

UNITED STATES OF AMERICA  
and  
SPAIN

**Exchange of notes (with annexed Memorandum of Understanding and Standard Clauses) constituting an agreement relating to a program of offshore procurement. San Sebastian, 30 July 1954**

*Official texts of the notes and of the Memorandum of Understanding: English and Spanish.*

*Official text of the Standard Clauses: English.*

**Exchange of notes constituting an agreement amending the above-mentioned Agreement. Madrid, 26 October 1954**

*Official texts: English and Spanish.*

*Registered by the United States of America on 25 April 1956.*

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ÉTATS-UNIS D'AMÉRIQUE  
et  
ESPAGNE

**Échange de notes (avec, en annexe, le Mémorandum d'accord et les clauses types) constituant un accord relatif à un programme d'achats offshore. Saint-Sébastien, 30 juillet 1954**

*Textes officiels des notes et du Mémorandum d'accord: anglais et espagnol.*

*Texte officiel des Clauses types: anglais.*

**Échange de notes constituant un accord modifiant l'Accord susmentionné. Madrid, 26 octobre 1954**

*Textes officiels anglais et espagnol.*

*Enregistrés par les États-Unis d'Amérique le 25 avril 1956.*

No. 3295. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN THE UNITED STATES OF AMERICA AND SPAIN RELATING TO A PROGRAM OF OFFSHORE PROCUREMENT. SAN SEBASTIAN, 30 JULY 1954

I

*The Spanish Minister of Foreign Affairs to the American Ambassador*

[SPANISH TEXT — TEXTE ESPAGNOL]

MINISTERIO DE ASUNTOS EXTERIORES

Núm. 613

Excm<sup>o</sup>. Señor :

San Sebastián, 30 de julio de 1954

Muy señor mío :

Tengo la honra de referirme a la Nota Verbal de este Ministerio, n<sup>o</sup> 578, de 22 de julio actual, comunicando la conformidad del Gobierno español en firmar un Acuerdo con el Gobierno de los Estados Unidos relativo a las adquisiciones "off shore" en España, sobre la base de la Nota Verbal de esa Embajada, n<sup>o</sup> 496, de 10 de mayo último, y de sus dos anejos.

Confirmado así el deseo del Gobierno español de seguir colaborando con el de los Estados Unidos en la ejecución del llamado Programa de Adquisiciones "off shore", en provecho de la seguridad mutua de la civilización occidental, tengo ahora la honra de comunicar a V.E. su conformidad con las disposiciones del "Memorándum de Acuerdo entre el Gobierno de los Estados Unidos y el de España sobre las adquisiciones "off shore" anejo al presente escrito, que deberá considerarse, juntamente con la contestación de V.E., como constituyendo un Acuerdo entre ambos Gobiernos, para reglamentar estas adquisiciones, que entrará en vigor en el día de la fecha.

El Gobierno español entiende que el Contrato-Tipo que acompaña al Memorándum anteriormente citado será empleado como pauta de los contratos que se firmen entre ambos Gobiernos.

Quedo asimismo enterado de las seguridades dadas por V.E. de que las líneas generales de estos documentos coinciden con lo acordado con los otros países que colaboran en la ejecución del programa "off shore".

Aprovecho esta oportunidad, señor Embajador, para reiterarle las seguridades de mi alta consideración.

Alberto MARTÍN ARTAJO

A Su Excelencia James C. Dunn  
Embajador de los Estados Unidos de América  
en España

<sup>1</sup> Came into force on 30 July 1954 by the exchange of the said notes.

tantes de la fluctuación en los tipos de cambio. El Gobierno de España accede a determinar si ha obtenido algún beneficio, en cuyo caso, o en el caso de que el Gobierno de los Estados Unidos considerase que algún beneficio se pudiese haber obtenido, el Gobierno de España accede a entrar inmediatamente en conversaciones con el Gobierno de los Estados Unidos con objeto de determinar la existencia y cantidad de dicho beneficio. Durante las conversaciones, el Gobierno español facilitará aquellos documentos y datos contables que puedan ser necesarios para determinar los hechos. En la computación de beneficios realizada, los contratos serán considerados colectivamente. Si, como resultado de las conversaciones entre los dos Gobiernos respectivos, se estableciera que se ha obtenido un beneficio por el Gobierno español en tales contratos, éste reembolsará la totalidad del beneficio al Gobierno de los Estados Unidos según acuerdos y procedimientos que se convendrán entre los dos Gobiernos. A petición de cualquiera de los dos Gobiernos será realizado un reajuste de reembolso sobre los contratos terminados, lo antes posible, pero este reajuste debe ser realizado lo más tarde el 31 de diciembre de 1956 o en fechas posteriores que puedan ser convenidas entre los dos Gobiernos. Este artículo no será interpretado como de aplicación en cualquier estipulación de reembolso de beneficios contenida en contratos individuales.

