

DEFENSE

Government Quality Assurance

Memorandum of Understanding between the UNITED STATES OF AMERICA and POLAND

Signed at Warsaw and Washington
May 31 and June 22, 2007



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.”

POLAND

Defense: Government Quality Assurance

*Memorandum of understanding signed at
Warsaw and Washington
May 31 and June 22, 2007;
Entered into force June 22, 2007.*

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA
AND
THE MINISTER OF NATIONAL DEFENSE
OF THE REPUBLIC OF POLAND
REGARDING RECIPROCAL
GOVERNMENT QUALITY ASSURANCE
SERVICES**

I. PREAMBLE

- A. The Department of Defense of the United States of America (U.S. DoD) and the Minister of National Defense (MND) of the Republic of Poland (hereinafter referred to as the "Parties") shall provide one another with reciprocal Government Quality Assurance (GQA) services for the procurement of defense materials and services, regardless of the method of purchase.
- B. In general, the responsibilities of the Parties under this Memorandum of Understanding (MOU) will be carried out by their respective quality assurance national authorities listed in Article II. (hereinafter referred to as the "Authorities"). The Authorities shall accomplish such GQA services without charge in accordance with established and documented laws, directives, regulations and procedures of their Governments. The obligations of the Parties under this MOU are subject to the availability of funds for such purposes.
- C. This MOU applies to contracts entered into after the effective date of this MOU (see Article VIII). However, a contract awarded by the U.S. Government after the effective date of this MOU, but which supports an FMS case that was entered into prior to the effective date of this MOU, is not covered by this MOU.
- D. Notwithstanding any other provisions of this MOU, if special arrangements for GQA support are made under an international cooperative project in which the U.S. DoD and the MND of Poland participate, those special arrangements shall have precedence over this MOU.
- E. The objective of this MOU is to ensure that each of the Authorities is able to employ the most effective and efficient GQA services possible when acting under the provisions of this MOU.

II. DEFINITIONS AND GENERAL SCOPE

- A. The following definitions apply to this MOU:
 - 1. Acquirer: Governmental organization or agency that enters into a contractual relationship with a Supplier and defines the product and quality requirements.
 - 2. Authorities: The National Authorities are defined as the Defense Contract Management Agency (DCMA) for the U.S. DoD and the Military Centre for Standardization, Quality, and Codification for the MND of Poland.
 - 3. Delegator: The representative authorized by an Authority to request GQA support from the other Authority.

4. Delegatee: The representative authorized by an Authority to ensure GQA support is performed on behalf of the other Authority.
5. Government Quality Assurance (GQA): The process by which the appropriate national Authorities establish confidence that the contractual requirements relating to quality are met by the Supplier.
6. Quality Assurance Representative (QAR): The representative authorized by an Authority to perform GQA at the Supplier's plant on behalf of the Delegator in accordance with an RGQA.
7. Request for Government Quality Assurance (RGQA): The formal written request of the Delegator to the Delegatee to perform GQA on a defense contract.
8. Supplier: A company or contractor that acts in a contract as the provider of products to the Acquirer.

B. Referenced documents (most recent edition):

1. NATO Standardization Agreement (STANAG) 4107 - Mutual Acceptance of Government Quality Assurance and Usage of the Allied Quality Assurance Publications.
2. Allied Quality Assurance Publication (AQAP) 2070 – NATO Mutual Government Quality Assurance (GQA) Process.

C. An RGQA under this MOU shall normally be restricted to those cases in which quality cannot be verified satisfactorily after receipt of the deliverables of a contract or where GQA support at source is otherwise considered essential. GQA should not normally be requested for non-complex, non-critical, or low-risk products or contracts.

D. Purchases by Poland from the United States under the U.S. Foreign Military Sales (FMS) Program shall be in accordance with the U.S. Arms Export Control Act and associated regulations, policies, and procedures. Normally, such FMS purchases shall be afforded the same GQA support as the U.S. DoD invokes for similar procurements that it makes for its own use.

FMS purchases are U.S. Government (Acquirer) contracts and do not normally require an RGQA to be initiated by the Polish purchaser. However, where special or specific GQA requirements are necessary for FMS purchases, the requirements shall be communicated directly to the U.S. Government Acquirer who shall forward those special or specific GQA requirements to the Defense Contract Management Agency (DCMA). If assistance is required by the Polish Delegator, he or she shall contact the DCMA DOD Central Control Point directly.

For all other defense-related contracts issued by the United States or Poland (e.g., direct procurements of defense products), either Authority may request the other Authority to provide GQA services based on the guidance contained in AQAP 2070.

