

AGREEMENT TO EXTEND THE

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY AND THE SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT

The Secretary of Defense of the United States of America and the Federal Minister of Defense of the Federal Republic of Germany,

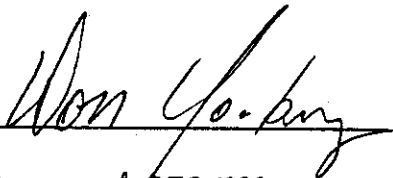
Agree to extend the Memorandum of Understanding Concerning the Principles Governing Mutual Cooperation in the Research and Development, Production, Procurement and Logistic Support of Defense Equipment signed October 17, 1978, together with related annexes.

This agreement shall enter into force upon date of last signature, is effective as of October 17, 1991, shall remain in force for five years, and shall be extended for successive five-year periods unless otherwise agreed by the two Parties.

DONE in duplicate, in the English and German languages, both texts being equally authentic.

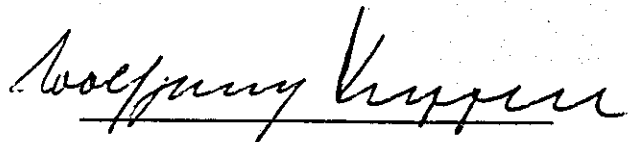
For the Secretary of Defense  
of the United States of America

For the Federal Minister of  
Defense of the Federal  
Republic of Germany



Date: 4 DEC 1991

Place: Washington D.C.



Date: 27. Dec. 1991

Place: Bonn

AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE  
FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY  
AND THE  
SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA  
CONCERNING  
THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE  
RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND  
LOGISTIC SUPPORT OF DEFENSE EQUIPMENT

The Government of the United States and the Government of the Federal Republic of Germany agree that the Memorandum of Understanding (MOU) between them, signed October 17, 1978, (heretofore extended to October 16, 1990) and all annexes, is extended for a period of one year to October 16, 1991.

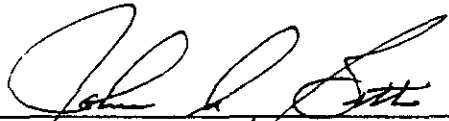
The Governments agree to exchange information and to discuss the extent to which equitable opportunities are provided for procurements subject to the MOU, i.e., coverage of similar classes of goods and services.

The Governments intend to negotiate an annex to this MOU in the near future to further, on the basis of reciprocity, competition in the field of armaments. It is intended to achieve greater transparency and a wider opening of the armaments markets in both countries.


The Governments agree to discuss measures to limit any adverse effects of offsets and other regulations on the defense industrial base of each country.

Subject to the above amendments, the MOU shall continue in all other respects with full force and effect. This amendment will enter into force on October 17, 1990.

For the Government of the  
United States

  
Date: 19 Oct 1990

For the Government of the  
Federal Republic of Germany

i.A.  
  
Date: 19. Okt. 1990

Federal Republic of Germany Memorandum of Understanding.

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY AND THE SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT

The Secretary of Defense of the United States of America and the Federal Minister of Defense of the Federal Republic of Germany:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement and logistic support of defense equipment, in order to:

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

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding; and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in conventional defense equipment research and development, production, procurement and logistic support.

The Parties hereto conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Parties are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations. They therefore agree that in the event of a possible conflict between understandings entered into between the IEPG and the Government of the United States, and this Memorandum of Understanding, the Parties hereto will consult with a view to amending this Memorandum of Understanding.

The Parties further agree that this Memorandum of Understanding should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

## ARTICLE 1

### Principles Governing Mutual Defense Cooperation

1.1 Both Parties intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

1.2 This Memorandum of Understanding is intended to cover areas in which, in the view of both parties to the Agreement, bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement and logistic support. This cooperation is intended to complement the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

1.3 Each Party may propose to the other any particular project that might be suitable for cooperation or for use by the other Party.

1.4 Both Parties will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production, procurement and logistic support which are intended to optimize Alliance standardization and/or interoperability.

1.5 In the interests of standardization within the Alliance and the effective utilization of scarce resources, both Parties shall, to the extent possible, select qualified defense items that have been developed and produced in the other country to meet their requirements. Necessary decisions should be taken on the basis of joint comparative trials according to criteria to be jointly established.

1.6 Both Parties will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

1.7 Both Parties will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described herein.

1.8 The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duty; customs and import duties should not be charged as far as this is admissible under current laws.

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Party for performance, quality, delivery and costs.

1.9 Competitive contracting procedures shall normally be used in acquiring items of conventional defense equipment developed or produced in each other's country for use by either country's defense establishment.

1.10 Both Parties will ensure that the technical data packages (TDPs) made available under this Memorandum of Understanding are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Party.

1.11 Both Parties will undertake their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two contracting parties will mutually make available to each other, to the extent possible, all information and proprietary rights required to implement cooperation under this agreement. The two contracting parties will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements, between the industries of the two countries.

1.12 Arrangements and procedures will, at the request of the purchasing Party, be established concerning follow-on logistic support for items of defense equipment acquired pursuant to this Memorandum of Understanding. Both Parties will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

## ARTICLE II

### Implementing Procedures

2.1 The DoD and MoD will appoint representatives to determine in detail the procedures for implementing this Memorandum of Understanding and the terms of reference for a German-American Committee for Mutual Cooperation.

