

No. 2700

**BELGIUM
and
UNITED STATES OF AMERICA**

**Agreement (with exchange of notes) relating to offshore
procurement. Signed at Brussels, on 2 September 1953**

Official texts: English and French.

Registered by Belgium on 19 October 1954.

**BELGIQUE
et
ÉTATS-UNIS D'AMÉRIQUE**

**Accord (avec échange de notes) relatif aux achats dits
« offshore ». Signé à Bruxelles, le 2 septembre 1953**

Textes officiels anglais et français.

Enregistré par la Belgique le 19 octobre 1954.

No. 2700. AGREEMENT¹ BETWEEN BELGIUM AND THE UNITED STATES OF AMERICA RELATING TO OFFSHORE PROCUREMENT. SIGNED AT BRUSSELS, ON 2 SEPTEMBER 1953

The Government of Belgium and the Government of the United States of America, desiring to set forth certain principles and policies governing the United States Offshore Procurement Program in Belgium, have agreed as follows :

Article 1

SCOPE AND PURPOSE OF THE OFFSHORE PROCUREMENT PROGRAM

It is the intent of the United States Government under the Offshore Procurement Program to conduct a program of military procurement in countries participating in the Mutual Security Program of those types of materials, services, supplies and equipment appropriate either for the mutual security military aid program or for the direct use of United States Forces. The extent of this program in Belgium is dependent upon the ability of the United States Government to place contracts at reasonable prices and with satisfactory delivery dates. It is intended that the carrying out of this program will materially contribute to the combined defense productive capacity of the nations which are members of the North Atlantic Treaty Organization and the European Defense Community and will at the same time provide a means for increasing the dollars earnings of these countries.

The United States Government will conduct the Offshore Procurement Program in accordance with the laws of the United States governing military procurement and the Mutual Security Program. It is also the intent of the United States that the Offshore Procurement Program shall be carried out in Belgium in furtherance of the principles set forth in Section 516 of the Mutual Security Act of 1951, the Mutual Defense Assistance Control Act of 1951, and article II (3) of the Economic Cooperation Agreement between the Kingdom of Belgium and the United States of America, signed in Brussels on July 2, 1948,² as amended.³

¹ Came into force on 22 July 1954, by notice given to the Government of the United States of America of the ratification of this Agreement by the Government of Belgium, in accordance with article 16. This Agreement is not applicable to the territories of the Belgian Congo and Ruanda-Urundi.

² United Nations, *Treaty Series*, Vol. 19, p. 127.

³ United Nations, *Treaty Series*, Vol. 31, p. 485 ; Vol. 76, p. 250, and Vol. 140, p. 428.

Article 2

INTERGOVERNMENTAL COORDINATION

The two Governments will exchange information, as needed, and on a continuing basis, with respect to procurement plans, production facilities in Belgium and progress in the achievement of production objectives in Belgium.

It is understood that the Belgian Government may, to ensure the execution of its own defense procurement program, inform the United States Government that certain commodities are in short supply in Belgium, in which case the United States Government will abstain from placing contracts in Belgium for such commodities. Contracts in existence at the time of such notice will not be affected by such Belgian Government measure.

In so far as feasible and appropriate, information relating to overall United States offshore procurement programs in Europe and individual requests for bids will be furnished in due time to the Belgian Government by the United States Government.

Copies or abstracts of contracts signed with Belgian private contractors will be currently furnished the Belgian Government by the United States Government.

Article 3

CONTRACT PLACEMENT BY PROCUREMENT OFFICERS

It is understood that offshore procurement contracts will be placed and administered on behalf of the United States Government by procurement officers of the United States Military Department.

Article 4

PARTIES TO CONTRACTS

United States procurement officers may :

- 1) contract directly with private contractors, including individuals, firms, or other legal entities, or
- 2) with the Belgian Government.

It is the preference of the Belgian Government that the United States Government contract directly with private contractors.

Article 5

CONTRACT ASSISTANCE

The Belgian Government will, upon request of the contracting officer, provide such technical information as is available to it for assistance in the selection of

contractors and subcontractors and will lend its good offices to the United States Government and individual contractors, to the extent necessary and appropriate, to facilitate the administering and carrying out of offshore procurement contracts,

Article 6

SUPPLY OF EQUIPMENT, MATERIALS, AND MANPOWER

The Belgian Government will accord to offshore procurement contractors and their subcontractors priorities for securing equipment, materials, manpower and services generally equal to those which are accorded contractors having similar types of contracts with the Belgian Government, provided that the normal and timely execution of the Belgian Government's own defense procurement program be safeguarded, and that the Belgian Government be notified in due time of the requests of such priorities.

