to the products of the Party in accordance with the provisions of this Agreement, each Party shall:

- 4.1. Facilitate defense procurement while aiming at a long term equitable balance in the Parties' respective 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 (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 any buy-national requirements, both Parties agree to waive the buy-national requirement.

- 4.3. Utilize contracting procedures that allow all industrial enterprises of both countries, which have previously not been suspended or disbarred, to compete for procurements covered by this Agreement.
- 4.4. 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 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; and shall take all lawful steps available to prevent the transfer of such data and information, supplies, or services 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 under its applicable export control laws and regulations. Further, any export subject to the national export control laws and regulations of one of the Parties, must be compliant with such laws and regulations.

6. This Agreement shall not serve as a basis to waive any export control laws or regulations that are applicable to other agreements or arrangements between the Parties.

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 consider 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. The 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. The 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 between an offeror and the procuring Party.

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 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 between the Parties under the provisions of this Agreement shall be used, transmitted, stored, handled, and safeguarded in accordance with the Agreement Between the United States of America and the Grand-Duchy of Luxembourg Concerning General Security of Military Information, which entered into force September 17, 1981.
2. Both Parties shall take all necessary steps to ensure that industrial enterprises within each Party's 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 prevent the disclosure to a third party of unclassified information received in confidence from the other Party pursuant to this Agreement unless the Party that provided the information consents in writing to such disclosure.
4. Each Party shall permit visits to its establishments, agencies, and laboratories, and shall not impede visits to contractor industrial facilities, by employees of the other Party or by employees of the other Party's contractors, provided that such visits are authorized by both Parties and the employees have appropriate security clearances and a need-to-know.

5. Requests for visits under the preceding section shall be coordinated through official channels and shall 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 & Sustainment) shall be the responsible authority in the Government of the United States of America for implementation of this Agreement. The Minister of Foreign Affairs shall be the responsible authority in the Government of the Grand-Duchy of Luxembourg 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 4.9. 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 this Agreement; and consider any other matters relevant to this Agreement.
4. Each Party shall, as necessary, 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. Such annexes shall be incorporated into this Agreement and considered an integral part thereof.
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 ten years. This Agreement may be 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 undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE, in two originals in the English language.

**FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA**

Matt. Egan

Date: APR - 2 2020

City: _____

**FOR THE GOVERNMENT OF
THE GRAND-DUCHY OF
LUXEMBOURG**

*Francois BAUSCH,
Minister of Defense*

Date: 18 December 2019

City: LUXEMBOURG

[Signature]