2.2 The Under Secretary of Defense for Research and Engineering will be the *responsible authority* of the United States Department of Defense for the development of implementing procedures under this Memorandum of Understanding.

2.3 The Director General of Armaments in the Ministry of Defense will be the *responsible authority* of the Ministry of Defense of Germany for the development of implementing procedures under this Memorandum of Understanding.

## ARTICLE III

### Industry Participation

3.1 Implementation of this Memorandum of Understanding will involve full industrial participation. Primary responsibility for finding business opportunities shall rest with the industries of each country.

3.2 Each Party will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Parties will take all appropriate implementing guidance. Both Parties will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

3.3 Also, the Parties will arrange to familiarize their respective procurement and requirements offices with the principles and objectives enunciated herein.

## ARTICLE IV

### Security

4.1 The operating procedures for the implementation of the General Security of Information Agreement dated 23 December 1960 between the two Parties, with particular reference to industrial security, apply to activities under this Memorandum of Understanding.

4.2 To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Party for security purposes, the other Party shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Party throughout the period during which the classifying Party may maintain such classification.

4.3 Information that has been provided by either of the Parties to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Party will mark such information furnished with a legend indicating the origin of information, that the information relates to the MOU and Annexes thereto, and that the information is furnished in confidence.

## ARTICLE V

### Administration

5.1 Each Party will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

5.2 The German-American Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Party to review progress in implementing the Memorandum of Understanding. It will discuss development, production, procurement and logistic support needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this Memorandum of Understanding.

ARTICLE VI

Duration

6.1 This Memorandum of Understanding will remain in effect for a six-year period following its signing. Unless otherwise agreed by both Parties, the duration will be extended for another six years.

6.2 If, however, either Party considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the six-year period, or any extension thereof, written notification of its intention will be given to the other Party six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Party to enable the Parties fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the Parties, any contract entered into consistent with the terms of this Memorandum of Understanding shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VII

Implementation

7.1 Each Party must agree in writing to any amendment of this Memorandum of Understanding.

7.2 Details pertaining to implementation of the principles set forth herein will be set out in annexes to this Memorandum of Understanding.

7.3 Any differences of opinion over the interpretation and implementation of this Agreement and its Annexes shall be resolved by consultation between the DoD and MoD.

7.4 This Memorandum of Understanding will come into effect on the date of the last signature.

The Secretary of Defense  
of the United States of America

The Federal Minister of Defense  
of the Federal Republic of  
Germany

Harold Brown

Hans Apel

Date October 17, 1978

October 17, 1978



## ANNEX 1

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA AND THE FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY CONCERNING MUTUAL COOPERATION IN DEFENSE EQUIPMENT RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT.

### 1. FOREWORD

On October 17, 1978, the Secretary of Defense of the United States and the Federal Minister of Defense of the Federal Republic of Germany signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in the Research and Development, Production, Procurement and Logistic Support of Defense Equipment. This annex sets forth mutually agreed implementing procedures for carrying out the MoU.

### 2. BASIC PRINCIPLES

With the aim already expressed in the text of the MoU to achieve the greatest practicable degree of standardization and/or interoperability in defense equipment, the two Parties shall cooperate in the field of research, development, production, procurement, and logistic support in order to implement programs of common interest and to strengthen their respective industrial defense efforts. This goal can be attained both through the joint participation in mutually agreed research, development, production, and logistic support programs and through joint participation in, or interchange of, studies, materials and services.

The US Department of Defense (DoD) and the Ministry of Defense of Germany (MoD) will each consider for procurement for their defense requirements qualified defense items and services developed or produced in the other country. (See also paragraph 3 of this annex). MoD and DoD will also identify to one another, as soon as possible, those practices of their respective countries having the force of law that may potentially restrict the fulfillment of the MoU and this annex. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals. However, the responsible governmental agencies in each country will assist sources in the other country to obtain information concerning proposed programs, necessary qualifications and appropriate documentation.

### 3. ACTION

3.1 In implementing the foregoing, the two Parties, in addition to facilitating procurement on a competitive basis, shall in accordance with respective laws and regulations consider the following:

3.1.1 Cooperation in R&D for specified projects. Said cooperation may take place also in the framework of projects already undertaken by both countries.

3.1.2 Licensed production and co-production of defense equipment both for the requirements of the two countries and for export.

3.1.3 Supply of logistic and administrative materials and facilities.

3.1.4 Maintenance and overhauling of items of military equipment, including supply of spares.

3.2 DoD and MoD will individually review and, where considered necessary, revise their respective internal policies, procedures and regulations to ensure that the principles and objectives of this MoU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. The DoD and MoD agree that the measures listed below will be utilized in a reasonable manner recognizing among other factors, delivery date, requirements for supplies, the interest of security and the timely conduct of the procurement process, and requirements attendant to ensuring free and full competition for the award of contracts.

3.2.1 Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

3.2.2 Ensure that their respective research and development offices are familiar with the principles and objectives of this MoU.

