

No. 2895

**NETHERLANDS
and
UNITED STATES OF AMERICA**

Exchange of notes (with annex) constituting an agreement relating to the United States offshore procurement program in the Netherlands. The Hague, 15 April and 7 May 1954

Official text: English.

Registered by the Netherlands on 16 August 1955.

**PAYS-BAS
et
ÉTATS-UNIS D'AMÉRIQUE**

Échange de notes (avec annexe) constituant un accord relatif au programme d'achat «offshore» des États-Unis aux Pays-Bas. La Haye, 15 avril et 7 mai 1954

Texte officiel anglais.

Enregistré par les Pays-Bas le 16 août 1955.

No. 2895. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA RELATING TO THE UNITED STATES OFFSHORE PROCUREMENT PROGRAM IN THE NETHERLANDS. THE HAGUE, 15 APRIL AND 7 MAY 1954

I

AMERICAN EMBASSY

No. 447

The Hague, April 15, 1954

Excellency :

I have the honor to refer to conversations which have taken place between representatives of our two Governments relating to a Memorandum of Understanding and a Model Contract for the United States Offshore Procurement Program in the Netherlands. These discussions resulted in agreement on a Memorandum of Understanding reading as follows :

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES AND THE NETHERLANDS GOVERNMENT RELATING TO OFFSHORE PROCUREMENT

This Memorandum sets forth certain principles and policies which the Netherlands Government and the Government of the United States have agreed will govern the United States Offshore Procurement Program in the Netherlands.

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 for United States military procurement and required either for the mutual security military aid program or for the direct use of United States Forces. The extent of this program in the Netherlands 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

¹ Applied provisionally from 7 May 1954 and came into force on 30 July 1954, in accordance with the terms of the said notes.

Treaty Organization and the European Defense Community and will at the same time provide a means for increasing the dollar 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 the Netherlands in furtherance of the principles set forth in Section 516 (A) of the Mutual Security Act of 1951, as amended, the Mutual Defense Assistance Control Act of 1951, and Article II (3) of the Economic Cooperation Agreement between the Netherlands Government and the Government of the United States of America signed in The Hague on July 2, 1948, as amended.¹

2. Intergovernmental Coordination

The procurement program of the United States Government of military items in the Netherlands will be coordinated with the defense program of the Netherlands Government as it develops. Appropriate officials of the two governments will consult together on a continuing basis to study production problems and the carrying out of recommendations for the procurement of items required by the United States Government. The two governments will exchange information, as needed, and on a continuing basis, with respect to procurement plans, production facilities in the Netherlands and progress in the achievement of production objectives in the Netherlands.

Copies or abstracts of contracts executed with Netherlands private contractors will be furnished the Netherlands Government by the United States Government.

3. Contract Placement by Contracting Officers

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

4. Parties to Contracts

United States contracting officers may contract with the Netherlands Government or directly with individuals, firms or other legal entities. It is the preference of the Netherlands Government that the United States Government contract directly with individuals, firms or other legal entities.

5. Contract Assistance

The Netherlands Government will, upon request of the contracting officer, provide assistance in the selection of contractors and technical information concerning prospective sub-contractors, and will assist the United States Government and individual contractors, to the extent necessary and appropriate, in the administering and carrying out of offshore procurement contracts.

¹ United Nations, *Treaty Series*, Vol. 20, p. 91; Vol. 93, p. 361; Vol. 141, p. 368, and Vol. 173, p. 372.

6. *Supply of Equipment, Materials and Manpower*

The Netherlands Government will accord to offshore procurement contractors and their sub-contractors priorities for securing equipment, materials, manpower and services equal to those which are accorded contractors having similar types of contracts with the Netherlands Government.