Article 7

SECURITY

Any security-classified or protected material, including information delivered by one Government to the other will be treated by the recipient Government in the same manner as its own similarly protected material or information.

Security-classified material of the United States Government needed by a private Belgian contractor will be delivered to the appropriate Ministry of the Belgian Government for transmittal to the contractor. Such material will, prior to transmittal, receive a security classification of the Belgian Government and be transmitted with the warning that its divulcation or improper use may subject the person or persons involved to criminal prosecution. When requested by the contracting officer or other United States Government representative, the Belgian Government shall assist in establishing restricted areas according to Belgian laws and regulations.

In order to ensure adequate protection of security-classified or protected information and material, the appropriate Ministry of the Belgian Government will in special cases, upon request, conduct a security investigation of any prospective Belgian contractor for the United States Government in the same manner as such investigations are conducted in cases of defense procurement by the Belgian Government, and a recommendation resulting from such investigation will be made to the United States Government.

No charge will be made by the Belgian Government for services rendered pursuant to this clause.

Article 8

INSPECTION

Inspection of all materials, supplies, equipment and services procured by the United States in Belgium shall, in so far as feasible, be carried out by inspectors of the Belgian Government when so requested by the United States Government contracting officer.

In such cases the Belgian Government will furnish the necessary materials and inspection equipment as available, and its inspectors will conduct inspections in accordance with the Belgian Government administrative inspection procedures and according to such technical standards as are acceptable to the United States Government contracting officer, in order to determine whether the materials, supplies, or equipment are being produced in accordance with the specifications set forth in the contracts.

Upon completion of such inspections, the Belgian Government inspectors will certify that their inspection has been so performed and that the products meet all specifications and other technical requirements of the contract.

As a rule inspections shall not be duplicated. For verification purposes the United States Government representatives will be entitled to be present at all inspections performed by the Belgian Government inspectors and to examine the Belgian Government inspection records. United States Government representatives shall have the right to make special inspections and verifications. Such inspections will be made in company with Belgian Government inspectors provided they are available. Notice of these inspections will be given to the Belgian Government inspectors in so far as feasible at least forty-eight hours in advance. In case the Belgian Government inspectors, cannot be present at such inspections, the United States Government representatives will send a full report to the Belgian Government inspectors.

No charges will be made by the Belgian Government for inspection services and for tests performed in Belgian Government installation except that, where special expenses are involved, the appropriate representatives of the two Governments will consult regarding defrayment of such expenses prior to the signing of each contract.

Article 9

CREDIT ARRANGEMENTS

It is understood that the Belgian Government will assist administratively in providing Belgian contractors, producing for the United States Offshore Procurement Program, treatment concerning commercial credit facilities at least equal to that accorded to Belgian business establishments producing for the defense or export program of Belgium.

Article 10

LICENSES

The Belgian Government will grant any necessary licenses, including exchange control, export and import licenses, required in connection with any United States offshore procurement contract placed in Belgium except for contracts involving commodities in short supply placed after the notification provided in article 2.

The Belgian Government will also facilitate, within the framework of its general policy, the granting of such licenses required in connection with offshore procurement contracts placed in other North Atlantic Treaty or European Defense Community countries, providing that the country concerned grants reciprocal treatment to Belgium in respect of offshore procurement contracts placed in Belgium.

Article 11

TAXES

The provisions of the Agreement between Belgium and the United States of America relating to relief from taxes and duties, concluded by exchange of notes signed at Brussels on March 18 and April 7, 1952, as well as the agreed procedures which have been worked out thereunder by representatives of the two Governments, are applicable to this program.

In contracts between the two Governments, the United States Government will be accorded at least the same exemptions from taxes and charges as those to which the Belgian Government is entitled under its own contracts with its suppliers.

The two Governments may consult from time to time as the occasion arises regarding further implementation of the tax agreement.

Article 12

STANDARD CONTRACT CLAUSES

The Belgian Government understands that offshore procurement contracts between either Belgian private contractors or the Belgian Government and the United States Government will contain such clauses as are required by United States laws.

Insofar as authorized by United States laws and regulations, no provision for renegotiation of contract under the Renegotiation Act of 1951 or examination of records under Public Law 245, 82nd Congress, will be included in offshore procurement contracts placed in Belgium. In case of application by the United States Government of the clause of termination for the convenience of the United

States Government, due compensation to the supplier, whether Government or private contractor, will be provided for in the terms of the contract.

Standard clauses will be approved by the two Governments for use, as appropriate, in contracts between them. Other clauses may be included in individual contracts.

There will be no cost plus a percentage of cost contract between the United States Government and either private contractors or the Belgian Government nor in subcontracts thereunder.