3.2.3 Ensure that their respective procurement offices are familiar with the principles and objectives of this MoU.

3.2.4 Ensure wide dissemination of the basic understanding of this MoU to their respective defense industries.

3.2.5 Ensure that to the extent permitted by national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations or the cost of import duties providing that this shall not preclude a party from including a charge equivalent to an internal tax imposed consistently with the provisions of the general agreement on tariffs and trade. To the extent permitted by national laws and regulations provisions will be made for duty-free entry certificates and related documentation.

3.2.6 Assist industries in their respective countries to identify and advise the other government of their capabilities and assist such industries in carrying out the supporting actions to optimize industrial participation.

3.2.7 Review defense items submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to participate in the development or production and procurement process.

3.2.8 Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

3.2.9 Ensure that the MoU and its implementing procedures are applied on the broadest possible base. Exceptions should be made only in those instances where they are required for the protection of primary national interests. It is intended that such defense items, as well as those items which would not be qualified as defense items under this MoU because of legally imposed restrictions on procurement from non-national sources, should be identified in a timely manner by MoD and DoD for their respective countries and kept under review at this level.

3.2.10 Ensure that the balance of reciprocal purchasing within the areas of this MoU takes into consideration the levels of technology involved, as well as the contractual value of purchases hereunder.

3.2.11 Arrange visits between appropriate government personnel from time to time in order actively to explore possibilities for R&D cooperation, procurement, and logistic support cooperation.

#### 4. COUNTING PROCEDURES

Each party will keep a record of defense equipment procurement from the other country either directly or through its defense industry reporting. The purchases to be counted towards this MoU will be identified jointly by DoD and MoD. In principle all expenses in the other country for R&D, procurement, and logistic support will be counted towards this MoU including the following:

4.1 Direct purchases by the MoD and DoD, including their respective agencies, one from the other.

4.2 Direct purchases by either the MoD or DoD from the industry of the other country.

4.3 Purchases by industry from the Government or industry of the other country in the frame of Government defense contracts.

4.4 Purchases by a Third Country Government from either the US or the German Government or industrial sources as a direct result of commercial efforts of the other non-supplying country will be counted toward this MoU as mutually agreed between MoD and DoD on a case by case basis.

4.5 Purchases by either country of defense items resulting from common funded projects will be counted towards this MoU as mutually agreed between MoD and DoD on a case by case basis.

4.6 License fees, royalties and other associated income resulting from orders placed by DoD or MoD and/or industry in one country with a license in the other country; or in MoD-DoD transactions.

4.7 The term "procurement" includes expenditures by the FRG under Foreign Military Sales Training Cases for purchase of spare parts and services for maintenance and modification of defense equipment and associated machinery located in the United States and similar expenditures by the United States in Germany.

## 5. ADMINISTRATION

5.1 Each Party will designate points of contact at the Ministry of Defense level.

5.2 MoD and DoD representatives will meet periodically, alternatively in each country, to review the projects undertaken in implementing the MoU. They will discuss research, development, production, procurement and logistic support needs of each country and the likely areas of cooperation; they will update the financial statement referred to in paragraph 5.3 below as a means of judging the progress of activity in the period under review; and they will consider other matters relevant to this MoD. Specific tasks of the representatives are:

5.2.1 Review of the status of the exchanges on the basis of the data, in comparable terms to be agreed upon, compiled by the other party.

5.2.2 Consider additional steps necessary to facilitate the actions called for in paragraph 3.


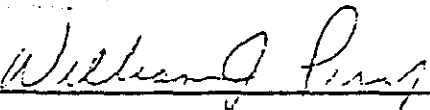
5.3 An annual US/Germany statement consolidating the current balance of defense equipment research and development, production, procurement and logistic support between the two countries, as well as the long term trends, will be prepared on a basis to be mutually agreed.

5.4 Quality assurance procedures outlined in STANAG 4107 and 4108 will apply unless other provisions are mutually agreed to on any specific contract; however, reimbursement for services provided shall be in accordance with the national laws and regulations of each country.

5.5 This annex, in two original texts in the German and English languages, both texts being equally authentic, will come into effect when signed.

For the U.S. Department of Defense

For the Ministry of Defense of the  
Federal Republic of Germany



31 OCT 1979

31 OCT 1979

(date)

(date)

ANNEX 2

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA AND THE FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY CONCERNING MUTUAL COOPERATION IN DEFENSE EQUIPMENT RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT.

Principles Governing Research and Development

2.1 The two Parties shall inform each other of their conventional defense equipment plans and how they intend to implement these plans to meet their future requirements. In doing so, they shall indicate whether a bilateral or multilateral development effort (to what extent and with whom), a national development effort, or the future procurement, licensed production or coproduction of a defense item that has been developed in the other country is intended.

2.2 Consultations for the purpose of providing the information under paragraph 2.1 shall be held as early as possible preferably at a time when the Parties have not yet committed themselves. It shall be the objective of both Parties to avoid, if possible, duplicate research and development efforts. When mutually agreed, the Parties shall enter into either a cooperative development or a complementary work-sharing or specialization in the sense that each Party is allocated a specific work package (weapon system) and results are made available to each other for future use.