7. *Security*

In the case of procurement contracts placed by the United States Government with the Netherlands Government, any classified material, including information, delivered by one government to the other, will be given a security classification by the recipient government which will afford to the material substantially the same degree of security as that afforded by the originating government and will be treated by the recipient government as its own classified material of that security grading. The recipient government will not use such material, or permit it to be used, for other than military purposes and will not disclose such material, or permit it to be disclosed, to another nation without the consent of the originating government. In cases of government-to-government contracts which involve the disclosure of top secret information, the Netherlands Government shall, when so requested by the contracting officer, undertake to assist the United States Government in maintaining restricted areas in accordance with Netherlands law concerning 'prohibited places'.

In the case of procurement contracts placed by the United States Government with individuals, firms or other legal entities, security arrangements for classified material will be followed similar to those described in the preceding paragraph. Prior to the placement of the contract, the contracting officer will notify the prospective producer and the Netherlands Government of the security classification of the contract. Classified material of the United States Government needed by a Netherlands contractor will be delivered to the appropriate ministry of the Netherlands Government for transmittal to the contractor. Such material will, prior to transmittal, receive a security classification of the Netherlands Government which will afford to the material substantially the same degree of security as that afforded by the United States Government and at the time of transmittal the Netherlands Government will notify the contractor that the classified material delivered to it is also classified material of the Netherlands Government and is subject to the provisions of the Act on the Protection of Official Secrets. The Netherlands Government undertakes to enforce the security requirements and obligations placed upon private Netherlands contractors in possession of such classified material.

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

No charges will be made by the Netherlands Government for services rendered by its security services.

8. *Inspection*

An inspection of all materials, supplies, equipment and services procured by the United States Government in the Netherlands either from the Netherlands Government or Netherlands manufacturers and suppliers shall be carried out by representatives of the Netherlands Government when requested by the United States Government. In such cases, the Netherlands Government will certify to the United States Government that the products meet all specifications and other technical requirements of the contract. As a rule inspection shall not be duplicated. For verification purposes the United States Government representative will be entitled to be present at all inspections performed by the Netherlands Government inspectors and to examine the Netherlands Government inspection records. The United States Government representatives shall have the right to make independent inspections and verifications, and insofar as feasible, such inspections will be made in company with Netherlands inspectors. As a rule no charges will be made by the Netherlands Government for inspection services, particularly for items produced for delivery to countries which are members of NATO or the EDC. In no event will charges be made for inspection services on items procured by the United States Government for delivery to the Netherlands Government. Should the Netherlands Government find it necessary to charge for inspection services in connection with materials, supplies, equipment or services procured under a contract between the United States Government and the Netherlands Government such inspection charges will be included in the proposed contract price quoted to the United States Government. Should the Netherlands Government find it necessary to charge for inspection services in connection with procurement made directly by the United States Government from private contractors in the Netherlands, the respective Governments will execute a contract to cover such charges. In no event will the charges for inspection exceed the cost thereof to the Netherlands Government.

9. *Credit Arrangements*

It is understood that the Netherlands Government will assist in providing Netherlands contractors producing for the United States offshore procurement program, treatment concerning commercial bank priorities equal to that accorded to Netherlands business establishments producing for the defense and export program of the Netherlands.

10. *Licenses*

The Netherlands Government will facilitate the granting or obtaining of, any necessary licenses including exchange control export and import licenses required in connection with any offshore procurement contracts placed in the Netherlands.

The Netherlands Government will also grant and facilitate the obtaining of such licenses in connection with offshore procurement contracts placed by the United States Government in other North Atlantic Treaty or European Defense Community countries unless such other country upon request fails to grant reciprocal treatment with respect to licenses which may be required in connection with offshore procurement contracts placed in the Netherlands.

11. Taxes

The provisions of the Memorandum of Agreement Between the Netherlands Government and the United States Government dated March 7, 1952¹ are applicable to this program as well as the agreed procedures which have been worked out thereunder by representatives of the two governments. The two governments may consult from time to time as the occasion arises regarding further implementation of that Agreement.

12. Standard Contract Clauses

Standard clauses have been approved by the two governments for use, as appropriate, in contracts between them. Other clauses may be included in individual contracts including but not limited to escalation, advance and progress payment clauses, where appropriate.