A. M. A.

30 de julio de 1954

## STANDARD CLAUSES

Contract No.

NEGOTIATED CONTRACT FOR THE PROCUREMENT OF SUPPLIES, SERVICES, AND MATERIALS  
IN SPAIN

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 Government of Spain (hereinafter called the Spanish 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 Spanish Government relating to procurement of supplies, services and materials dated 30 July 1954.

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

## SCHEDULE

(Schedule) Page 1 of \_\_\_\_\_ pages

Item No.	Supplies or Services	Quantity (Number of Units)	Unit	Unit Price Excl. taxes	Amount Excl. Taxes
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TOTAL CONTRACT PRICE EXCL. TAXES :

## 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 "Spanish Government" means the Government of Spain or any officer duly authorized to act on behalf of the Spanish Government in relation to this contract.

(e) Except as otherwise provided in this contract, the term "sub-contracts" means any agreement, contract, subcontract, or purchase order made by the Spanish 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 order 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 Spanish Government for adjustment under this clause must be asserted within thirty days from the date of receipt by the Spanish 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. Nothing in this clause shall excuse the Spanish Government from proceeding with the contract as changed.

3. *Extras*

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have 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 Spanish Government.

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

(c) United States Government representatives shall have the right 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 Spanish Government representatives when they intend to conduct inspections and such inspections will, insofar as feasible, be conducted promptly.

(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 instructions 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 Spanish 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.

(1) The Spanish Government will provide and require their contractors and subcontractors 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. Final acceptance or rejection of the supplies shall be made as promptly as practical after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Spanish Government from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the United States Government therefor.

(2) The inspection and test by the United States Government of any supplies or lots thereof does not relieve the Spanish 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.

(e) The Spanish Government shall provide and maintain an inspection system acceptable to the United States Government covering the supplies hereunder. Records of all inspection work by the Spanish 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 Supplies*

Except as otherwise provided in this contract, (1) the Spanish Government shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; and (2) the Spanish 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 Spanish Government of a Notice of Termination specifying to 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 directed by the Contracting Officer, the Spanish 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 subcontracts 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 subcontracts 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 directed by the Contracting Officer, all of the right, title, and interest of the Spanish Government under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, 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, if any, directed 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 directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph, *provided, however*, that the Spanish 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 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 Spanish 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 direct; (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, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Spanish Government and in which the United States Government has or may acquire an interest. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation,<sup>1</sup> as it may be amended from time to time, the Spanish 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 directed 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) After receipt of a Notice of Termination, the Spanish Government shall submit to the Contracting Officer its termination claim, in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than two years from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Spanish Government made in writing within such two-year period or authorized extension thereof. However, if the Contracting Officer determines 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 extension thereof. Upon

<sup>1</sup> United States of America : 32 CFR 8. 217.

failure of the Spanish Government to submit its termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Spanish Government by reason of the termination and shall thereupon pay to the Spanish Government the amounts so determined.

(d) Subject to the provisions of paragraph (c), the Spanish Government and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Spanish Government by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Spanish Government shall be paid the agreed amount.

(e) Any determination of costs under paragraph (c) hereof shall be governed by the Statement of Principles for Consideration 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.

(f) In arriving at the amount due the Spanish Government under this clause there shall be deducted (1) all unliquidated payments on account theretofore made to the Spanish Government, (2) any claim which the United States Government may have against the Spanish Government in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Spanish Government or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the United States Government.