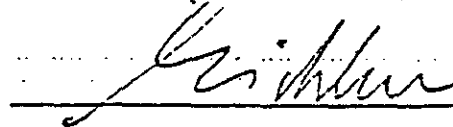
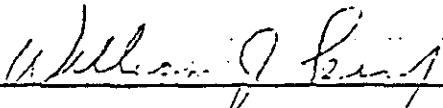
2.3 Both Parties intend to provide each other with all information that is necessary to conduct the above-mentioned reviews and consultations (results of research activities, feasibility studies).

2.4 The two Parties shall ensure that such information will receive in their country the same security classification and be given the same protection through security implementing procedures as in the originating country and will be used only for the purpose of information and to facilitate a decision on future actions.

2.5 Technical Data that are exchanged between the Parties during the course of and for the purpose of discussing a potential Research and Development Cooperative Project shall be returned to the originating government if the Parties decide not to enter into an agreement for such project.

For the U.S. Department of Defense

For the Ministry of Defense of the  
Federal Republic of Germany



31 OCT 1979

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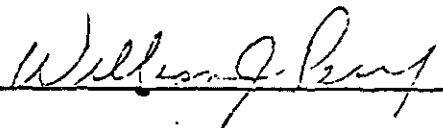
ANNEX 3

TO THE MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA  
AND THE  
FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY  
CONCERNING MUTUAL COOPERATION IN DEFENSE EQUIPMENT RESEARCH  
AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT

Principles Governing Logistic Support

- 3.1 When developing or procuring standard or interoperable equipment, both Parties will agree upon the basis for common logistic when utilizing the equipment, i.e., configuration control, substituteability and interchangeability of spare parts.
- 3.2 Arrangements and procedures will be established concerning follow-on logistic support or other forms of logistic cooperation, e.g., joint utilization of national and NATO facilities.
- 3.3 Both Parties will issue basic guidelines and directives to their respective armaments and logistics agencies to achieve the described goals. In the logistics field (maintenance, conversion, retrofitting, spare parts, etc.) contract awards should take into account principles of economy and competition and consideration of all applicable costs.
- 3.4 Logistics planning and related arrangements should also be pursued in accordance with the FRG-US Memorandum of Agreement on Combat Logistic Support System (CLSS) Planning (Ref DoD C-31006.).
- 3.5 Industrial firms in both nations that are performing logistic support services such as overhaul and maintenance should actively seek opportunities for mutual cooperation.

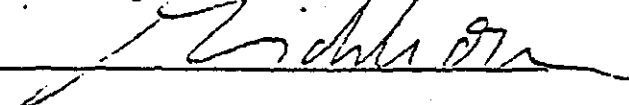
For the U.S. Department of Defense

  
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31 Oct 79

(date)

For the Ministry of Defense of the  
Federal Republic of Germany

  
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31 OCT 1979

(date)

Annex 4

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA AND THE FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY CONCERNING MUTUAL COOPERATION IN DEFENSE EQUIPMENT RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT.

Terms of Reference

1. The German/American Committee for Mutual Cooperation (hereafter referred to as "The Committee") will function, under the direct responsibility of the authorities listed in Article II, paragraphs 2 and 3 of the MoU, as the principal agency responsible for the implementation of the MoU.

2. In particular, the Committee will review the implementation of the MoU governing mutual cooperation in the areas of research and development, production, procurement and logistic support of conventional defense equipment. In this review, the Committee will:

2.1 Determine, through the exchange of information, the status of implementation of the MoU and if need be, propose amendments to the MoU and/or its Annexes.

2.2 Exchange information and recommend appropriate action, to include visits, to facilitate cooperation in areas of research and development, production, procurement and logistic support in accordance with national acquisition regulations.

2.3 Agree to the financial statement of the current balance, give guidance for its yearly preparation and formulate conclusions from it.

2.4 Draw up a joint report at the end of each meeting and submit copies to the respective Governments.

2.5 Consider any other matters relevant to the MoU.

2.6 The Committee will meet alternately in the United States and Germany as required, but not less than annually, to review progress in implementing the MoU. The country hosting the meeting will provide the Chairman and the secretariat for that meeting.

3. This Annex in two original texts in the German and English languages, both texts being equally authentic, will come into effect on the date signed by both Governments.

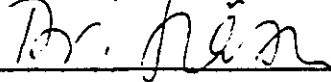
For the U.S. Department of Defense



Dec. 4, 1980

(Date)

For the Ministry of Defense of the  
Federal Republic of Germany



Dec. 4, 1980

(Date)

## ANNEX 5

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT DATED 17 OCTOBER 1978.

### PRINCIPLES GOVERNING CONTRACT ADMINISTRATION SERVICES

#### 1. INTRODUCTION

This Annex sets forth the terms, conditions, and procedures under which the Governments will provide each other with selected contract administration services and related information in support of defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU). It is recognized that in the event conflicts arise between any aspect of this Annex and the laws of either Government, the laws shall prevail.

#### 2. MAJOR PRINCIPLES

The objective of this Annex is to insure each Government is able to employ the most effective and efficient contract administration support possible when acting under the MOU. Nothing is to be construed as impairing a purchasing Government's access to its contractors and their records as may be contractually authorized.

