

No. 3311

**UNITED STATES OF AMERICA
and
ITALY**

Exchange of notes (with annexed Memorandum of Understanding and model contract) constituting an agreement relating to the offshore procurement program. Rome, 31 March 1954

Official texts: English and Italian.

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

**ÉTATS-UNIS D'AMÉRIQUE
et
ITALIE**

Échange de notes (avec, en annexe, le Mémorandum d'accord et le contrat type) constituant un accord relatif au programme d'achats *offshore*. Rome, 31 mars 1954

Textes officiels anglais et italien.

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

No. 3311. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND ITALY RELATING TO THE OFFSHORE PROCUREMENT PROGRAM. ROME, 31 MARCH 1954

I

The Italian Minister of Foreign Affairs to the American Ambassador

[ITALIAN TEXT — TEXTE ITALIEN]

IL MINISTRO DEGLI AFFARI ESTERI

22/00322

Roma, li 31 mar. 1954

Eccellenza,

ho l'onore di riferirmi alle conversazioni che si sono svolte recentemente tra i Rappresentanti dei nostri due Governi che hanno portato alla redazione concordata dei qui uniti "Memorandum d'Intesa tra il Governo degli Stati Uniti d'America e il Governo della Repubblica Italiana relativo alle commesse *off shore*" e "Modello di Contratto tra il Governo degli Stati Uniti d'America ed il Governo della Repubblica Italiana per commesse *off shore* da collocarsi in Italia".

Appena in possesso di una Nota del Suo Governo indicante che le disposizioni contenute nei sopra citati documenti sono accettate da parte del Governo degli Stati Uniti, il Governo Italiano considererà che la presente Nota e la Sua risposta costituiranno un Accordo fra i due Governi in materia di commesse *off shore*, Accordo che andrà in vigore alla data della Sua Nota di risposta.

Mi è grata l'occasione, Eccellenza, per rinnovarle l'espressione della mia più alta considerazione.

A. PICCIONI

S.E. la Signora Clara Boothe Luce
Ambasciatore degli Stati Uniti d'America
Roma

¹ Came into force on 31 March 1954 by the exchange of the said notes.

[TRANSLATION¹ — TRADUCTION²]

THE MINISTER OF FOREIGN AFFAIRS

22/00322

Rome, March 31, 1954

Excellency :

I have the honor to refer to the conversations recently held between the Representatives of our two Governments which resulted in agreement on the wording of the enclosed "Memorandum of Understanding between the Government of the United States of America and the Government of the Italian Republic relating to offshore orders" and "Model Contract between the Government of the United States of America and the Government of the Italian Republic for offshore orders to be placed in Italy".

On receipt of a note from your Government stating that the provisions contained in the above-mentioned documents are accepted by the Government of the United States, the Italian Government will consider that the present note and your reply will constitute an agreement between the two Governments concerning offshore orders, which agreement will enter into force on the date of your note in reply.

I am happy to avail myself of this occasion, Excellency, to renew to you the assurances of my highest consideration.

A. PICCIONI

Her Excellency Clare Boothe Luce
Ambassador of the United States of America
Rome

II

The American Ambassador to the Italian Minister of Foreign Affairs

No. 1554

Rome, March 31, 1954

Excellency :

I have the honor to acknowledge the receipt of your note dated March 31, 1954, regarding the offshore procurement program for Italy and enclosing texts of a "Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Italy Relating to Offshore Procurement" and of a "Model Contract between the Government of the United States of America and the Government of the Republic of Italy for Offshore Procurement Contracts Placed in Italy".

¹ Translation by the Government of the United States of America.

² Traduction du Gouvernement des États-Unis d'Amérique.

In reply I am enclosing English texts of the above-mentioned Memorandum of Understanding¹ and Model Contract² and have the honor to inform you, in accordance with the proposal made in your Excellency's note, that the provisions of these documents meet with the approval of the United States Government. Your note and the present note, accordingly, are considered as constituting an Agreement between our two Governments on offshore procurement, such Agreement to enter into force as of this date.

