

**IMPLEMENTING ARRANGEMENT BETWEEN
THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF
AMERICA AND THE MINISTRY OF DEFENCE OF FINLAND FOR
MEETING NATIONAL DEFENSE REQUIREMENTS –
SECURITY OF SUPPLY**

INTRODUCTION

This Implementing Arrangement (IA) under the Memorandum of Understanding between the Government of the Republic of Finland and the Government of the United States Concerning Reciprocal Defense Procurement, which entered into force on October 3, 2009. It is also in furtherance of the "Declaration of Principles for Enhanced Cooperation in Matters of Defense Equipment and Industry," dated March 29, 2007.

This IA sets forth the principles each Participant intends to follow to provide reciprocal priorities support. This IA is not intended to be binding under international law.

The Department of Defense of the United States of America and the Ministry of Defence of Finland

Recognizing the benefits of improving cooperation on security of supply for national defense requirements and that it is in the national interest of both Participants to extend existing cooperation by concluding an IA on security of supply;

Noting that, among the consequences of globalization and industrial restructuring are the creation of transnational defense companies, possible loss of certain domestic industrial capabilities and capacities, and increasing acceptance of mutual interdependence of supplies needed for approved national defense requirements;

Recognizing, in this environment, the value of dialogue, consultation, and arrangements that facilitate the supply of defense articles and defense services; and,

Recognizing, as a consequence, that it is desirable that each Participant develop and/or utilize a Priorities System that enables it to provide for preferential treatment of contracts and subcontracts that promote national defense to each other; have reached the following understandings.

ARTICLE 1 - DEFINITIONS

For the purposes of this IA, the following definitions will be used:

- a. **Industrial Resources** - Materials, services, and facilities, including construction materials, needed to meet approved defense requirements. This term includes any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service. However, Industrial Resources, for the purposes of this IA, do not include commercial end items commonly available in the country of the supplier, nor does it include construction or construction material supplied under construction contracts.
- b. **Priorities System** - Procedures under which a Participant can assign priority to, and provide preferential acceptance and performance of, certain contracts (including subcontracts and purchase orders) over other contracts to meet approved defense requirements. As defined here, a Priorities System addresses only the Industrial Resources defined above.
- c. **Security of Supply** - A nation's ability to ensure a supply of defense products, materials, and services sufficient to discharge its military commitments in accordance with its foreign and security policy requirements.

ARTICLE 2 - MAJOR PRINCIPLES

Security of Supply presupposes, where possible, cooperation and coordination, including the mutual acceptance and support of Industrial Resource priorities set by either Participant.

Complementary, mutual Priorities Systems arrangements between the Participants are important to enable each to acquire the Industrial Resources needed to meet urgent and critical defense requirements in a timely, effective, and efficient manner. Such Priorities Systems are not designed to rectify poor provisioning and should not be used as a substitute for the normal contracting process.

Each Participant will provide reciprocal priorities support. The Ministry of Defence of Finland will provide reciprocal priorities support by utilizing a system based on a Code of Conduct to be signed by the Finnish Industry. The Department of Defense of the United States of America will provide priorities support by utilizing the existing Priorities System that is based on national law.

If so requested, each Participant will, to the greatest extent practicable and with due regard to its international commitments, immediately consult in a spirit of cooperation with the other Participant in order to enable each to:

- a. assign or facilitate the assignment of priority designations to specified defense contracts that are issued by the other Participant, or by contractors, subcontractors, or suppliers working on an approved defense program requirement of the other Participant, to suppliers located in its territory;
- b. facilitate the acceptance and priority performance by participating contractors, subcontractors, or suppliers located in its territory of designated defense contracts as necessary to meet customer delivery requirements;
- c. provide assistance, when requested, to seek to resolve problems in order to ensure timely delivery of Industrial Resources under designated contracts; and
- d. on a reciprocal basis, endeavor to enter into Security of Supply arrangements, as appropriate, with other defense establishments of members of the North Atlantic Treaty Organization, the European Union, or other Alliances or Organizations to which the Governments of the Participants are members.

ARTICLE 3 - ACTIONS

Finland

In furtherance of the above principles, the Finnish Ministry of Defence, acting within its authorities, will invite Finnish Industry to participate in a Code of Conduct System. Pursuant to the Code of Conduct with Finnish Industry, when requested to do so by the U.S. Department of Defense point of contact identified in Article 4, the Finnish Ministry of Defence will make its best efforts to ascertain that the accredited Finnish Companies will do all they reasonably can to provide preference to contracts supporting U.S. Department of Defense programs, including:

- a. accepting that a contract they are entering into or are participant to with the U.S. Department of Defense or with one of its contractors will, after approval by the point of contact of the Finnish Ministry of Defence, be accepted as a contract falling under the Code of Conduct (Code of Conduct contracts);
- b. inserting into any subcontract provisions designed to ensure due performance of such a contract;
- c. responding in a timely manner to requests of the U.S. Department of Defense, transmitted through the Finnish Ministry of Defence, for amendments to the timing of deliveries provided that the customer is willing to compensate them as required by the relevant contractual provisions; and
- d. bringing to the attention of the Participants priority conflicts between Code of Conduct contracts and other contracts.