13. Protection of United States Property and Personnel

In accordance with the existing law and custom in the Netherlands, any interests of the United States Government in property furnished or acquired through offshore procurement contracts in the Netherlands will be immune from legal liability or process. Likewise, the United States Government is protected against suits or other legal liability in the Netherlands on any matter which may arise out of an offshore procurement contract.

Contracting officers and other authorized procurement personnel who are in the Netherlands in connection with the offshore procurement program and whose names have been duly reported to the Netherlands Government will be accorded the privileges and immunities set forth in paragraphs (b) and (c) of annex E to the Mutual Defense Assistance Agreement between the United States and the Netherlands signed at Washington on January 27, 1950² provided that upon entry into force of the NATO Status of Forces Agreement³ between the United States and the Netherlands, the status of such contracting officers and other authorized procurement personnel will be reconsidered in the light of the agreement, such other pertinent agreements as may be in force between the two governments and such other considerations as may be appropriate.

14. Destination of End-Items

Although the determination of specifications and other requirements of particular offshore procurement contracts may require the tentative identification of the recipient country for the end-item to be produced, it is understood that, unless otherwise specifically agreed between the two governments in a particular case, the United States may subsequently amend any such prior determination and identification as to which country shall be the ultimate recipient of the end-items produced.

15. Contract Terms

Inasmuch as the statutes of the United States prohibit utilization of a contract upon which payment is based on cost plus a percentage of cost, it is understood that

¹ United Nations, *Treaty Series*, Vol. 135, p. 199.

² United Nations, *Treaty Series*, Vol. 80, p. 219.

³ United Nations, *Treaty Series*, Vol. 199, p. 61, and Vol. 200, p. 346.

such a system of determining payment shall not be employed in contracts entered into between the United States Government and either private contractors or the Netherlands Government. Further, the Netherlands Government advises that it will not utilize the type of contract in which payment is made on the basis of cost plus a percentage of cost in sub-contracts under any contracts between the United States Government and the Netherlands Government.

For the information of the United States procurement officer the Netherlands Government advises that it does not have any law authorizing the recoupment of excess profit similar to the Renegotiation Act of the United States. The two governments may agree in contracts between them to include provisions limiting the amount of profit of sub-contractors. In such instances, the Government of the Netherlands will pass on to the Government of the United States any profits refunded by such sub-contractors. Procedures for the determination and recovery of profits will be agreed upon by the two governments.

16. *Reporting of Sub-Contracts*

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

17. *No Profits Clause*

On offshore procurement contracts entered into between the United States Government and the Netherlands Government, it is intended that no profit of any nature, including net gains, resulting from fluctuations in exchange rates, will be made by the Netherlands Government. The Netherlands Government agrees to determine, prior to December 31, 1954, or at such later date as may be mutually agreed by the 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 Netherlands 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 increases in costs to the Netherlands Government which may have arisen out of the contracts due to a fluctuation of exchange rates. If as a result of conversations between the respective governments it is established that a collective net profit has been realized by the Netherlands Government, it shall refund the amount of such profit to the United States Government under arrangements and procedures to be agreed upon between the two governments.

This article shall not be construed as affecting in any manner such profit refunding provisions as may be contained in individual contracts.

Agreement was also reached on the standard clauses, referred to in Article 12 of the Memorandum of Understanding, which have been incorporated into a Model Contract. A copy of this Contract is Enclosure No. 1 to this Note.

This note and Your Excellency's affirmative reply will constitute agreement on this matter which shall enter into force on the date the Embassy of the United States of America is notified that the approval constitutionally required in the Netherlands has been obtained. Meanwhile, I suggest that the parties to the present agreement shall apply its provisions from the date of Your Excellency's reply.

If either of our two Governments wishes to amend or terminate this agreement the two Governments will consult in order to consider possible effects of such amendment or termination on contracts concluded under the agreement. Such consultation shall be without prejudice to obligations and liabilities which have then accrued pursuant to the terms of this agreement.

