

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND  
THE GOVERNMENT OF THE REPUBLIC OF POLAND  
CONCERNING  
RECIPROCAL DEFENSE PROCUREMENT  
(SHORT TITLE: U.S.-POLAND RECIPROCAL DEFENSE  
PROCUREMENT MOU)

## PREAMBLE

The Government of the United States of America and the Government of the Republic of Poland, hereinafter referred to as "the Parties",

BEARING in mind that the Republic of Poland and the United States of America are members of 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, which has included a strategic partnership in pursuing common goals and interests and joint participation in coalition operations;

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

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

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

DESIRING to 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 Memorandum of Understanding (MOU) covers the acquisition of defense capability by the Department of Defense of the United States of America and the Ministry of National Defense of the Republic of Poland through:
  - a. Research and development;
  - b. Procurements of supplies, including defense articles; and
  - c. Procurements of services, including defense services.
2. This MOU does not cover:
  - a. Construction; or
  - b. Construction material supplied under construction contracts.

**ARTICLE II**  
**Principles Governing Mutual 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 procedures in Article V.**
- 2. The Parties undertake the obligations in this MOU with the goal of providing each other with reciprocal treatment consistent with the provisions herein.**
- 3. Each Party shall, consistent with its laws, regulations, policies, and international obligations, give favorable consideration to all requests from the other Party for cooperation in defense capability research and development, production, procurement, and logistics support.**
- 4. Consistent with its laws, regulations, policies, and international obligations, each Party shall:**
  - a. Facilitate defense procurement, taking into consideration the capabilities of its defense industrial and research and development bases.**
  - b. Remove barriers to procurement or co-production of supplies produced in the other Party's country or services performed by sources (herein referred to as "industrial enterprises") established in the other Party's country. This includes providing to industrial enterprises of the other Party treatment no less favorable than that accorded to domestic industrial enterprises. When a responsible industrial enterprise of the other Party submits an offer that would be the low responsive offer but for the application of any buy-national requirements, both Parties agree to waive the buy-national requirement.**
  - c. Utilize contracting procedures that allow all respective industrial enterprises of both Parties to compete for procurements covered by this MOU.**
  - d. Give full consideration to all industrial enterprises in both the United States of America and the Republic of Poland, 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, each Party shall give full consideration to all applications for qualification by industrial enterprises of the other Party, in accordance with the laws, regulations, policies, procedures, and international obligations of the procuring Party.**

- e. Provide information regarding requirements and proposed procurements in accordance with Article V to ensure adequate time for industrial enterprises of the other Party's country to qualify for eligibility, if required, and to submit an offer.
  - f. Ensure that technical data and defense items (defense articles and defense services) made available for use by its industrial enterprises by the other Party are not used for any purpose other than for bidding on, *or performing, defense contracts covered by this MOU, except as* authorized, in writing, by those owning or controlling proprietary rights.
  - g. 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.
  - h. Exchange information on *pertinent laws, implementing regulations, policy guidance, and administrative procedures.*
  - i. Annually exchange statistics demonstrating the total monetary value of defense procurements awarded to industrial enterprises of the other Party during the prior year. An annual summary shall be prepared on a basis to be jointly decided.
  - j. Provide appropriate policy guidance and administrative procedures within its respective defense organizations to implement the provisions of this MOU.
5. This MOU is not intended to and does not create any authority to authorize the export of defense items (defense articles or defense services), including technical data, controlled on the U.S. Munitions List or U.S. Commerce Control List, or in the case of the Republic of Poland, in appropriate regulations regarding the register of armaments, which requires a trading permit or on the European Union (EU) Common List of Military Equipment. Further, any export subject to the U.S. Arms Export Control Act and the International Traffic in Arms Regulations, or the U.S. International Emergency Economic Powers Act and Export Administration Regulations, or any other applicable laws or regulations governing exports, or in the case of the Republic of Poland, subject to the regulations of the November 29, 2000 Act of Parliament on Trade in Goods, Technologies and Services of Strategic Importance both for state security and for the keeping of international peace and security (2004 Journal of Laws No 229, item 2315, with later amendments), and other applicable laws and regulations governing exports, must be compliant with such laws, decrees, regulations, and guidelines, as well as any requirements established pursuant thereto.
6. Nothing in this MOU shall, or may be cited to, prevent the application of export controls, including in individual cooperative project agreements.

ARTICLE III  
Offsets

1. This MOU does not constitute the basis for limitation of the offset laws and regulations in force in the both Parties.
2. The Parties agree to discuss measures to limit any possible adverse effects that offset agreements have on the defense industrial base of the other Party.

