

DEFENSE

Procurement

Memorandum of Understanding between the UNITED STATES OF AMERICA and SWITZERLAND

Signed at Bern and Washington
November 29, 2006 and February 15, 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.”

SWITZERLAND

Defense: Procurement

*Memorandum of understanding signed at
Bern and Washington November 29, 2006
and February 15, 2007;
Entered into force February 15, 2007.*

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF THE SWISS CONFEDERATION
AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
CONCERNING
RECIPROCAL DEFENSE PROCUREMENT

PREAMBLE

The Government of the Swiss Confederation and the Government of the United States of America:

BEARING in mind the traditional policy of neutrality on the part of Switzerland and the membership of the United States in the North Atlantic Treaty Organization;

NOTING that the Governments established and have maintained understandings related to reciprocal defense procurement since July 9, 1975;

HAVING regard to the friendly relations existing between them;

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

DESIRING to promote the exchange of defense technology consistent with their respective national laws, regulations, policies and procedures;

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

DESIRING to remove discriminatory barriers to purchases of defense products or services produced by industrial enterprises of the other country to the extent mutually beneficial and consistent with law, regulation, and international obligations,

HAVE entered into this Memorandum of Understanding (MOU) under the terms and guiding principles governing mutual cooperation in defense procurement areas as set out below.

ARTICLE I

Applicability

This MOU covers the acquisition of defense capability by the Department of Defense of the United States Government and the Federal Department of Defense, Civil Protection and Sports of the Government of Switzerland through:

- 1. Research and development;**
- 2. Procurements of defense equipment and supplies; and**
- 3. Procurements of defense services.**

This MOU does not cover:

- 1. Construction; or**
- 2. Construction material supplied under construction contracts.**

ARTICLE II

Principles Governing Mutual Defense Cooperation

1. Consistent with its laws, regulations, and international obligations, each Government shall:

a. Facilitate defense procurement while aiming at a long-term equitable balance in their purchases, consistent with their national laws, regulations, policies, and procedures and taking into consideration the capabilities of their defense industrial and research and development bases.

b. Remove barriers to procurement or co-production of defense equipment produced in the other country or services performed by sources (hereinafter referred to as "industrial enterprises") established in the other country. This includes providing to industrial enterprises of the other country treatment no less favorable than that accorded to domestic industrial enterprises. When an industrial enterprise of the other country submits an offer that would be the low responsive and responsible offer but for the application of any buy-national requirements, both Governments agree to waive the buy-national requirement.

c. Utilize contracting procedures that allow all responsible industrial enterprises of both countries to compete for covered procurements.

d. Exchange information on pertinent laws, implementing regulations, policy guidance, and administrative procedures.

e. Give full consideration to all qualified industrial enterprises and Government sources in both the United States and Switzerland, in accordance with the policies and criteria of the respective purchasing agencies. Offers must satisfy requirements for performance, quality, delivery, and cost. In addition, each Government shall give full consideration to all applications for qualification by sources in the other country, in accordance with the laws, regulations, policies, and procedures of the purchasing Government.

f. Provide information regarding capabilities sought and proposed purchases in accordance with Article V to ensure adequate time for industrial enterprises of the other country to qualify for eligibility and submit a proposal.

g. Ensure that technical data and defense items (defense equipment and defense services) made available by the purchasing Government for use by industrial enterprises of the other country are not used for any purpose other than for bidding on, or performing, defense contracts covered by this MOU, except as authorized by those owning or controlling proprietary rights. Full protection shall be given to such proprietary rights and to any privileged, protected, export controlled or classified data and information. In no event shall such data, equipment or services be transferred to a third country or any other transferee without the prior written consent of the originating government.

h. Establish arrangements and procedures concerning follow-on logistics support for covered defense items, on a case-by-case basis. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

i. Make every effort to avoid commitments that conflict with this MOU. If such conflicts should occur, the Governments agree to consult to seek resolution without impairment of this MOU.

j. Annually exchange statistics demonstrating the total monetary value of defense procurements that each Government awarded to industrial enterprises of the other country during the prior year.