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

(Signed) H. Freeman MATTHEWS

Enclosure : Copy of Model Contract

His Excellency J. W. Beyen
Royal Netherlands Minister for Foreign Affairs
The Hague

ANNEX

Enclosure No. 1 to Note No. 447

MODEL FIXED PRICE CONTRACT

Contract No.

NEGOTIATED CONTRACT

for the Procurement of Supplies, Services, and Materials in the Netherlands

This contract is entered into pursuant to the provisions of Section 2 (c) (1) of the Armed Services Procurement Act of 1947, as amended (41 U.S. Code 151 *et seq.*) and other applicable law.

Funds Chargeable :

Amount of Contract :

Fiscal Officer :

Payment : to be made in United States Dollars

by

at

to

This contract is entered into this . . . day of 19 . . by and between the United States of America (hereinafter called the United States Government) represented by the Contracting Officer executing this contract and the Kingdom of the Netherlands (hereinafter called the Netherlands Government) represented by

This contract is executed subject to the agreement and conditions included in the Memorandum of Understanding between the United States Government and the Netherlands Government relating to procurement of supplies, services and materials dated

The parties hereto agree that the Netherlands Government shall furnish and deliver all of the supplies and perform all the services set forth in the Schedule for the consideration stated therein.

GENERAL PROVISIONS

1. *Definitions*

As used throughout this contract the following terms shall have the meanings set forth below :

(a) The term "Secretary" means the Secretary, the Under-Secretary, or any Assistant Secretary of the United States Military Department concerned; and the term "his duly authorized representative" means any person or persons (other than the Contracting Officer) authorized to act for the Secretary. (b) The term "contracting Officer" means the person executing this contract on behalf of the United States Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority. (c) The term "United States Government" means the United States of America. (d) The term "Netherlands Government" means the Kingdom of the Netherlands or any officer duly authorized to act on behalf of the Netherlands Government in relation to this contract. (e) Except as otherwise provided in this contract, the term "sub-contract" means any agreement, contract, sub-contract, or purchase order made by the Netherlands Government with any contractor in fulfillment of any part of this contract, and any agreements, contracts, sub-contracts or purchase orders thereunder.

2. *Changes*

The Contracting Officer may at any time, by a written notice make changes, within the general scope of this contract, in any one or more of the following :

- (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the United States Government in accordance therewith;
- (ii) Method of shipment or packing; and
- (iii) Place of delivery.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of this contract an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Netherlands Government for adjustment under this clause must be declared within thirty days from the date of receipt by the Netherlands Government of the notification of change; provided, however, that the Contracting Officer if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. The Netherlands Government will proceed with the contract as changed and the United States Government will process claims as promptly as possible.

3. *Extras*

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor has been authorized in writing by the Contracting Officer.

4. *Variation in quantity*

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

5. *Inspection*

(a) Adequate inspection and test of all supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) to insure conformity with drawings, designs and specifications of the contract shall be effected by the Netherlands Government.

(b) The Netherlands Government will furnish a certificate or certificates stating that the inspection has been made and that all supplies, services or materials so certified meet all requirements of the schedules, drawings, designs and specifications of the contract.

(c) United States Government representatives shall have the right, by inspections or otherwise, to verify the certifications and to verify that (1) the end items conform to standards and to drawings, designs and specifications and (2) the quantity of end items specified is delivered. United States representatives will notify the appropriate Netherlands Government representatives when they intend to conduct inspections and such inspection will be conducted as promptly as feasible. Representatives of the Netherlands Government shall have the right to participate in such verifications should the Netherlands Government so request.

(d) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the United States Government shall have the right to either reject them (with or without making arrangements with the Netherlands Government as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or corrected in place, as requested by the Contracting Officer, by and at the expense of the Netherlands Government promptly after notice, and shall not again be tendered for acceptance unless the former tender and either the rejection or requirement for correction is disclosed.