(g) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Spanish 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 Spanish Government that the Spanish Government is precluded from performing the contract in accordance with its terms and conditions due to circumstances beyond its control the two Governments will consult with a view toward negotiating an amendment to this contract. If the two Governments cannot agree to an amendment extending the time of performance or otherwise modifying the contract so as to enable the Spanish Government to perform it, the United States Government may terminate this contract by reason of the inability of the Spanish Government to perform it. 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 upon the transfer to the United States Government of any or all of the property of the types referred to in paragraph (b) (6) above, in which event the United States Government will pay to the Spanish Government (i) the price provided in the contract for items completed in accordance with the contract requirements, and (ii) a price mutually agreed upon for other items.

(i) Unless otherwise provided for in this contract, or by applicable statute, the Spanish Government, from the effective date of termination and for a period of six years after final settlement under this contract, shall preserve and make available to the United States Government at all reasonable times at the office of the Spanish Government but without direct charge to the United States Government, all its books, records, documents, and other evidence bearing on the costs and expenses of the Spanish Government under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

## 8. Taxes

(a) The contract prices, including the prices in subcontracts hereunder, do not include any tax or duty which the Government of the United States and the Government of Spain have agreed shall not be applicable to expenditures in Spain by the United States, or any other tax or duty not applicable to this contract under the laws of Spain. If any such tax or duty has been included in the contract prices through error or otherwise, the contract prices shall be correspondingly reduced.

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

### 9. *Subcontracting*

(a) The Spanish 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 Spanish 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 subcontractor against the Spanish Government or the United States Government.

### 10. *Payments*

The Spanish 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 Spanish 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.

### 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 Spanish 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 Spanish 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 Spanish Government agrees to apply to this contract the provisions embodied in Section 631 of Public Law 179<sup>1</sup> and Section 629 of Public Law 488,<sup>2</sup> 82nd Congress of the United States.

### 14. *Filing of Patent Applications*

While and so long as the subject matter of this contract is classified security information, the Spanish Government agrees that it will not file, or cause to be filed, an application or registration for patent disclosing any of said subject matter without first referring the proposed application or registration to the Contracting Officer for determination as to whether, for reasons of security, permission to file such application or registration should be denied, or whether such application may be filed on conditions imposed by the Contracting Officer.

### 15. *Copyright*

(a) The Spanish 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,

<sup>1</sup> United States of America : 65 Stat. 450.

<sup>2</sup> United States of America : 66 Stat. 536.



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 delivered to the United States Government under this contract by the Spanish 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 Spanish 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 Spanish 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 Spanish 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 Spanish Government agrees to report to the Contracting Officer, promptly and in reasonably written detail, any notice or claim of copyright infringement received by the Spanish Government with respect to any material delivered under this contract.

#### 16. *Guaranty*

The Spanish Government undertakes that the benefit of any guarantee obtained in respect to any subcontract 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 Spanish Government and any materials, documents, designs, drawings, specifications or supplies delivered by the Spanish Government to the United States Government in the performance of this contract, which are classified by the originating Government as "Top Secret", "Secret", or "Confidential", shall 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 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 recipient Government agrees to include appropriate provisions covering military security material including information in all subcontracts hereunder.

#### 18. *Technical Information*

The Spanish 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 Spanish Government to the United States Government under this contract.

#### 19. *Assignment of Claims*

No claims arising under this contract shall be assigned by the Spanish Government except as follows :

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940<sup>1</sup> as amended (31 U. S. Code 203, 41 U. S. Code 15), if this contract provides for payments aggregating \$ 1,000 or

<sup>1</sup> United States of America : 54 Stat. 1029.

more, claims for moneys due or to become due the Spanish 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", or "Confidential", 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 Spain and any political subdivision thereof, from time to time in effect, which govern the hours, wages, labor relations, 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 Spanish 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 Spanish Government further agrees (i) to furnish in writing any additional information relating to such royalties as may be requested by the Contracting Officer, and (ii) to insert a provision similar to this clause in any subcontract hereunder which involves an amount in excess of the equivalent of ten thousand United States dollars.

#### 22. *Examination of Records*

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

(a) The Spanish 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 Spanish Government involving transactions related to this contract.

(b) The Spanish Government further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor 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 subcontractor involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding \$ 1,000 and (ii) subcontracts 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 Sched-

ule shall control. It is agreed that quotations and/or conversations leading up to and during the negotiations of this contract have been consummated by signing this contract which, together with the memorandum of understanding dated 30 July 1954, constitutes the entire agreement between the parties hereto. The provisions of this contract shall be interpreted on the basis of the laws of the United States and the English language version of the contract.