For the purpose of this Annex, contract administration shall include all those necessary actions, other than contract pricing and audit, to be accomplished at, or in proximity to, a firm's place of business to assist the purchasing office in evaluating a prospective contractor's capabilities and in monitoring and enforcing awarded contracts. This Annex supplements NATO Standardization Agreement (STANAG) 4107, hereby incorporated by reference in regard to reciprocal quality assurance.

#### 3. GENERAL

The purchasing Government may request specific services and information selected from those listed in Appendix 1 to this Annex which it considers appropriate to the circumstances. The purchasing Government may elect to obtain additional support through its own on-site representatives provided there is no duplication of work performed by the host Government. In addition, the host Government will use its best efforts to supply information requested by the purchasing Government but not listed in this Annex when necessary to support contract award, enforcement, or termination. The provision of any services and information other than those defined in Appendix 1 will be on a cost reimbursable basis. The purchasing Government may modify a request for support during contract performance after consultation with the host Government.

The host Government shall accept requests for services to the extent resources are available and carry them out according to the procedures that Government uses for its own contracts.

Contracts shall contain suitable provisions for the host Government to act for and on behalf of the purchasing Government and shall authorize access



to contractor facilities and records and use of contractor assets as necessary for the performance of contract administration services.

Where representatives of either Government deal with a contractor at the same location in support of the same contract or separate contracts, they shall act in full concert according to terms of reference mutually agreed or to be agreed upon.

Each Government shall designate a single office to receive requests for contract administration services. This office shall arrange for the required services to be performed by the appropriate national organization. In addition, each Government may elect to designate an office in or near the other's country to act as a focal point through which requests for support will be forwarded. The host Government will endeavor to keep the purchasing Government's focal point apprised of current contract administration practices and resources to help insure requests for services are reasonable and prudent. The focal point shall advise the host Government concerning contract requirements and clarify requests for services as necessary.

#### 4. PROCEDURES

Requests for contract administration in the Federal Republic of Germany shall be directed to:

Bundesamt für Wehrtechnik und Beschaffung  
 (Federal Office for Military Technology and Procurement)  
 Konrad-Adenauer-Ufer 2-6  
 5400 Koblenz 1  
 Tel 49-261-4001

Requests for contract administration in the United States shall be directed to:

The Department of Defense Control Point  
 DCASR New York  
 201 Varrick Street  
 New York, New York 10014  
 Tel 212/374-3446.

Contract administration requests will be accompanied by the number of copies of the request for proposal or awarded contract, as appropriate, prescribed in STANAG 4107 and will specify the contract administration services desired. Every effort will be made to forward support requests simultaneously with the forwarding of awarded contracts to the contractor. The format shall be as described in Annex A to STANAG 4107, with desired services other than quality assurance specified in Block 10. If less than comprehensive quality assurance is needed, the desired services selected from Allied Quality Assurance Publication (AQAP) 10 shall be specified in Block 10. Requests shall reference this Annex to the MOU and shall be processed according to the procedures in STANAG 4107 with due regard to Section VII of this Annex. In principle, acceptance or rejection shall be made within 30 calendar days of receipt by the host Government.

Direct communications between the purchasing office and the assigned contract administration office in resolving contract problems are authorized and encouraged. The purchasing Government shall retain final authority over contract interpretations and enforcement actions, and shall advise the contract administration office on such matters as needed.

In the event the purchasing Government envisions the assignment of in-plant representatives, proposed terms of reference describing an appropriate working relationship with host Government representatives will be suggested to the host Government as early as possible.

5. RESPONSIBILITY AND LIABILITY

Nothing in this annex shall relieve the contractor of any responsibilities under the contract. No liability will attach to the Government, its officers or agents, acting under this Annex on behalf of the other Government.

6. PROTECTION OF INFORMATION

Data obtained through the implementation of this Annex shall receive the same protection against unauthorized disclosure as such data would normally receive under the laws and rules of the country which possesses it.

7. CHARGES

Services defined in Appendix 1 and provided under this Annex will be free of charge, subject to a joint review of the services being exchanged at not less than three-year intervals. If, as a result of such a joint review, either Government determines that charges will be necessary, they may be imposed after not less than one year advance notice. Should such charges by the U.S. Government become necessary, or should the USG provide services other than those defined in Appendix I, Foreign Military Sales Procedures then in effect will apply.

8. DURATION

This Annex will remain in effect for a period as set forth in ARTICLE VII of the MOU, and may be terminated under the conditions as set forth in that Article.

9. IMPLEMENTATION

This Annex will come into effect on the date of the last signature.

For the Government of the  
United States of America

James P. Wade Jr.