(e) The Netherlands Government will provide and require their contractors and sub-contractors to provide to the United States Government inspectors, without additional charge to the United States Government, reasonable facilities and assistance for the safety and convenience of the United States Government representatives in the performance of their duties.

(f) Except as otherwise provided in this contract final acceptance or rejection shall be made concurrently with or shortly after final inspection and before shipment or transportation to the delivery point; but failure of the United States Government to take action on acceptance or rejection shall neither relieve the Netherlands Government from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the United States Government therefor; provided, however, that if the Netherlands Government considers that there is an undue delay by the United States Government in taking action on acceptance or rejection, it will so notify the United

States Government and the two Governments will consult with a view towards amending the contract to provide to the Netherlands Government compensation for additional expenses occasioned by such delay of the United States Government.

(g) The inspection and test by the United States Government of any supplies or lots thereof does not relieve the Netherlands Government from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to final acceptance. Except as otherwise provided in this contract, final acceptance shall be conclusive except as regards latent defects which could not have been discovered by normal inspection methods appropriate to the industry concerned.

(h) The Netherlands Government shall provide and maintain an inspection system mutually acceptable to the two Governments covering the supplies hereunder. Records of all inspection work by the Netherlands Government shall be kept complete and available to the United States Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

6. Responsibility for loss of or damage to supplies

Except as otherwise provided in this contract, (1) the Netherlands Government shall bear all risk of loss of or damage to the supplies covered by this contract until they are delivered at the designated delivery point, even if different from the point of inspection; and (2) the Netherlands Government shall bear all risks as to rejected supplies after notice of rejection.

7. Termination

(a) The performance of work under this contract may be terminated by the United States Government in accordance with this clause in whole, or, from time to time, in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the United States Government. Any such termination shall be effected by delivery to the Netherlands Government of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise authorized by the Contracting Officer, the Netherlands Government shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or sub-contracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (3) terminate all orders and sub-contracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the United States Government, in the manner, at the times, and to the extent requested by the Contracting Officer, all of the right, title, and interest of the Netherlands Government under the orders and sub-contracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the Contracting Officer to the extent he may request, which approval or

ratification shall be final for all the purposes of this clause; (6) transfer title and deliver to the United States Government, in the manner, at the times, and to the extent requested by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the United States Government; (7) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph, *provided, however*, that the Netherlands Government (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *provided further* that the net proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the United States Government to the Netherlands Government under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may authorize (for the purposes of this sub-paragraph, such net proceeds will be exclusive of any identifiable taxes included therein from which the property has been exempted under the 7 March 1952 Tax Agreement); (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, whether or not requested by the Contracting Officer, for the protection and preservation of the property related to this contract which is in the possession of the Netherlands Government and in which the United States Government has an interest. As soon as practicable the Netherlands Government may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been requested or authorized by the Contracting Officer, and may request the United States Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the United States Government will accept title to such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) As soon as possible after receipt of a Notice of Termination, the Netherlands Government shall submit to the Contracting Officer its termination claim, in a suitable form to be agreed upon. The claim shall be submitted not later than two years from the effective date of termination; *provided, however*, that the two Governments may agree to one or more extensions within such two year period or agreed extension thereof; *provided further*, that if the Contracting Officer considers that the facts justify such action, he may receive and act upon any such termination claim at any time after such two year period or any agreed extension thereof and *provided further*, that if the Netherlands Government, due to intervening armed hostilities, is unable to submit its claim during such two year period or any agreed extension thereof then the running of such two year

period or any agreed extension thereof shall be suspended for such period during which the Netherlands Government is unable to present its claim. If no such claim is submitted within said period of two years plus any extensions, the Contracting Officer may determine the amount due and the amount so determined shall be paid to the Netherlands Government in full settlement of the termination; *provided* that the Contracting Officer shall first give the Netherlands Government written notice of the amount thus determined and the Netherlands Government shall have ninety (90) days from receipt of such notice within which to protest the amount of the determination. If the Netherlands Government does make such a protest to the United States Government, the two Governments shall, as promptly as possible, consult with each other with a view toward settling the amount due.