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

_____	THE UNITED STATES OF AMERICA
By _____	By _____
_____	_____
(Authorized Officer)	(Contracting Officer)
_____	_____
(Address)	(Address)

For \_\_\_\_\_

A. M. A.

[TRANSLATION — TRADUCTION]

MINISTRY OF FOREIGN AFFAIRS

No. 613

San Sebastian, 30 July 1954

Excellency,

[See note II]

I avail, etc.

Alberto MARTÍN ARTAJO

His Excellency James C. Dunn  
Ambassador of the United States of America  
to Spain

## II

*The American Ambassador to the Spanish Minister of Foreign Affairs*

San Sebastián, July 30, 1954

Excellency :

I have the honor to acknowledge receipt of Your Excellency's Note of July 30, 1954, which reads as follows :

"I have the honor of referring to the Note Verbale of this Ministry No. 578 of 22nd July,<sup>1</sup> communicating the consent of the Spanish Government to conclude an agreement with the Government of the United States relating to the "off-shore" procurements in Spain, on the basis of the Note Verbale of that Embassy No. 496 of 10th May last<sup>1</sup> and of its two annexes.

Confirming thus the desire of the Spanish Government to continue collaborating with that of the United States in the execution of the so-called "off-shore" Procurement Program in furtherance of the mutual security of Western civilization, I have now the honor of communicating to Your Excellency its agreement with the stipulations of the "Memorandum of Understanding between the United States and the Government of Spain relating to off-shore Procurement attached to this Note, which should be considered, together with Your Excellency's answer, as constituting an Agreement between our two Governments, for the governing of these purchases which will enter into force on this date.

The Spanish Government understands that the Standard Clauses<sup>2</sup> attached to the Memorandum previously mentioned will be utilised as a model for the contracts to be signed between both Governments.

I take note also of the assurances given by Your Excellency that the general lines of the documents coincide with what has been agreed with the other nations that are collaborating in the execution of the 'off-shore' program."

I have the honor to inform Your Excellency that, in accordance with the second paragraph of your Note of today's date, the Government of the United States agrees that the attached "Memorandum of Understanding Between the United States and the Government of Spain Relating to Offshore Procurement" together with Your Excellency's Note of July 30, 1954, with attachments, and this Note of mine, shall be considered as constituting an Agreement between our two Governments relating to offshore procurement in Spain which will take effect on July 30, 1954.

Accept, Excellency, the renewed assurance of my highest consideration.

James Clement DUNN

His Excellency Alberto Martín Artajo  
Minister of Foreign Affairs  
San Sebastián

<sup>1</sup> Not printed by the Department of State of the United States of America.

<sup>2</sup> See p. 51 of this volume.

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

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

1. *Scope and Purpose of the Offshore Procurement Program*

It is the intent of the United States Government to procure in countries participating in the mutual security program those types of materials, services, supplies and equipment, including vessels, vehicles and aircraft, appropriate either for mutual security military aid or for the direct use of United States Forces. The extent of this program in Spain is dependent upon various considerations, including the ability of the U. S. Government to place contracts at reasonable prices with satisfactory delivery dates. It is intended that offshore procurement will materially contribute to the combined defense productive capacity of the nations which are associated with the United States in the mutual defense of Western Europe and will at the same time provide a means for increasing the dollar earnings of these countries.

The United States Government will conduct offshore procurement 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 Spain in furtherance of the principles set forth in Section 516 of the Mutual Security Act of 1951,<sup>1</sup> the Mutual Defense Assistance Control Act of 1951,<sup>2</sup> and Article II (3) of the Economic Cooperation Agreement of June 28, 1948, as amended.<sup>3</sup>

In accordance with the understanding that the U. S. Government intends to conduct the offshore procurement program in accordance with relevant U. S. legislation and in furtherance of the principles set forth in certain U. S. statutes, it is understood that, in order to carry out this intention, the U. S. Embassy may from time to time submit the names of certain firms and individuals who in their opinion have acted contrary to the mutual security interest of our two countries and that no contracts will be awarded to these firms and individuals under the Offshore Procurement Program, and that no subcontracts will be awarded to these firms and individuals without prior conversations between the Governments of Spain and the United States.