- E. Each Authority shall identify a Central Control Point (CCP) for receipt of the RGQA. The CCP contact information (i.e., mailing address, email address, phone numbers, etc.) shall be maintained and kept current in NATO STANAG 4107.
 - 1. Requests by the United States for GQA services in Poland shall be sent via DCMA Southern Europe to the Military Centre for Standardization, Quality and Codification.
 - 2. Requests by Poland for GQA support in the United States shall be sent via the Military Centre for Standardization, Quality, and Codification to the DCMA DOD Central Control Point.
- F. Each Authority shall be responsible for arranging for the performance of the required GQA support by its appropriate national organization.
- G. Where GQA support on major programs or projects is contemplated, the Authorities shall consider conducting a joint GQA planning meeting to ensure contractual requirements are thoroughly understood and to plan the GQA surveillance jointly.
- H. The GQA Authorities shall endeavor to keep each other well informed regarding their GQA practices and resources to help ensure that requests for GQA support are reasonable and prudent. Continuous process improvement efforts and opportunities shall be shared between the Authorities.
- I. The Authorities may perform other necessary contract administration functions (e.g., government property surveillance) through their own representatives, including GQA functions not delegated in an RGQA. In such cases, the Delegator or purchasing Authority shall inform the other Authority in order to avoid duplication of work.
- J. Visits by representatives of the Purchasing Authority to its Supplier's plant shall be coordinated with the other Authority, which shall have the right to accompany the visiting representatives. The Acquirer's access to its suppliers, subcontractors, and their records, as may be authorized contractually, shall not be impaired or affected in any other way by the provisions of this MOU.

III. GQA DELEGATION PROCESS

- A. The procedures and processes of NATO Standardization Agreement (STANAG) 4107 - Mutual Acceptance of Government Quality Assurance and Usage of the Allied Quality Assurance Publications, and Allied Quality Assurance Publication (AQAP) 2070 – NATO Mutual Government Quality Assurance (GQA) Process, shall be used when:

1. Either Authority is requesting GQA services from the other Authority.
 2. Either Authority is performing GQA services on behalf of the other Authority.
- B. When GQA support is contemplated, the Delegator shall ensure:
1. Authorization (usually by contract or purchase order) is provided for QAR access to the supplier or subcontractor's facilities and records, and the use of supplier or subcontractor assets, as necessary for the performance of GQA support.
 2. Appropriate quality assurance standards are imposed by the contract or subcontract. These standards may include contractual Allied Quality Assurance Publications (AQAPs), ISO 9001 QA standard, Military QA standards, National QA standards, etc. Contractual QA standards are not limited to NATO QA publications.
- C. To the greatest extent possible, the RGQA shall be risk-based. Each Authority shall use its own national practices to identify the specific risks the Delegator requires to be mitigated by the GQA surveillance or the specific tasks the Delegator requires to be performed. The risks and/or tasks shall be documented in the RGQA. A copy of the risk assessment is not required to accompany each RGQA.
- D. Where the Acquirer has identified and/or imposed mandatory GQA inspections or tests, these requirements shall be identified in the RGQA.
- E. Critical product characteristics, or processes (including safety of flight) that may require a more intensive GQA approach (other than risk-based) shall be coordinated with the Delegatee in advance of issuing an RGQA. It is the Delegator's responsibility to identify in the RGQA the critical characteristics or processes requiring GQA surveillance. The Delegatee may propose an alternative GQA approach.
- F. The Delegator may seek the advice of the Delegatee in identifying risks prior to submitting an RGQA or may simply request risk-based GQA. If the latter is requested the Delegatee shall decide minimum GQA surveillance requirements. GQA requests made in this manner should be on an exception basis.
- G. The Delegatee shall acknowledge receipt of an RGQA within 5 working days of receipt and shall either accept or reject the RGQA within 20 days of receipt. Immediately upon acceptance of an RGQA, the Delegatee shall plan and implement the necessary GQA surveillance to mitigate the identified risks and/or to accomplish the requested tasks, in accordance with established national practices.
- H. Rejection of an RGQA shall be on an exception basis only and shall be limited to unusual circumstances. Should it be necessary to reject an RGQA, the Delegator shall be formally notified and provided the rationale, in writing, as to why the RGQA was rejected. The Delegatee should propose an alternative GQA approach in lieu of rejecting the RGQA.

- I. The Delegator may modify an RGQA during contract performance after consultation with the Delegatee. Based on knowledge of the supplier's current or past performance, the Delegatee shall advise the Delegator when the tasks identified on the RGQA are considered unwarranted, excessive or insufficient. The Delegator is the final authority for defining the GQA requirements.
- J. If the requirements imposed by an RGQA include functions beyond the current technical capabilities or resource capacities of the Delegatee, the Delegatee shall immediately notify the Delegator. In such cases, the Delegatee shall not procure technical experts or additional resources needed to perform the functions without the written consent of the Delegator. The Delegator shall make other arrangements for the performance of the RGQA.
- K. The responsibilities of the Authorities associated with subcontract delegations and deviation permits and concessions shall be as defined in AQAP-2070.
- L. The Delegatee shall maintain records of all GQA surveillance activity performed in support of the RGQA. Unless otherwise stated in the RGQA, record retention periods shall be in accordance with national practices. GQA surveillance records shall be made available to the Delegator upon request.
- M. If at any time during the course of the performance of GQA the Delegatee cannot proceed with the GQA surveillance, the Delegatee shall so advise the Delegator of the facts as expediently as possible. Situations warranting notification shall include, but are not limited to:
 - 1. Deficiencies in the Supplier's quality management system, processes or product.
 - 2. Deficiencies expected to be a cause of excessive contract delivery delay.
- N. The Delegatee shall inform the Delegator when the requested GQA is complete.
- O. The Acquirer shall retain final authority over contract interpretations and enforcement actions, and it shall advise the assigned GQA support office in a timely fashion on such matters.