Article 13

PROTECTION OF UNITED STATES PROPERTY AND PERSONNEL

It is understood that any United States Government property furnished to a contractor or acquired through offshore procurement contracts in Belgium will be immune from legal process or seizure. Likewise, it is understood that the United States Government is protected against suits or other legal action in Belgium which may arise out of offshore procurement contracts.

The privileges and immunities accorded M.D.A.P. personnel as set forth in paragraphs (b) and (c) of Annex E to the Mutual Defense Assistance Agreement between Belgium and the United States, signed in Washington on January 27, 1950,¹ are applicable to procurement officers and their personnel who are United States nationals and whose names have been duly reported to the Belgian Government; provided that upon entry into force with respect to Belgium and the United States of America of the Agreement between the parties to the North Atlantic Treaty regarding the status of their forces and appendix thereto, signed in London on June 19, 1951,² the status of contracting officers and other authorized procurement personnel will be reconsidered in the light of that Agreement or such other pertinent Agreement as may be in force between the two Governments and such other considerations as may be appropriate.

Article 14

REPORT OF SUBCONTRACTS

On such contracts as are entered into between the Belgian Government and the United States Government, the Belgian Government will furnish to the United States contracting officers such informations as may be requested regarding the placement by the Belgian Government of subcontracts and purchase orders under such government to government contracts.

¹ United Nations, *Treaty Series*, Vol. 51, p. 213.

² United Nations, *Treaty Series*, Vol. 199, p. 67.

Article 15

PROFITS

On offshore procurement contracts entered into between the Belgian Government and the United States Government, it is understood that no profits, including net gains resulting from fluctuations in exchange rates, will be made by the Belgian Government. The Belgian Government agrees to determine, prior to December 31, 1954, or on such later dates as may be mutually agreed upon by the two Governments, whether it has realized any such profit, in which event, or in the event that the United States Government prior to such date considers that such profit may have been realized, the Belgian Government agrees that it will enter into conversations with the United States Government for the purpose of determining the existence and the amount of such profit. During these conversations the United States Government shall have access to such documents and accounting data as may be necessary to determine the facts.

In the computation of profits hereunder, the contracts shall be taken collectively and allowances will be made for the increase in costs to the Belgian Government which may have arisen out of the contracts due to a fluctuation of exchange rates.

If as a result of conversations between the two Governments it is established that a profit has been realized by the Belgian Government, the latter shall refund the amount of such profit to the United States Government under arrangements and procedures to be agreed upon between the two Governments.

Article 16

RATIFICATION AND ENTRY INTO FORCE

This Agreement shall come into force at the moment the Belgian Government has notified the United States Government of ratification by Belgium.

IN WITNESS WHEREOF the representatives of the two Governments, duly authorized for the purpose, have signed this Agreement.

DONE at Brussels, in duplicate, in the French and English languages, both texts being equally authentic, this 2nd day of September, 1953.

For Belgium :

(Signed) P. VAN ZEELAND

For the United States of America :

(Signed) F. M. ALGER JR.

EXCHANGE OF NOTES

I

AMERICAN EMBASSY

No. 209.

Brussels, September 2, 1953

Excellency :

I have the honor to set forth below my Government's understanding of certain points agreed on during the negotiations leading to the signature on this date of the Agreement between the United States of America and Belgium relating to Offshore Procurement.

Re Article 1

In accordance with the understanding expressed in paragraph 2 of Article 1 that the United States Government intends to conduct the Offshore Procurement Program in accordance with relevant United States legislation and in furtherance of the principles set forth in United States statutes, it is understood that in order to carry out this intention the Embassy of the United States of America may from time to time submit the names of certain firms and individuals who have acted contrary to mutual security interests of our two countries and that no contracts or subcontracts will be awarded to these firms and individuals under the Offshore Procurement Program.

Re Article 2

The Administration Belge de Coopération Économique is the administrative office of the Belgian Government to which the United States Government will furnish the information mentioned in Article 2 and in other Articles of the Agreement.

Re Article 7

It is understood that while Article 7 provides security arrangements and safeguards for classified material and information made available by the United States Government to the Belgian Government under the Offshore Procurement Program, nothing therein is to be construed as affecting the obligations with respect to security which the two Governments have assumed as parties to the N.A.T.O. Agreement on Security set forth in Annex A to N.A.T.O. document D. C. 2/7 (Final), dated April 8, 1954.

The Belgian Government also promoting legislation which will provide greater security in all important matters relating to the mutual defense of Belgium and the countries with which Belgium has defense agreements.

The Belgian Government is of the opinion that provisions for the establishment of restricted areas required in connection with the manufacture of materials for defense which need special protection should normally be included in the contracts made between procurement officers and suppliers.