The Finnish Ministry of Defence will notify the U.S. Department of Defense of the Finnish Companies participating in the Code of Conduct System. The Finnish Ministry of Defence will consult with Finnish Code of Conduct contractors, subcontractors, and suppliers as described below, when requested to do so by the U.S. Deputy Under Secretary of Defense (Industrial Policy) and/or the involved Finnish Company. The Finnish Ministry of Defence will use its best efforts to facilitate U.S. Department of Defense requests for priority performance.

In the event that a Finnish Company intends to refuse to provide the priorities support requested by the U.S. Department of Defense, the Finnish Ministry of Defence will, acting within its authorities as detailed in the Code of Conduct, investigate the circumstances surrounding the case. The U.S. Department of Defense will have the opportunity to provide the Finnish Ministry of Defence with details of the case. The Finnish Company will be entitled to respond either in writing or orally. The Finnish Ministry of Defence will take measures necessary to assess/evaluate the circumstances surrounding the case.

- a. If the Finnish Ministry of Defence considers that the Finnish Company has complied with the Code of Conduct, the Finnish Ministry of Defence will, if requested to do so by the Finnish Company, notify the U.S. Department of Defense. The U.S. Department of Defense will act on that notification as it considers appropriate. The Finnish Ministry of Defence will use its good offices with the U.S. Department of Defense to resolve any remaining difficulties. Participation of the Finnish company in the Code of Conduct and the benefits received under the system will not be affected.

- b. If the Finnish Company is deemed not in compliance with the Code of Conduct, the Finnish Ministry of Defence will use its good offices in order to obtain assurance that the Finnish Company will take such steps considered necessary to rectify the situation, and will notify the U.S. Department of Defense. Failure to comply with this request may result in the suspension or termination of the Finnish Company's participation in the Code of Conduct.

In the event that a Finnish Company cannot satisfy a request to amend a contract falling under the Code of Conduct without incurring a financial loss, and the relevant customer is unwilling to reimburse it, the Finnish Company may reasonably decline the request.

The Participants recognize that the U.S. Department of Defense or one of its contractors may require assistance in obtaining priority performance from a Finnish company that is not participating in the Code of Conduct. In such cases, if so requested by the U.S. Department of Defense, the Finnish Ministry of Defence will request the company join the Code of Conduct, or otherwise provide priority performance for the U.S. defense order.

United States

In furtherance of the above principles, and when requested to do so by the Finnish Ministry of Defence point of contact identified in Article 4, the U.S. Department of Defense will arrange for the Finnish Ministry of Defence, or Finnish contractors, subcontractors, or suppliers, to use priority ratings on defense contracts placed with U.S. contractors, subcontractors and suppliers. Priority performance will be provided in accordance with the U.S. Defense Priorities and Allocations System (DPAS). The U.S. DPAS:

- a. establishes priority designations for contracts performed in the United States, and provides preference in performance of those contracts;
- b. defines U.S. industry's responsibilities, setting forth rules to ensure timely delivery of Industrial Resources to meet approved national defense program requirements;
- c. provides procedures to request assistance if production or delivery problems arise; and
- d. sets forth compliance procedures.

The Office of the Under Secretary of Defense (Industrial Policy) will keep the U.S. defense procurement community informed of all Finnish Companies participating in the Code of Conduct System.

Finland and United States

All activities under this IA will be carried out in accordance with the respective national laws and regulations and with any other obligations binding the Participants. The Participants do not intend to place the financial responsibility of implementing this IA in Finland with Finnish industry or in the United States with U.S. industry.

In fulfilling their commitments under this IA, the Participants recognize that Finnish and U.S. Companies may have contracts with other customers, which the Participants do not wish to undermine.

Any dispute arising from the interpretation and implementation of this IA, including prioritization of supply, will be resolved by means of consultation between the Participants. Each Participant reserves the right to decide final prioritization requirements within its territory, and the other Participant will give deference to such requirements.

Participation in the Code of Conduct System may be offered by Finnish Companies as an indication of their reliability in supplying industrial resources to the U.S. Department of Defense and the contractors supplying it. Likewise, U.S. Companies may offer being subject to the U.S. DPAS as an indication of their reliability in supplying industrial resources to the Finnish Ministry of Defence and the contractors supplying it.

ARTICLE 4 – DESIGNATED POINTS OF CONTACT AND REVIEW

Designated Points of Contact

Essential to the implementation of this IA and the ability of the Participants to provide priority support to each other when needed is the designation of a point of contact for each Participant. This point of contact serves as the focal point for the implementation and administration of this IA and is the point of contact to which all requests for priority designations, priorities assistance, and related issues should be directed for approval.

Finland

- a. Requests for priority designations and/or assistance in Finland should be directed to:

The Ministry of Defence of Finland
Material Unit
PO Box 31
FI-00131 Helsinki
Finland

United States

- a. Requests for priority designations and/or assistance in the United States should be directed to:

Director, Industrial Policy
Office of Secretary of Defense Acquisition Technology & Logistics
3330 Defense Pentagon
Washington, DC 20301

- b. Copies of correspondence related to priority designations and/or assistance in the United States should be provided to:

Director, Defense Programs Division
Office of Strategic Industries and Economic Security
U.S. Department of Commerce
Room 3876
Washington, DC 20230

Finland and United States – Review of Priorities Systems Policies and Procedures

Representatives of the Participants will review their established or developing Priorities Systems policies and procedures at the request of either Participant, and will adjust them and the provisions of this IA as feasible and necessary to comport with evolving national Priorities Systems and to provide Security of Supply.