Date 6 DEC 1983

For the Government of the  
Federal Republic of Germany

*i.A.*  
Kupper

Date 06 DEC 1983

Appendix

- 1. Services to be Exchanged

## APPENDIX 1 to ANNEX 5

### PRINCIPLES GOVERNING CONTRACT ADMINISTRATION Services to be Exchanged

In accordance with the principles and procedures as set forth in this Annex the following services will be performed by the host Government within its national boundaries upon requests by and on behalf of the purchasing Government:

1. Support evaluations of contractor capabilities prior to award.
  - a. Supply available information concerning design, production, and quality control capabilities as appropriate; for example, the amount of available floor space, plant equipment, number of workers, past production of similar items, and (the information) whether the firm is able to meet the specific NATO allied quality assurance publication (AQAP) to be invoked on the contract.
  - b. Evaluate the financial strength of the prospective contractor, estimate the likelihood that financial resources will be sufficient to accomplish the contract, and report the monetary value (in local currency) of host Government capital assets furnished or made available to the contractor which may be used in the contract.
  - c. Provide access to available accounting system disclosure statements and assistance in determining the system's ability to meet contractual requirements.
2. Perform Government quality assurance, as defined in STANAG 4107, in whole or in part as requested.
3. Report detected potential or actual slippages in contract delivery schedules or any other contractor difficulties which might affect contract performance.
4. Assess contract progress if needed by the purchasing office to authorize financial payments, and recommend approval or disapproval of contractor payment requests.
5. Evaluate the feasibility and practicality of contractor production plans.
6. Verify contractor management reports furnished to the purchasing office during contract performance.
7. Evaluate and monitor contractor compliance with contract requirements governing technical data, especially the propriety of any restrictive markings on data offered for delivery under the contract.
8. Monitor contractor costs under cost reimbursement contracts, and insure the purchasing office is advised of any anticipated overruns or underruns of estimated costs.
9. Advise the purchasing office if supporting contract administration is needed at subcontractor plants to verify the adequacy of prime contractor management, and assist the purchasing Government to obtain desired support within the host country.

## ANNEX VI

TO:

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT, SIGNED ON OCTOBER 17, 1978.

### PRINCIPLES GOVERNING DEFENSE CONTRACT AUDIT SERVICES

#### I. INTRODUCTION

This annex supersedes Annex VI entered into between the governments of the Federal Republic of Germany (FRG) and the United States (U.S.), dated December 6, 1985, concerning reciprocal Defense Contract Audit Services and sets forth the terms, conditions, and procedures under which the participating governments will provide one another with audit services upon request in support of defense contracts and subcontracts contemplated or executed under the Memorandum of Understanding (MOU) and contracts and subcontracts entered into pursuant to Foreign Military Sales (FMS) Letters of Offer and Acceptance.

#### II. GENERAL PRINCIPLES

The objective of this annex is to improve the effectiveness and efficiency of audit services available to the participating governments. Either government may request audit services from the other government. Both governments agree to perform the audits requested by the other government. In the event conflicts arise between any aspect of this annex and the laws of either participating government, the laws shall prevail. With notice to the other participating government, the purchasing government may elect to perform a specific audit in unusual circumstances, such as when the performing government cannot satisfy an unusually short due date for an audit report.

Contract audit reports shall be advisory. The purchasing government shall retain authority and responsibility for negotiating acceptable prices and contract settlements with contractors. Purchases by the FRG under the FMS Program will be handled under U.S. FMS procedures in existence at the time of acceptance of the FMS agreement.

The FRG shall apply the current U.S. cost principles and applicable cost accounting standards whenever it does an audit for the U.S. This means the FRG may use the same audit methods it customarily uses for its own contracts as long as the audit results are consistent with current U.S. cost principles and applicable cost accounting standards. The same general approach will apply when the U.S. performs an audit for the FRG. This means the FRG will specify costs that are unallowable under FRG pricing regulations in their contracts as well as in their requests for U.S. audits and the U.S. will identify such costs in the audit report. All audit reports shall normally be written in English. The performing government shall determine the organizations and personnel to be involved.

Neither participating government shall duplicate the work of the other. The governments shall hold periodic discussions to evaluate the operational effectiveness of the reciprocal agreement. In addition, each government agrees that compliance with this audit annex will be evaluated at least once every three years by its own appropriate review and oversight organization. A copy of the results of such reviews shall be provided to the other government.

Solicitations, contracts, and subcontracts shall contain suitable provisions to enable the participating governments to act for and on behalf of one another under this annex and shall authorize access to contractors' facilities and records as necessary. Nothing in this annex is to be construed to limit a purchasing government's rights or remedies, including access to contractors' records, as may be authorized by contract or required by the laws of the purchasing government.

### III. SCOPE OF AUDIT ANNEX

This annex encompasses audits in support of contracts and subcontracts for defense equipment and services contemplated or executed under the MOU and FMS letters of offer and acceptance. It does not cover audits for architecture and engineering, construction, base support, operation and maintenance, or banking services, nor does it cover audits of universities, or contractors solely in the business of supporting the U.S. presence in FRG. For purposes of this annex, defense contract audit services shall include the following types of audits:

Forward Pricing Audits: Review of proposals submitted in contemplation of a contract award or a contract modification to determine the allowability, allocability, and reasonableness of each proposed cost element.

Accounting System Audits: Review of contractor accounting records, procedures, and systems to determine their accuracy, currency, completeness, and compliance with contract requirements.

Estimating System Audit: Evaluate cost estimating systems.

Post Award Audits: Verify after contract award the currency, accuracy, and completeness of cost or pricing data submitted to the purchasing government as of the completion of negotiations.

Reimbursement Vouchers Audits: Verify payment vouchers submitted under cost reimbursement contracts or other contracts with cost reimbursement features (e.g., material reimbursement) and recommend cost disallowances when appropriate.