2. *Intergovernmental Coordination*

The program of the United States Government for procurement of military end items in Spain will be coordinated with the defense program of the Spanish Government. Appropriate officials of the two governments will consult on a continuing basis to study production problems and the carrying out of recommendations for the procurement of end items required by the United States Government. The two governments will exchange information, as needed, and on a continuing basis, with respect to procurement

<sup>1</sup> United States of America : 65 Stat. 382 ; 22 U.S.C. § 1667.

<sup>2</sup> United States of America : 65 Stat. 644 ; 22 U.S.C. § 1611 note.

<sup>3</sup> Correct reference should be to article II (1) (e) of the Economic Aid Agreement between Spain and the United States of America, dated September 26, 1953. See p. 66 of this volume.

plans, production facilities in Spain and progress in the achievement of production objectives in Spain.

### 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 directly with the Spanish Government or directly with individuals, firms, or other legal entities in Spain; provided, that insofar as is possible, prior notification of any such contracts will be given to the Government of Spain.

### 5. *Contract Assistance*

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

### 6. *Supply of Equipment, Materials and Manpower*

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

### 7. *Security*

In the case of procurement contracts placed by the United States Government with the Spanish 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 the case of procurement contracts placed by the United States Government with private Spanish contractors, similar security arrangements for classified material will be followed. Classified material of the United States Government needed by a contractor will be delivered to the appropriate Ministry of the Spanish Government. An official of that Ministry will transmit the material to the contractor in such a way as to make the provisions of the Spanish security laws and regulations applicable to it. Such material will, prior to transmittal, receive a security classification of the Spanish 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 Spanish Government will notify the contractor that the classified material delivered to him is also classified material of the Spanish Government and subject to the provisions of the Spanish security laws and regulations.

The Spanish Government will, upon request, conduct a security investigation of any prospective Spanish contractor to the United States Government in the same manner as such investigations are conducted in cases of defense procurement by the Spanish Government, and a recommendation resulting from such investigation will be made to the United States Government.

No charges will be made by the Government of Spain for services rendered pursuant to this clause.

#### 8. *Inspection*

Inspection of all materials, services, supplies and equipment, including vessels, vehicles and aircraft procured by the United States Government in Spain either from the Government of Spain or Spanish manufacturers and suppliers shall be carried out by representatives of the Government of Spain when requested by the United States Government. In such cases, the Government of Spain will certify to the United States Government that the products meet all specifications and other requirements of the contract. It is not the intention of the United States Government generally to duplicate inspection made by the Government of Spain, but the United States Government shall have the right to make independent inspections and verifications. Accordingly, passage of any item by the inspectors of the Government of Spain may not necessarily be considered as finally meeting the responsibility of the United States contracting officer either as to quality or quantity. Inspection services rendered by the Government of Spain will be free of cost or charge to the United States Government.

#### 9. *Credit Arrangements*

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

#### 10. *Licenses*

The Government of Spain will facilitate the obtaining and granting of any necessary licenses, including exchange control, export and import licenses, which may be required in connection with any United States Government offshore procurement contract, whether placed in Spain or in North Atlantic Treaty or European Defense Community countries. Prior notification of such contracts will be given to the Government of Spain whenever possible.

#### 11. *Taxes*

The provisions of the Tax Relief Annex Attached to the Mutual Defense Assistance Agreement dated September 26, 1953,<sup>1</sup> as well as the agreed procedures thereunder,

<sup>1</sup> United Nations, *Treaty Series*, Vol. 207, p. 61.

are also applicable to the offshore procurement program of the United States Government in Spain. 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.

#### 13. *Protection of United States Property and Personnel*

1) a) It is understood that any interest of the United States Government in property acquired through or used in connection with offshore procurement contracts in Spain will be immune from legal process or seizure.

b) Likewise, it is understood that the United States Government is protected against suits or other legal action in Spain as to any matter which may arise out of an offshore procurement contract ; provided, however, that in no event will this sub-paragraph be construed to prohibit the contractor from exercising any rights granted under pertinent United States laws and regulations.

2) Contracting officers and other authorized procurement personnel who are in Spain in connection with the offshore procurement program and whose names will have been duly reported to the Spanish Government will be accorded the privileges and immunities set forth in Article IV of the Mutual Defense Assistance Agreement between the U. S. and Spain signed at Madrid on 26 September, 1953.