IV. RESPONSIBILITY AND LIABILITY

- A. Nothing in this MOU shall relieve the Supplier of any responsibilities under the contract. No liability shall attach to the Party (including the Authorities), its officers, or its representatives acting under this MOU on behalf of the other Party.
- B. Should defective materials or services be detected subsequent to delivery, the Delegatee shall assist the Delegator in the investigation of such defects.

V. SECURITY AND PROTECTION OF INFORMATION

- A. Any classified information, data, or material exchanged or developed under the terms of this MOU shall be protected in accordance with each Party's national practice for the protection of such information and the current security agreement between the Government of the United States and the Government of Poland for the protection of classified information.
- B. The highest level of classified information that will be disclosed under this MOU will be consistent with (1) the terms of the RGQA and the contract under which QA services will be performed, and (2) the security agreement between the U.S. and Poland for the protection of classified information that is in effect at the time.
- C. Each Party shall take all lawful steps available to it to keep information exchanged in confidence under this MOU free from disclosure under any legislative provision, unless the other Party consents in writing to such disclosure.
- D. To assist in providing the desired protection, each Party shall mark such information furnished to the other with a legend indicating the country of origin, the security classification, the condition of release, and, if unclassified, the fact that the information relates to this MOU and that it is furnished in confidence.
- E. Unclassified information provided by either Party to the other in confidence, and information produced by either Party pursuant to the MOU requiring confidentiality, shall be safeguarded in a manner that ensures its proper protection from unauthorized disclosure.
- F. In the event of termination or expiration of this MOU, the provisions of this Article shall continue to apply.

VI. CHARGES

- A. GQA services provided under this reciprocal MOU shall be provided free of charge, subject to a joint review under Article VII of this MOU of the services being exchanged. If, as a result of a joint review, either Authority determines that charges shall be necessary, charges may be imposed after not less than twelve months advance notice.
- B. In the event of unusually heavy resource effects being incurred, appropriate charges may be negotiated. The expenses for product expended during the performance of GQA (e.g., destructive testing, live firing tests, etc.) shall be borne in accordance with arrangements made between the contracting parties.

VII. REVIEW AND REVISION

- A. This MOU shall be jointly reviewed by the Authorities at not less than three-year intervals. However, if considered necessary by either of the parties, a joint review may be initiated at any time during the intervening years. The review shall ensure that the provisions of this MOU are being effectively implemented, that the quality of services being provided continue to meet the needs of the Authorities, and that general reciprocity is being maintained. Based on the review, the MOU shall be revised as necessary.
- B. The Authorities are responsible for managing and continuously improving their implementation of the reciprocal GQA process.

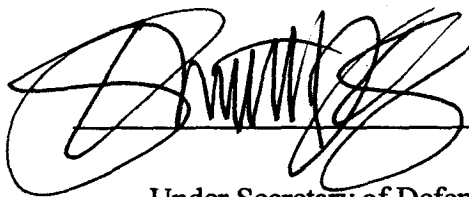
VIII. DURATION AND TERMINATION

- A. This MOU shall enter into force on the date of the last signature and shall remain in force for five years. Except as stated otherwise in writing by either Authority, the duration of the MOU will be extended automatically for successive five-year periods.
- B. Either Authority may terminate this MOU by providing written notification of its intention to the other Authority twelve months in advance of the effective date of the termination.
- C. Unless otherwise agreed, if either Authority terminates this MOU, GQA services shall continue to be provided until contract completion for those contracts for which GQA support is being provided under this MOU.
- D. Any misunderstanding regarding the interpretation or application of this MOU shall be resolved by consultation between both Authorities and shall not be referred to an international tribunal or third party for settlement.

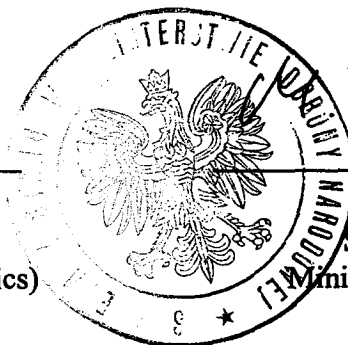
IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this MOU.
DONE in duplicate, in the English language.

FOR THE DEPARTMENT OF
DEFENSE OF THE
UNITED STATES OF AMERICA

FOR THE MINISTER OF
NATIONAL DEFENSE OF THE
REPUBLIC OF POLAND



Under Secretary of Defense
(Acquisition, Technology and Logistics)



Secretary of State of
Ministry of National Defense

Date: 22 JUNE 2007

Place: WASHINGTON, D.C.

Date: 31.05.2007

Place: WARSAW