Audits of Disclosed Accounting Practices: Verify contractor compliance with disclosed accounting practices and contractual accounting requirements.

Overhead Cost Audits: Evaluate overhead cost records prior to overhead settlements.

Termination Audits: Evaluate proposed termination costs and contract cost records prior to termination settlements.

Final Pricing Audits: Review and verify actual costs incurred in the performance of cost reimbursement and fixed price incentive contracts for purposes of establishing the final cost or price.

Other: Perform audit services considered necessary and requested by either country.

#### IV. PROCEDURES

Requests for contract audit services in FRG shall be sent, with a copy of the contractor's proposal (if applicable), by air mail to:

Defense Contract Management Area Office, Frankfurt  
Attn: DCMCI-GG-A  
Box 48  
APO New York, NY 09710-5345

A copy of each audit request shall be forwarded directly by air mail to:

Bundesamt Fuer Wehrtechnik und Beschaffung  
Referat AW II 1  
Postfach 73 60  
5400 Koblenz  
Federal Republic of Germany

All requests for audits in FRG will also be sent by telephonic facsimile to the following:

DCMAO, Frankfurt  
Facsimile Telephone Number: 49-69-597-8740  
Telephone Number: 49-69-551689

Bundesamt Fuer Wehrtechnik und Beschaffung-BWB  
Referat AW II 1  
Facsimile Telephone Number: 49-261-400-3781  
Telephone Number: 49-261-400-3562

Requests for contract audit services in the U.S. shall be sent by telephonic facsimile, followed by written request with a copy of the proposal (if applicable) sent by air mail, to:

Defense Contract Management Command International  
International Logistics Office  
DoD Central Control Point  
201 Varick St.  
New York, NY 10014-4811  
USA

Facsimile Telephone Number: (212) 807-3536  
Telephone Number: (212) 807-3343

Requests for audits shall specify the type of audit services needed, the contractor, the contractor's address, the subcontractor and address (if applicable), the proposal (if one is to be audited), any items requiring special review, the calendar date (not the number of days after receipt of audit request) by which the audit is needed, a point of contact, telephone number, and facsimile telephone number. Acceptance of requests shall be acknowledged by telephonic facsimile by the performing government and a point of contact, telephone number, and facsimile number shall be provided.

Each government agrees to establish a liaison person for this audit annex. The liaison person, liaison office, and telephone number shall be identified in each audit report. The liaison person shall assist in obtaining clarifications of audit requests or audit

reports whenever necessary. The liaison person shall also assist in resolving problems with the timeliness, content, or quality of audit reports. If unable to resolve such problems, the issue will be escalated to successive managers (up to, in FRG, Chief, Central Armaments Division, BMVg-Rue 2, Ministry of Defense, or, in the U.S., the Deputy Director, Defense Procurement (Foreign Contracting), Office of the Secretary of Defense).

Each government agrees to provide audit reports in a timely manner. Audit reports are to be submitted in accordance with the requested due dates, which for forward pricing audits is generally 45 days after receipt of request for audit. If the due date specified by the requesting government cannot be met, the performing government shall notify the point of contact identified in the audit request to explain the reasons for the delay. If failure to meet the requested due date is caused by external factors, not within the control of the government performing the audit (such as not obtaining necessary cost data from a contractor), the purchasing government shall attempt to assist in resolving the problem and grant reasonable extensions as appropriate. If the inability to meet the requested due date is caused by action or inaction of the performing government, the issue will be escalated to the attention of the audit annex liaison person and to successive managers.

The participating governments shall provide each other with access to all available information concerning contractor cost estimating systems and disclosed accounting practices when needed to support contract negotiations or enforcement. It is expected that contracts requiring the disclosure of accounting practices shall normally authorize contractors to file such disclosures with their own governments. In the U.S., the files shall be maintained by the office administering the contract. In the FRG, the files shall be maintained by the Federal Office for Military Technology and Procurement (BWB), AW II 1, Koblenz.

In order that the equity of this annex may be periodically appraised, both governments agree to maintain a list of all audits performed for each other and the specific office requesting the audit shall be identified in the list.

#### V. CONTENT OF AUDIT REPORTS

All audit reports shall describe the type, scope, depth of the evaluation performed, and a point of contact with a telephone number. Audit reports shall describe what was reviewed or evaluated, the methodology used to perform the review, findings of the review, recommendations of the auditor, and the basis for the recommendations. The audit report shall address any areas that were specifically requested for review. Each audit report shall state



that the proposal was audited for current unallowable costs and identify any unallowable costs. While audits requested pursuant to this agreement will not encompass investigations, audits shall be performed in a manner that will provide reasonable assurance of detecting errors, irregularities, abuse, or illegal acts that: (1) could have a direct (or indirect) and material effect on contractor financial representations or the results of financial related audits; or (2) significantly affect the audit objectives. The audit report should identify the extent to which issues raised by the auditor were discussed with the contractor. Supporting evaluations by technical and other specialists shall be included in the reports as appropriate. The purchasing government may request additional clarifications or supporting data if necessary, and shall have the final authority to determine when the information provided is adequate for its purposes.