2. Arrangements regarding the placement of contracts by one government for the requirements of the other government will be negotiated on a case-by-case basis and reflected in appropriate cooperative project agreements or arrangements.
3. Each Government 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 Government will ensure its processes are consistent with Article V.
4. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense organizations to implement the provisions of this MOU.
5. This MOU is not intended to and does not create any substantive authority to authorize the export of defense items (defense equipment or defense services), including technical data, controlled on the United States Munitions List or the Swiss Appendix 2 of the Ordinance on War Material or the Appendix 3 of the Goods Control Ordinance. Further, any export subject to Swiss legislation on the Control of War Material and the Control of Dual-Use Goods and of Specific Military Goods, or the U.S. Arms Export Control Act and the International Traffic in Arms Regulations, the Export Administration Act and Export Control Regulations, must be compliant with such laws and such regulations.
6. Nothing in this MOU may be cited to prevent the implementation of necessary export control provisions in individual cooperative project agreements or arrangements.

ARTICLE III

Offsets

The Governments agree to discuss measures to limit any adverse effects that offset agreements have on the defense industrial base of each country.

ARTICLE IV

Customs and Duties

Consistent with its laws and regulations, the Governments agree not to include customs, taxes and duties in the evaluation of offers and to waive its charges for customs and duties for purchases to which this MOU applies.

ARTICLE V

Procurement Procedures

1. The U.S. Department of Defense and the Federal Department of Defense, Civil Protection and Sports of Switzerland shall publish, or have published, in a generally available periodical or on-line format, a notice of proposed purchases in accordance with national laws, regulations, policies, and procedures on publication thresholds. Any conditions for participation in procurements shall be published in adequate time to enable interested suppliers to complete the bidding process.

Each notice of proposed purchase shall contain:

- a. Subject matter of the contract;**
- b. Time limits set for an application for solicitation or submission of offers; and**
- c. Address from which solicitation documents and related information may be requested.**

2. Upon request, the purchasing Government shall provide industrial enterprises of the other country copies of solicitations for proposed purchases. A solicitation shall constitute an invitation to participate in the competition and shall include the following information:

- a. The nature and quantity of the products or services to be supplied;**
- b. Whether the procurement is by sealed bidding or negotiation;**
- 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. The procuring Government shall promptly provide notification to each unsuccessful offeror that includes:
 - a. The name and address of the successful offeror;
 - b. Items, quantities, and unit prices of each contract award; and
 - c. The number of proposals received.
- 4. Upon request, the procuring Government shall promptly provide unsuccessful offerors pertinent information concerning the reasons why they were not allowed to participate in a procurement or were not awarded a contract.
- 5. The Governments shall establish a contact point to 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, including information on the general non-proprietary characteristics and the relative advantages of the offer selected.
- 6. Each Government 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 between an offeror and the procuring Government.

ARTICLE VI

Industry Participation

- 1. Implementation of this MOU will involve both the Governments and the Industrial enterprises of each country.

2. Each Government shall be responsible for informing the relevant industrial enterprises within its country of the existence and provisions of this MOU. The Governments understand that primary responsibility for finding business opportunities rests with the industrial enterprises of each country. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified and export controlled information.

3. The Governments shall inform their respective procurement and requirements offices regarding the obligations of this MOU. The Governments shall issue appropriate implementing guidance.

ARTICLE VII

Security, Release of Information and Visits

1. Any classified information or material exchanged under the provisions of this MOU will be used, transmitted, stored, handled and safeguarded in accordance with the U.S. – Switzerland General Security of Information Agreement of 19 December 1961, as amended August 6, 1981, and the Security Procedures for Industrial Operations dated July 20, 1983, as amended December 7, 1994.