(d) In mutually arriving at a settlement hereunder the Netherlands Government and the Contracting Officer or his authorized representative or successor may agree upon the whole or any part of the amount or amounts to be paid to the Netherlands Government as fair compensation by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Netherlands Government shall be paid the agreed amount.

(e) In arriving at a determination of the amount of compensation to be paid to the Netherlands Government in the event of the omission of the Netherlands Government to file a termination claim within the required time the Contracting Officer may be guided to the extent applicable by the "Statement of Principles for Determination of Costs" set forth in Part 4 of Section VIII of the Armed Services Procurement Regulation as in effect on the date of this contract, or by any other sound principles of cost determination; it being understood by both Governments that although the Contracting Officer is not required to be guided by that "Statement of Principles", in making such determination, he will ordinarily be so guided.

(f) In arriving at the amount due to the Netherlands Government under this clause there shall be deducted (1) all unliquidated payments on account theretofore made to the Netherlands Government, (2) any claim which the United States Government may have against the Netherlands Government in connection with this contract, and (3) the agreed price for, or the net proceeds of sale of, any materials, supplies, or other things acquired by the Netherlands Government or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the United States Government (for the purposes of this sub-paragraph, such net proceeds will be exclusive of any identifiable taxes included therein from which the property has been exempted under the 7 March 1952 Tax Agreement).

(g) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Netherlands Government may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination) and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(h) Upon notification to the United States Government by the Netherlands Government that the Netherlands Government is precluded from performing the contract in accordance with its terms due to circumstances beyond the control of the Netherlands Government, the two Governments will consult with a view toward negotiating an amend-

ment to the contract, in the form of a reasonable extension of time for the performance of the contract (it being recognized, however, that there may be special cases where the United States need for the end product will not admit of postponement) or an amendment to the contract in some other respect.

If the Netherlands Government should fail to perform the contract in accordance with its terms, and such failure should be due to causes within the control of the Netherlands Government, then the United States Government may terminate this contract by reason of the failure of the Netherlands Government to perform it. Any such termination shall be without cost to the United States Government, and without liability of either Government to the other; provided that the parties hereto may agree to the transfer to the United States Government of any of the property described in paragraph (b) (6) above, in which event the United States Government will pay to the Netherlands Government the price provided in the contract for completed items, and a price mutually agreed upon for other items.

(i) The Netherlands Government will make available to the United States Government without direct charge such books, records, documents, and other evidence bearing on the costs and expenses of the Netherlands Government under this contract and relating to the work terminated hereunder, as may be necessary to determine the facts, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof.

8. *Taxes*

(a) The contract price, including the value of sub-contracts hereunder, does not include any tax or duty which the Government of the United States and the Government of the Netherlands have agreed in the agreement dated 7 March 1952 as it may be amended from time to time and the agreed procedures thereunder shall not be applicable to expenditures in the Netherlands by the United States or any other tax or duty not applicable to this contract under the laws of the Netherlands. If any such tax or duty has been included in the contract price through error or otherwise, the contract price shall be correspondingly reduced.

(b) If, after the contract date, the Government of the United States and the Government of the Netherlands shall agree that any tax or duty included in the contract price shall not be applicable to expenditures in the Netherlands by the United States, the contract price shall be reduced accordingly.

9. *Subcontracting*

(a) The Netherlands Government undertakes that in any subcontract made in connection with this contract they will employ the same procurement methods and procedures as they employ in contracting for their own requirements.

(b) The Netherlands Government agrees to indemnify and save harmless the United States Government against all claims and suits of whatsoever nature arising under or incidental to the performance of this contract, by any sub-contractor against the Netherlands Government or the United States Government.