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

Clare Boothe LUCE
American Ambassador

His Excellency Attilio Piccioni
Minister of Foreign Affairs
Rome

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

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

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, construction and equipment appropriate either for mutual security military aid or for the direct use of United States Forces. The extent of this program in Italy is dependent upon various considerations, including the ability of the United States 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 members of the North Atlantic Treaty Organization 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 Italy in furtherance of the principles set forth in Section 516 of the Mutual Security Act of 1951,³ the Mutual Defense Assistance Control Act of 1951,⁴

¹ See below.

² See p. 315 of this volume.

³ United States of America : 65 Stat. 382 ; 22 U.S.C. § 1667.

⁴ United States of America : 65 Stat. 644 ; 22 U.S.C. § 1611 note.

and Article II (3) of the Economic Cooperation Agreement between the United States of America and Italy of June 28, 1948,¹ as amended.²

The United States Government and the Italian Government will consult from time to time with regard to those firms and individuals who have acted contrary to the mutual security interest of the two countries with a view to excluding these firms and individuals from receiving contracts or subcontracts under the Offshore Procurement Program.

2. *Intergovernmental Coordination*

The program of the United States Government for procurement of military end items in Italy will be coordinated with the defense program of the Italian 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. The two governments will exchange information, as needed, and on a continuing basis, with respect to procurement plans, production facilities in Italy and progress in the achievement of production objectives in Italy.

3. *Contract Placement and Parties to Contract*

The United States Government may place procurement contracts with the Italian Government or with individuals, firms or other legal entities in Italy through contracting officers of the United States Military Departments. Such contracts shall be executed and administered in the name and on behalf of the United States Government. The Italian Government will be periodically notified of the placement of contracts awarded under the Mutual Defense Assistance Program.

4. *Contract Assistance*

The Italian Government shall as necessary be consulted by the contracting officers concerning the selection of contractors and subcontractors. The Italian Government shall on request assist in such selection within the necessary and appropriate limits. The Italian Government shall also assist the United States Government and individual contractors to the extent necessary and appropriate to facilitate the administration and carrying out of offshore procurement contracts.

5. *Supply of Equipment, Materials and Manpower*

The Italian Government shall extend to offshore procurement contractors and subcontractors every possible assistance in the securing of equipment, materials, manpower and services. In any case, their treatment shall be equal to the treatment extended to contractors having similar contracts with the Government of Italy.

6. *Security*

In the case of procurement contracts placed by the United States Government with the Italian Government, any classified material, including information, delivered by one government to the other will be given a security classification by the recipient government

¹ United Nations, *Treaty Series*, Vol. 20, p. 43.

² United Nations, *Treaty Series*, Vol. 55, p. 318 ; Vol. 79, p. 274 ; Vol. 141, p. 362, and Vol. 200, p. 264.

which will afford to the material substantially the same degree of security as would be 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 Italian 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 Italian Government. An official of that Ministry will transmit the material to the contractor in such a way as to make the provisions of the Italian security laws and regulations applicable to it. Such material will, prior to transmittal, receive a security classification of the Italian 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 Italian Government will notify the contractor that the classified material delivered to him is considered also classified material of the Italian Government and subject to the provisions of the Italian security laws and regulations.

The Italian Government will, upon request, conduct a security investigation of any prospective Italian contractor to the United States Government in the same manner as such investigations are conducted in cases of defense procurement by the Italian 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 Italy for services rendered pursuant to this clause.

7. *Inspection*

Inspection of all materials, services, supplies, construction and equipment procured by the United States Government in Italy shall be carried out by representatives of the Government of Italy when requested by the United States Government. In such cases, the Government of Italy 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 Italy, 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 Italy 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 Italy will be free of cost or charge to the United States Government.

8. *Credit Arrangements*

The Government of Italy will assist in providing Italian contractors producing for the United States offshore procurement program special credit facilities at least equal to those accorded to Italian business establishments producing for the defense or export program of Italy.

9. Licenses

The Government of Italy will grant and facilitate the obtaining of any licenses, including exchange control, export and import licenses and temporary permits, in accordance with a procedure to be established, which may be considered necessary in connection with any United States Government offshore procurement contract, whether placed in Italy or in other North Atlantic Treaty countries.

10. Taxes

The provisions of the Exchange of Notes between the Government of Italy and the United States Government dated March 5, 1952,¹ as well as the agreed procedures thereunder, are applicable to the procurement program of the United States Government in Italy. The two governments may consult from time to time as the occasion arises regarding implementation of that agreement.