Re Article 8

In connection with this Article, the expression « inspection » in the English text as well as in the French text includes all procedures of examination during and after manufacture and prior to acceptance required for verification of compliance with specifications.

It is understood that individual agreements concerning inspection will be concluded for each contract or series of contracts. These agreements will set forth special conditions relating to inspection and determine in particular the division of cost between the two Governments, the principles laid down in Article 8 being in all cases respected.

Re Article 12

The Belgian Government has no law similar to the United States Renegotiation Act of 1951 authorizing the recoupment of excess profits.

Re Article 13

The Belgian Government is promoting legislation in support of the provisions contained in Article 13 of the Agreement.

Re Article 15

Nothing in Article 15 is to be construed as affecting in any way such profit refunding provisions as may be contained in individual offshore procurement contracts between the two Governments.

My Government also understands that by an exchange of notes dated June 18, 1953 a special regime regarding Belgian export licenses has been agreed upon for goods delivered in the B.L.E.U. to the United States Government under offshore procurement contracts. By means of this special regime, the Belgian Government relieves United States officers from any obligation to obtain export licenses for such offshore procurement goods. Since satisfaction has been given in this connection, the United States Government agrees to make all payments under offshore procurement contracts in dollars or in francs bought for dollars from the National Bank of Belgium. Moreover, the United States Government agrees that payment for goods delivered by the B.L.E.U. under offshore procurement contracts shall be made by check, payable to the National Bank of Belgium, bearing the indication of the name of the supplier as the beneficiary. It is understood however, that the United States Government reserves the right to consult with

the Belgian Government concerning alternative means of effecting offshore procurement payments in the event that future developments should indicate the desirability of re-examining the method of payment.

If your understanding of these points conforms to mine, I shall be most appreciative if you will be good enough to send me a note to that effect. My Government will consider that my note and your reply constitute an Agreement between our two Governments, effective on the date on which the Agreement between the United States of America and Belgium relating to Offshore Procurement comes into force.

Please accept, Excellency, the renewed assurances of my highest consideration.

(*Signé*) F. M. ALGER JR.

His Excellency Paul van Zeeland
Minister for Foreign Affairs,
Brussels

[TRADUCTION — TRANSLATION]

AMBASSADE DES ÉTATS-UNIS D'AMÉRIQUE

N° 209

Bruxelles, le 2 septembre 1953

Monsieur le Ministre,

[*Voir note II*]

Je saisis, etc.

(*Signé*) F. M. ALGER JR.

Son Excellence Monsieur Paul van Zeeland
Ministre des affaires étrangères
Bruxelles

II

MINISTÈRE DES AFFAIRES ÉTRANGÈRES ET DU COMMERCE EXTÉRIEUR

Bruxelles, le 2 septembre 1953

Monsieur l'Ambassadeur,

J'ai l'honneur d'accuser la réception de la note de Votre Excellence en date de ce jour concernant l'interprétation à donner à certains points de l'Accord entre nos deux Gouvernements, relatif aux achats dits « offshore », note conçue comme suit :

(*Suit le texte de la note de l'Ambassade des États-Unis d'Amérique.*)

Gouvernements, qui entrera en vigueur en même temps que l'Accord entre la Belgique et les États-Unis d'Amérique, relatif aux achats dits « offshore ».

J'ai l'honneur de vous marquer mon accord sur le contenu de cette note ; le texte français faisant foi au même titre que le texte anglais.

Je saisis cette occasion, Monsieur l'Ambassadeur, de renouveler à Votre Excellence, l'assurance de ma très haute considération.

(Signé) P. VAN ZEELAND

Son Excellence Monsieur Frederick M. Alger Jr.
Ambassadeur extraordinaire et plénipotentiaire
des États-Unis d'Amérique
à Bruxelles

[TRANSLATION — TRADUCTION]

MINISTRY OF FOREIGN AFFAIRS AND FOREIGN TRADE

Brussels, 2 September 1953

Your Excellency,

I have the honour to acknowledge the receipt of your note of today's date concerning the proper understanding of certain points in the Agreement between our two Governments relating to offshore procurement, in the following terms :

(Here follows the text of the note from the United States Embassy.)

The French translation of that note, prepared by common agreement between our two Governments, reads as follows :

[See note II — French text]

I have the honour to inform you that I am in agreement with the terms of the said note, the English and French texts of which are equally authentic.

I have the honour to be, etc.

(Signed) P. VAN ZEELAND

His Excellency Mr. Frederick M. Alger, Jr.
Ambassador Extraordinary and Plenipotentiary
of the United States of America
Brussels