10. *Payments*

The Netherlands Government shall be paid, upon the submission of properly certified invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the United States Government when the amount due on such deliveries so warrants; or, when requested by the Netherlands Government, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either \$1,000 or 50% of the total amount of this contract. If the invoices when submitted are completely in order with respect to the amounts due and payable; if they make correct, unambiguous reference to the items invoiced so that they can be readily identified in the contract; and if they are prepared and certified in accordance with the stated invoicing requirements of the contract, payment is customarily made without delay and in considerably less than thirty days.

11. *United States officials not to benefit*

No member of or delegate to Congress of the United States, or resident commissioner of the United States shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit .

12. *Covenant against contingent fees*

The Netherlands Government warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Netherlands Government for the purpose of securing business. For breach or violation of this warranty the United States Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

13. *Gratuities*

The Netherlands Government agrees to apply to this contract the provisions embodied in Section 631 of Public Law 179 and Section 629 of Public Law 488, 82nd Congress of the United States and like provisions embodied in subsequent United States Appropriation Acts.

14. *Filing of patent application*

While and so long as the subject matter of this contract is classified security information of the United States Government, the Netherlands Government agrees that it will not file, or knowingly permit to be filed, an application for patent or other like statutory protection disclosing any of said subject matter without referring the proposed application to the Contracting Officer for determination as to whether, for reasons of United States security, such application shall be held in secrecy.

15. *Copyright*

(a) The Netherlands Government agrees to and does hereby grant to the United States Government, and to its officers, agents and employees acting within the scope of their official duties, (i) a royalty-free, non-exclusive and irrevocable license to publish, translate, reproduce, deliver, perform, use, and dispose of, and to authorize, in behalf of the United States Government or in the furtherance of mutual defense, others so to do, all copyrightable material first produced or composed and required to be delivered to the United States Government under this contract by the Netherlands Government, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and (ii) a license as aforesaid under any and all copyrighted or copyrightable work not first produced or composed by the Netherlands Government in the performance of this contract but which is incorporated in the material furnished under the contract, *provided* that such license shall be only to the extent that the Netherlands Government now has or prior to completion of final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(b) The Netherlands Government agrees that it will exert all reasonable effort to advise the Contracting Officer, at the time of delivering any copyrightable or copyrighted work furnished under this contract, of any adversely held copyrighted or copyrightable material incorporated in any such work and of any invasion of the right of privacy therein contained.

(c) The Netherlands Government agrees to report to the Contracting Officer, promptly and in reasonable written detail, any notice or claim of copyright infringement received by the Netherlands Government with respect to any material delivered under this contract.

(d) Nothing contained in this paragraph shall be deemed, directly or indirectly, to grant any license under any patent now or hereafter granted or to grant any right to reproduce any copyrighted or copyrightable material other than that referred to in subparagraph (a), above.

16. *Guaranty*

The Netherlands Government undertakes that the benefit of any guarantee obtained in respect of any sub-contract shall be passed on to the United States Government.

17. *Security*

Any materials, documents, designs, drawings or specifications delivered by the United States Government to the Netherlands Government and any materials, documents, designs, drawings, specifications or supplies delivered by the Netherlands Government to the United States Government in the performance of this contract, which are classified by the originating Government as "Top Secret", "Secret", "Confidential", "Restricted", or other recognized security classification shall be given a security classification by the recipient Government which will afford to the material substantially the same security grading as that afforded by the originating Government and shall be treated by the recipient Government as its own classified material of that security grading.

The recipient Government will not use such material including information, or permit it to be used, for other than military purposes and will not disclose such material, or permit it to be disclosed, to another nation without the consent of the originating Government.

The recipient Government will, upon request, give to the originating Government an acknowledgement of receipt in writing for any such classified material.

The Netherlands Government agrees to include appropriate provisions covering military security material including information in all sub-contracts hereunder.