11. Standard Contract Clauses

Standard clauses have been approved by the two governments for use, as appropriate, in contracts between them and are contained in the attached model contract. Other clauses may be included in individual contracts.

12. Protection of United States Property and Personnel

a) The Italian Government agrees that it will save the United States Government harmless from any loss or damage which might be incurred as a result of any suit, lien, attachment, or other legal process or seizure in Italy against any interest of the United States Government in property acquired through offshore procurement contracts in Italy or as a result of any legal process in Italy against the United States Government on any matter which may arise out of an offshore procurement contract, provided that nothing herein shall be construed as a waiver of any immunity to which the United States Government may be entitled.

b) Contracting officers and other authorized procurement personnel who are in Italy in connection with the offshore procurement program and whose names have been duly reported to the Italian Government will be accorded the privileges and immunities set forth in paragraphs (2) and (3) of Annex G to the Mutual Defense Assistance Agreement between the United States and Italy signed at Washington on 27 January 1950² provided that upon entry into force of the NATO status of forces agreement³ between the United States and Italy, the status of such contracting officers and other authorized procurement personnel will be reconsidered in the light of that agreement, such other pertinent agreements as may be in force between the two governments and such other considerations as may be appropriate. The maximum number of procurement personnel who will enjoy the privileges referred to above will be fixed every year by consultation between the U.S. Embassy at Rome and the Italian Ministry of Foreign Affairs.

¹ United Nations, *Treaty Series*, Vol. 179, p. 3.

² United Nations, *Treaty Series*, Vol. 80, p. 145.

³ United Nations, *Treaty Series*, Vol. 199, p. 67, and Vol. 200, p. 340.

13. *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.

14. *Technical Assistance*

The United States Government shall make available all United States Government drawings and specifications, and assist in the obtaining of other drawings and specifications which the United States Government deems necessary for proper performance under the contract. In those cases where the United States Government has promised to deliver drawings and specifications and does not deliver such drawings and specifications in sufficient time to permit the contractor to proceed in accordance with the delivery schedule, then the contract shall be extended by the number of days equal to the number of days to which non-compliance with the delivery schedule is attributable to the United States Government in the delivery of such drawings and specifications; such extension shall be effected by a supplemental agreement to the contract.

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 the Government of Italy. Further, the Government of Italy advises that it will not utilize the type of contract in which payment is made on this basis in subcontracts under any contract between the United States Government and the Government of Italy.

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

16. *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 Italy. The Government of Italy 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 Italy agrees that it will immediately enter into conversation with the United States Government for the purpose of determining the existence and the amount of such profit. During these conversations, the Italian Government shall furnish the United States Government 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

¹ United States of America : Public Law 9, approved Mar. 23, 1951 ; 65 Stat. 7 ; 50 U.S.C., app. § 1211.

has been realized by the Italian 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 December 31, 1955 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.

MODEL CONTRACT

Contract No _____

NEGOTIATED CONTRACT for the Procurement of Supplies, Services, and Materials in Italy

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 Republic of Italy (hereinafter called the Italian 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 Italian Government relating to procurement of supplies, services and materials dated _____.

The parties hereto agree that the Italian 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) Page 1 of pages

SCHEDULE

Item No.	Supplies or Services	Quantity (Number of Units)	Unit	Unit Price Excl. taxes	Amount Excl. taxes
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 "Italian Government" means the Republic of Italy or any officer duly authorized to act on behalf of the Italian Government in relation to this contract.

(e) Except as otherwise provided in this contract, the term "subcontracts" means any agreement, contract, subcontract, or purchase order made by the Italian Government with any contractor in fulfillment of any part of this contract, and any agreements, contracts, subcontracts 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 total 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 Italian Government for adjustment under this clause must be asserted within sixty days from the date of receipt by the Italian 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 Italian 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 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 Italian Government.

(b) The Italian 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 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 Italian 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, except for supplies or materials furnished or certified by 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 Italian 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 Italian 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 practicable after delivery, except as otherwise provided in this contract, but failure to inspect and accept or reject supplies shall neither relieve the Italian 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 Italian 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 Italian 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 Italian 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 Italian 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 Italian 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 Italian 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 Italian 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 Italian 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 Contracting the 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 Italian 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 Italian 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 Italian 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,¹ as it may be amended from time to time, the Italian 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 Italian 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 Italian 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 failure of the Italian 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 Italian Government by reason of the termination and shall thereupon pay to the Italian Government the amount so determined.