2. Each Government will 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 Government consents in writing to such disclosure.

3. To assist in providing the desired protection, each Government will mark such information furnished to the other with a legend indicating the country of origin, the security classification, the conditions of release, the fact that the information relates to this MOU and, if unclassified, that it is furnished in confidence.

4. Information provided by either Government to the other in confidence, and information produced by either Government pursuant to this MOU requiring confidentiality will be safeguarded in a manner that ensures its proper protection from unauthorized disclosures.

5. The Governments will maintain full and comprehensive lists of Technical Exchange Arrangements pursuant to this MOU to which both are signatories. These Arrangements will be taken into account when applications from the Government of either country, including Government supported industry applications, are made for the disclosure of information relating to cooperation under the provisions of the MOU.

6. Bearing in mind the close cooperation of the two Governments, they confirm that in considering each cooperative project carried out under this MOU, they will pay specific attention to exercising control both bilaterally and within multinational bodies over the transfer to third parties of technologies and associated manufacturing processes involved in defense programs. Within such a framework each Government may authorize release of information generated solely within its territory exclusively at its own cost and which does not incorporate any information provided by the other Government. Release of controlled information, know-how or articles will require the prior written permission of the providing Government.

7. A security review of all cooperative programs carried out under this MOU will be conducted annually by the appropriate national authorities to ensure Government and Industry compliance with the security regulations of the respective Governments for the protection of classified and unclassified but sensitive technology.

8. In accordance with the U.S.-Switzerland General Security of Information Agreement of December 19, 1961, as amended, and the Security Procedures for Industrial Operations dated July 20, 1983, as amended, each Government will permit visits to its establishments, agencies and laboratories, and contractor industrial facilities, by employees of the other Government or by employees of the other Government's contractor(s), provided that the visit is authorized by both Governments and the employees have appropriate security clearances and a need-to-know.

9. All visiting personnel will comply with security and export control regulations of the host country. Any information disclosed or made available to visitors will be treated as if supplied to the Government sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

ARTICLE VIII

Implementation and Administration

1. The Under Secretary of Defense (Acquisition, Technology and Logistics) shall be the responsible authority in the Government of the United States of America for implementation of this MOU. The Chief of Armament of the Federal Military Department shall be the responsible authority in the Government of Switzerland for implementation of this MOU.

2. Each Government shall designate points of contact to represent its designated implementation authority.

3. Progress under this MOU will be discussed during meetings of a Steering Committee organized to include representatives of both countries.

ARTICLE IX

Amendments and Implementing Arrangements

1. Any changes or additions to this MOU, including Annexes, that create or amend substantive benefits or commitments involving either government are subject to approval at the same level as the MOU itself.
2. Implementing arrangements regarding the provisions of this MOU, including Annexes, may be negotiated by appropriate subordinate officials of the responsible authority of each Government. Such arrangements may involve procedural matters, administrative direction, and guidance, but will not create any substantive benefits or commitments involving either Government. No provision of any implementing arrangement will be inconsistent with this MOU. In the event of conflict, this MOU will be controlling.

ARTICLE X

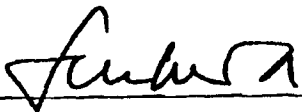
Duration and Termination

This MOU shall enter into force on the date of the last signature, remain in force for five years, and be extended automatically for successive five-year periods. This MOU may be terminated by either Government upon six months prior written notice to the other Government.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this MOU.

DONE in two original copies in English, each of which shall be of equal authenticity.

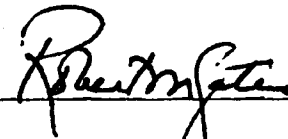
FOR THE GOVERNMENT OF THE
SWISS CONFEDERATION
MINISTER OF DEFENSE



Date: 29. 11, 2006

Place: Bern

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA
THE SECRETARY OF DEFENSE



Date: 2-15-07

Place: Washington