18. *Technical information*

The Netherlands Government agrees that the United States Government shall have the right to duplicate, use and disclose, in behalf of the United States Government or in the furtherance of mutual defense, all or any part of the reports, drawings, blueprints, data and technical information, specified to be delivered by the Netherlands Government to the United States Government under this contract provided that the granting of such rights shall be to the extent that the Netherlands Government is able to obtain and grant such rights. Nothing contained in this clause, in itself, shall grant any right or license to use, sell, or reproduce any patented article; it is strictly limited to reports, drawings, blueprints, data and technical information.

19. *Assignment of claims*

No claim arising under this contract shall be assigned by the Netherlands Government except as follows :

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940 as amended (31 U.S. Code 203, 41 U.S. Code 15), if this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Netherlands Government from the United States Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret", "Secret", "Confidential", or "Restricted" be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same; *provided*, that a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed to such assignee upon the prior written authorization of the Contracting Officer.

20. Labor relations and standards

The provisions of this contract and the performance hereunder shall be subject to and in accordance with the laws of the Government of the Netherlands and any political subdivision thereof, from time to time in effect, which govern the hours, wages, labor relations (including collective bargaining), workman's compensation, working conditions, and other matters pertaining to labor.

21. Reporting of royalties

If this contract is in an amount which exceeds \$10,000 the Netherlands Government agrees to report in writing to the Contracting Officer during the performance of this contract the amount of royalties paid or to be paid by it directly to others in the performance of this contract. The Netherlands Government further agrees (i) to furnish in writing any additional information relating to such royalties as may be requested by the Contracting Officer in connection with this contract, and (ii) to insert a provision similar to this clause in any sub-contract hereunder which involves an amount in excess of the equivalent of ten thousand United States dollars.

22. Examination of records¹

The following clause is applicable to the extent required by the laws of the United States :

(a) The Netherlands Government agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Netherlands Government involving transactions related to this contract.

(b) The Netherlands Government further agrees to include in all its sub-contracts hereunder a provision to the effect that the sub-contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract with the United States Government, have access to and the right to examine any directly pertinent books, documents, papers, and records of such sub-contractor involving transactions related to the subcontract. The term "sub-contract" as used in this clause excludes (i) purchase orders not exceeding \$1,000 and (ii) sub-contracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

The rights and obligations of the parties to this contract shall be subject to and governed by the Cover Sheet, the Schedule consisting of . . . numbered pages, the General Provisions consisting of . . . numbered pages and this Signature Sheet. To the extent of any inconsistency between the Schedule or the General Provisions, and any specifications or other provisions which are made a part of this contract by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control. It is agreed that quotations, and/or conversations leading up to and during the

¹ *Explanatory Note Concerning Examination of Records*

As of 16 March 1954, contracts chargeable to appropriations for carrying out the purposes of the Mutual Security Act of 1951, as amended, are the only ones from which the following clause may be omitted.

negotiations of this contract have been consummated by signing this contract which, together with the memorandum of understanding dated, constitutes the entire agreement between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

The Kingdom
of the Netherlands

The United States of America

By By

(Authorized Officer)

(Contracting Officer)

(Address)

(Address)

For

II

MINISTRY OF FOREIGN AFFAIRS

The Hague, May 7, 1954

Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note dated April 15, 1954, and reading as follows :

[See note I]

I have the honour to inform Your Excellency that the Netherlands Government are prepared to accept the foregoing provisions and will regard Your Excellency's Note and the present reply as constituting an agreement on this matter between our two Governments. This agreement will enter into force on the date that the United States Government is notified by the Netherlands Government that the approval constitutionally required in the Netherlands

has been obtained. Notwithstanding the foregoing, the parties to the present agreement shall apply its provisions with effect as from this day. If either of our two Governments wishes to amend or terminate this agreement the two Governments will consult in order to consider possible effects of such amendments or termination on contracts concluded under the agreement. Such consultation shall be without prejudice to obligations and liabilities which have then accrued pursuant to the terms of this agreement.

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

(Signed) J. W. BEYEN

Enclosure : Copy of Model Contract,¹

His Excellency H. Freeman Matthews
United States Ambassador
The Hague

¹ See p. 338 of this volume.