**ARTICLE IV**  
**Customs and Duties**

When allowed under the national laws and regulations and international obligations of the Parties, the Parties shall exclude customs, taxes, and duties *from the evaluation of offers* and shall waive their charges for customs and duties for procurements to which this MOU applies.

ARTICLE V  
Procurement Procedures

1. 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 an application for solicitation or submission of offers; and
  - c. An address from which solicitation documents and related information may be requested.
  
2. 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; and
  - j. Any other conditions for participation in the competition.
3. 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*.
  4. Consistent with its laws, regulations, policies, and international obligations, the procuring Party shall:
    - a. Upon award of a contract, promptly provide notification to each unsuccessful offeror that includes, at a minimum:
      - (i) The name and address of the successful offeror;
      - (ii) Items, quantities, and price(s) of each contract award;  
and
      - (iii) The number of offers received.
    - b. Upon request, promptly provide unsuccessful offerors pertinent information concerning the reasons why they were not awarded a contract.
  5. Upon request, the procuring Party shall provide additional information to any unsuccessful offeror dissatisfied with the explanation for rejection of its offer or that may have further questions about the award of the contract. The additional information shall, consistent with the procuring Party's laws, regulations, policies, procedures, and international obligations, include information on the characteristics and the relative advantages of the offer selected.
  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 MOU shall be equitably and expeditiously resolved.

**ARTICLE VI**  
**Industry Participation**

1. Implementation of this MOU shall involve both the Parties and the industrial enterprises of each Party's country.
2. Each Party shall be responsible for informing the relevant industrial enterprises within its country of the existence of this MOU.
3. The Parties understand that primary responsibility for finding business opportunities rests with the industrial enterprises of each Party's country.
4. The Parties shall arrange for their respective procurement and requirements offices to be familiar with the principles and objectives of this MOU so that, consistent with their normal practices and procedures, those offices may assist sources in the country of the other Party to obtain information concerning proposed procurements, necessary qualifications, and appropriate documentation.

**ARTICLE VII**  
**Security of Information**

1. Any classified information furnished by either Party in connection with procurements subject to this MOU shall be protected in accordance with the Agreement between the Government of the United States of America and the Government of the Republic of Poland concerning Security Measures for the Protection of Classified Information in the Military Sphere, signed at Warsaw on March 8, 2007.
2. Both Parties shall take all necessary steps to ensure industrial enterprises within their respective country comply with applicable regulations pertaining to security and safeguarding of classified information.

**ARTICLE VIII**  
**Implementation and Administration**

1. The Under Secretary of Defense for Acquisition, Technology and Logistics shall be the responsible authority in the Government of the United States of America for implementation of this MOU. On behalf of the Government of the Republic of Poland, the Minister of National Defence shall be the responsible authority for implementation of this MOU.
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 MOU. The representatives shall discuss procurement matters of mutual interest, including the effectiveness of their procurement procedures and practices in supporting cooperation in the acquisition of defense capability; annually review the procurement statistics exchanged as agreed under Article II.4.i.; 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 MOU; and consider any other matters relevant to the MOU.
4. Each Party shall, as appropriate, review the provisions of this MOU 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, as appropriate, to decide jointly whether this MOU should be amended in light of such changes.
5. Each Party shall avoid actions that could conflict with this MOU. If either Party believes that such a conflict has occurred, the Parties agree to consult.

## ARTICLE IX

### Annexes, Amendments, and Implementing Arrangements

1. Annexes may be added to this MOU by written agreement of the Parties. Such Annexes shall be considered an integral part of this MOU.
2. This MOU, including its Annexes (if any), may be amended by written agreement of the Parties.
3. Implementing arrangements regarding the provisions of this MOU, including its Annexes (if any), may be negotiated and concluded by appropriate representatives of each Party. Such arrangements may involve procedural matters and administrative direction and guidance, but shall not create any substantive rights or obligations involving either Party. Provisions of any implementing arrangement shall be consistent with this MOU. In the event of conflict between this MOU and any implementing arrangement, this MOU, as it may be amended, shall govern.

ARTICLE X  
Duration and Termination

1. *After signature of this MOU, the Government of the Republic of Poland shall notify the Government of the United States of America of the completion of its national measures necessary for the entry into force of this MOU. This MOU shall enter into force on the date of such notification.*
2. This MOU shall remain in force for ten years. This MOU may be terminated by either Party, upon six months prior written notice to the other Party.

This MOU was done in duplicate, in the English and Polish languages, each text being equally authentic.

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

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA



Date: August 27, 2011

Place: Washington DC.

FOR THE GOVERNMENT OF  
THE REPUBLIC OF POLAND



Date: 8 września 2011r.

Place: Warszawa