#### 14. *Destination of End-Items*

Although the determination of specifications and other requirements of particular offshore procurement contracts may require a tentative identification of the recipient country to which the end-items are to be delivered, it is understood that 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 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 Government of Spain. Further, the Government of Spain 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 subcontracts under any contract between the United States Government and the Government of Spain.

The Government of Spain advises that it does not have any law authorizing the recoupment of excess profits similar to the Renegotiation Act of the United States.<sup>1</sup>

<sup>1</sup> United States of America : Public Law 9, approved March 23, 1951 ; 65 Stat. 7 ; 50 U.S.C. app. § 1211 note.



#### 16. *Reporting of Subcontracts*

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

#### 17. *No Profits Clause*

On offshore procurement contracts, it is understood that no profit of any nature, including net gains resulting from fluctuations in exchange rates, will be made by the Government of Spain. The Government of Spain agrees to determine whether it has realized any such profit, in which event, or in the event that the United States Government considers that such profit may have been realized, the Government of Spain agrees that it will immediately 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 Spanish Government shall make available 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. If, as a result of conversations between the respective Governments, it is established that profit has been realized by the Spanish Government on such contracts it shall refund the amount of the profit to the United States Government under arrangements and procedures to be agreed upon between the two Governments. At the request of either Government, a refund adjustment will be accomplished on completed contracts at the earliest practicable date, but this adjustment must be effected on or before 31 December 1956 or such later dates as may be mutually agreed upon by the two Governments. This article shall not be construed as affecting in any manner any profit refunding provisions as may be contained in individual contracts.

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EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT<sup>1</sup>  
BETWEEN THE UNITED STATES OF AMERICA AND  
SPAIN AMENDING THE AGREEMENT OF 30 JULY 1954  
RELATING TO A PROGRAM OF OFFSHORE PROCURE-  
MENT. MADRID, 26 OCTOBER 1954

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I

*The American Ambassador to the Spanish Minister of Foreign Affairs*

AMERICAN EMBASSY, MADRID, SPAIN

No. 1092

October 26, 1954

Excellency :

I have the honor to refer to the agreement concluded with the Government of Spain concerning offshore procurement in an exchange of notes dated July 30, 1954 at San Sebastián.

Through inadvertence, in the second paragraph of Article I of the "Memorandum of Understanding Between United States and the Government of Spain Relating to Offshore Procurement" reference was incorrectly made to *Article II (3) of the Economic Cooperation Agreement of June 28, 1948, as amended*". Reference should properly be to *Article II (1) (e) of the Economic Aid Agreement Between Spain and the United States of America, dated September 26, 1953*.<sup>2</sup>

I hereby propose that this present note and the affirmative reply of Your Excellency shall be considered as constituting agreement to amend the affected paragraph of the above-mentioned Memorandum of Understanding by deletion of the incorrect reference, and substitution of the proper one. It is further proposed that copies of this present exchange of notes be attached to, and henceforth form an integral part of, the Memorandum of Understanding Between United States and the Government of Spain Relating to Offshore Procurement.

Accept, Excellency, the renewed assurance of my highest consideration.

James Clement DUNN

His Excellency Alberto Martín Artajo  
Minister of Foreign Affairs  
Madrid

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<sup>1</sup> Came into force on 26 October 1954 by the exchange of the said notes.

<sup>2</sup> United Nations, *Treaty Series*, Vol. 207, p. 93.

[TRANSLATION<sup>1</sup> — TRADUCTION<sup>2</sup>]

MINISTRY OF FOREIGN AFFAIRS

No. 863

Madrid, October 26, 1954

Excellency :

I have the honor to acknowledge the receipt of Your Excellency's note No. 1092, dated today, the text of which, translated into Spanish, reads as follows :

[*See note I*]

In communicating to Your Excellency the agreement of the Spanish Government with respect to the foregoing, I beg you, Mr. Ambassador, to accept the assurances of my highest consideration.

Alberto MARTÍN ARTAJO

His Excellency James Clement Dunn  
Ambassador Extraordinary and Plenipotentiary  
of the United States of America  
Madrid

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<sup>1</sup> Translation by the Government of the United States of America.

<sup>2</sup> Traduction du Gouvernement des États-Unis d'Amérique.