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

(e) Any determination of costs under paragraph (c) hereof shall be governed by the State 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 Italian Government under this clause there shall be deducted (1) all unliquidated payments on account theretofore made to the Italian Government,

¹ United States of America : 32 CFR, part 8.

(2) amounts due or which may be due from the Italian Government to the United States 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 Italian 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 Italian 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 Italian Government that the Italian 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 Italian Government to perform it, the United States Government may terminate this contract by reason of the inability of the Italian 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 Italian 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 Italian Government, from the effective date of termination and for a period of five 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 Italian 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 Italian Government under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof.

8. Taxes

(a) The contract prices, including the prices in subcontracts hereunder, are understood to be net of the taxes and duties which, in accordance with the agreement entered into between the Government of the United States and the Government of Italy, will not be borne by the United States for its expenditures in Italy, as well as net of all other taxes or duties not applicable to this contract under the laws of Italy.

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

9. Subcontracting

(a) The Italian 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 Italian 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 Italian Government of the United States Government.

(c) The Italian Government agrees to furnish to the United States Contracting Officers such information as may be requested regarding the placement or proposed placement by the Italian Government of subcontracts and purchase orders, with a view to facilitating early consultation between the two governments on any questions respecting the reliability, potential efficiency, or productivity of any such subcontractor.

10. *Payments*

The Italian 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 Italian 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 Italian 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 Italian 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 Italian Government agrees to apply to this contract the provisions embodied in Section six hundred thirty-one, Public Law 179,¹ and Section six hundred twenty-nine, Public Law 488,² 82nd Congress of the United States and like provisions embodied in subsequent United States Appropriation Acts.

14. *Filing of Patent Applications*

While and so long as the subject matter of this contract is classified security information, the Italian 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 Italian 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 delivered to the United States Government under this contract by the Italian 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 Italian 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 Italian 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.

¹ United States of America : 65 Stat. 450.

² United States of America : 66 Stat. 536.

(b) The Italian Government agrees that it will exert all reasonable effort to advise the Contracting Officer, at the time of the 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 Italian Government agrees to report to the Contracting Officer, promptly and in reasonable written detail, any notice or claim of copyright infringement received by the Italian Government with respect to any material delivered under this contract.

16. *Guaranty*

The Italian Government undertakes that the benefit of any technical guarantee obtained in respect of any item subcontracted 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 Italian Government and any materials, documents, designs, drawings, specifications or supplies delivered by the Italian Government to the United States Government in the performance of this contract, which are classified by the originating Government as "Top Secret", "Secret", "Confidential" or "Restricted", 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 acknowledgment 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 Italian 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 NATO mutual defense, all or any part of the reports, drawings, blueprints, data and technical information, specified to be delivered by the Italian Government to the United States Government under this contract.

19. *Assignment of Claims*

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

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940¹ as amended² (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 Italian 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",

¹ United States of America : 54 Stat. 1029.

² United States of America : 65 Stat. 41.

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 Italy, from time to time in effect, which govern the hours, wages, labor relations (including collective bargaining), workmen'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 Italian 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 Italian 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 Italian Government agrees that the Comptroller General of the United States or one of his regularly authorized representatives shall, until the expiration of three years after final payment under this contract, be furnished on request the necessary data relative to the documents concerning the transactions that are directly related to the present contract.

(b) The Italian 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, on request be furnished through the medium of the Italian Government copies of 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.

23. *Settlement of Controversies*

If in the performance of this contract or as a consequence of its termination, some controversial issue should arise, the solution of such disagreement shall be reached through consultation between the two Governments.

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 15 numbered pages and this Signature Sheet. To the extent of any inconsistency between the Schedule on the General Provisions, and any specifications or other provisions which are made a part of this contract by reference or otherwise, the Schedule and 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 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 REPUBLIC OF ITALY :

THE UNITED STATES OF AMERICA :

By _____

By _____

(Authorized Officer)

(Contracting Officer)

(Address)

(Address)

For _____