For forward pricing audits, the reports shall, for each element of proposed cost, identify the offeror's proposed cost, the basis for the proposed cost, how the auditor evaluated it, any recommended exceptions (questioned costs), and rationale supporting the recommended exceptions (questioned costs). The information supplied in the audit report should be sufficiently detailed to permit the purchasing government to develop and justify a negotiation position.

#### VI. PROTECTION OF INFORMATION

Every audit report will contain criteria and qualifications regarding the release of the reports which must be observed by the requesting government. No privileged or confidential, commercial or financial information contained in a report will be disclosed to third parties without the express agreement of the authorized officers of both governments and the audited contractor or subcontractor. However, the contracting officer will normally release a summary of the results of audits of subcontractors to higher tier contractors for negotiation purposes. Information obtained through the implementation of this annex shall receive the same protection against unauthorized disclosure as it would normally receive under the laws and rules of the government which possesses it.

#### VII. CHARGES

Services will be provided under this annex without charge for all defense contracts and subcontracts and FMS contracts and subcontracts entered into on or after the date of implementation of this annex provided that a joint review of the services being exchanged between the participating governments performed at not less than three-year intervals indicates that general reciprocity is being maintained. If after such joint review either government determines that charges

will be necessary, they may be imposed after not less than one year advance notice. Should charges by the U.S. Government become necessary, FMS procedures then in effect will apply.

VIII. VALIDITY OF TEXT

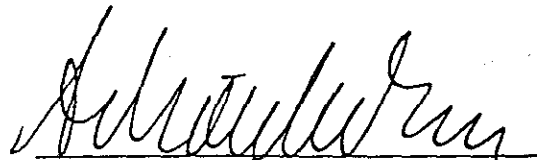
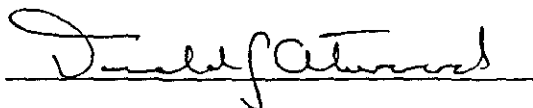
This annex has been drawn up in the German and the English languages; both texts being equally authoritative.

IX. DURATION

This annex will remain in effect for a period as set forth in Article VII of the MOU and may be terminated as provided in that article.

For the Government of the  
United States of America

For the Government of the  
Federal Republic of Germany



Place: Washington, DC

Place: Bonn

Date: April 23, 1992

Date: May 30, 1992

ANNEX 7

TO:

THE MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY AND THE SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT, SIGNED OCTOBER 17, 1978.

PRINCIPLES GOVERNING PROCUREMENT PROCEDURES

The Secretary of Defense of the United States of America (U.S.) and the Federal Minister of Defense of the Federal Republic of Germany (FRG), hereafter named "the parties", agree to this annex to the Memorandum of Understanding (MOU).

1. To the extent practical, each Government will publish or have published, in a generally available periodical, a notice of proposed purchases in accordance with national rules or Departmental/ Ministerial provisions on publication thresholds. The parties will notify one another any time threshold levels change. The above mentioned notice will contain:

- a. Subject matter of the procurement;
- b. time limits set for the submission of offers or an application for solicitation; and
- c. addresses from which solicitation documents and related data may be requested.

2. Solicitations are furnished to potential suppliers differently in the FRG and the U.S. Purchasing offices in the FRG shall determine which potential suppliers are qualified for a solicitation in a fair and nondiscriminatory manner, consistent with national laws and regulations, and provide copies of the solicitation to those suppliers. In the U.S., purchasing offices shall provide solicitations to interested suppliers upon request, consistent with national laws and regulations. Solicitations furnished to potential suppliers by either party shall constitute an invitation to participate in the competition and shall contain the following information:

- a. The nature and quantity of the products or services to be supplied;
- b. whether the procedure is by sealed bids or negotiation;
- c. the basis on which the award is to be made, such as by lowest bid price or otherwise;
- d. any delivery date;
- e. the address and final date for submitting offers as well as the language or languages in which they must be submitted;
- f. the address of the agency awarding the contract and providing any information required by suppliers;
- g. any economic and technical requirements, financial guarantees, and information required from suppliers; and
- h. the amount and terms of payment of any sum payable for solicitation documentation.

3. Any conditions for participation in procurements shall be published in adequate time to enable interested suppliers to meet the conditions, and solicitations shall allow adequate time for response, consistent with user needs.

4. Competing suppliers shall be promptly notified whether their offer has been accepted or rejected. In appropriate circumstances, the name of the successful offeror may be withheld.

5. Apart from legally proscribed exceptions, suppliers shall, upon request, promptly be provided pertinent information concerning the reasons why they were not allowed to participate in a procurement or were not awarded a contract.

6. The parties mutually acknowledge that they will have and maintain published procedures regarding the filing and review of complaints arising in connection with any phase of the procurement process, and will exchange pertinent information in this matter. These procedures will follow the principle that foreign suppliers shall be treated the same as domestic suppliers.

Subject to the above, the other clauses of the MOU, and all of its Annexes, shall continue with full force and effect.

DONE in duplicate, in the German and English languages, both texts being equally authentic.

For the Secretary of Defense of the United States of America

For the Federal Minister of Defense of the Federal Republic of Germany

Don Gregory

Wolfgang Krupp

Date: 4 DEC 1991

27. Dec. 1991

Place: \_\_\_\_\_

Place: Bonn