

No. 3661

**UNITED STATES OF AMERICA
and
LUXEMBOURG**

**Agreement relating to offshore procurement. Signed at
Luxembourg, on 17 April 1954**

**Exchange of notes constituting an agreement relating to the
standard contract form for use in the offshore procure-
ment program. Luxembourg, 17 April, 10 May and
16 July 1954**

Official texts: English and French.

Registered by the United States of America on 16 January 1957.

**ÉTATS-UNIS D'AMÉRIQUE
et
LUXEMBOURG**

**Accord relatif aux achats dits *offshore*. Signé à Luxembourg,
le 17 avril 1954**

**Échange de notes constituant un accord relatif au contrat
type devant être utilisé pour les besoins du programme
d'achats *offshore*. Luxembourg, 17 avril, 10 mai et
16 juillet 1954**

Textes officiels anglais et français.

Enregistrés par les États-Unis d'Amérique le 16 janvier 1957.

No. 3661. AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE GRAND DUCHY OF LUXEMBOURG RELATING TO OFFSHORE PROCUREMENT. SIGNED AT LUXEMBOURG, ON 17 APRIL 1954

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

Article 1

SCOPE AND PURPOSE OF THE OFFSHORE PROCUREMENT PROGRAM

It is the intent of the Government of the United States of America 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 Luxembourg is dependent upon various considerations, including the ability of the Government of the United States of America 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 the European Defense Community and will at the same time provide a means for increasing the dollar earnings of these countries.

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

In accordance with the understanding that the Government of the United States of America intends to conduct the Offshore Procurement Program in accordance with relevant United States legislation and in furtherance of the principles set forth in certain United States statutes, it is understood that, in order to carry out this intention, the Legation of the United States of America may from

¹ Came into force on 30 September 1955, by notification to the Government of the United States of America by the Government of Luxembourg of ratification of the Agreement by Luxembourg, in accordance with article 18.

² United Nations, *Treaty Series*, Vol. 24, p. 35; Vol. 55, p. 324; Vol. 79, p. 306; Vol. 137, p. 280, and Vol. 212, p. 286.

time to time submit the names of certain firms and individuals who have acted contrary to the mutual security interest of our two countries and that no contracts or subcontracts will be awarded to these firms and individuals under the Offshore Procurement Program.

Article 2

INTERGOVERNMENTAL COORDINATION

The program of the Government of the United States of America for procurement of military items in Luxembourg will be coordinated with the defense program of the Government of Luxembourg. 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 items required by the Government of the United States of America.

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

Article 3

CONTRACT PLACEMENT BY CONTRACTING OFFICERS

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

Article 4

PARTIES TO CONTRACTS

United States contracting officers may contract directly with individuals, firms, or other legal entities in Luxembourg or with the Government of Luxembourg.

Article 5

CONTRACT ASSISTANCE

The Government of Luxembourg will, upon request of the contracting officer, assist in the selection of contractors and subcontractors and also will otherwise assist the Government of the United States of America and individual contractors to the extent necessary and appropriate to facilitate the administering and carrying out of offshore procurement contracts.

Article 6

SUPPLY OF EQUIPMENT, MATERIALS AND MANPOWER

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

Article 7

SECURITY

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

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

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

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

It is understood that while this article provides for certain security arrangements and safeguards for classified material and information made available by the Government of the United States of America to the Government of Luxembourg under the Offshore Procurement Program, nothing therein is to be construed as affecting the obligations with respect to security which the two Governments have assumed as parties to the NATO Agreement on Security set forth in Annex A to NATO document D.C. 2/7 (Final),¹ dated April 8, 1952.

Article 8

INSPECTION

Inspection of all materials, services, supplies, construction and equipment procured by the Government of the United States of America in Luxembourg either from the Government of Luxembourg or Luxembourg manufacturers and

¹ Not printed by the Department of State of the United States of America.

suppliers shall be carried out by representatives of the Government of Luxembourg when requested by the Government of the United States of America. In such cases, the Government of Luxembourg will certify to the Government of the United States of America that the products meet all specifications and other requirements of the contract. It is not the intention of the Government of the United States of America generally to duplicate inspection made by the Government of Luxembourg, but the Government of the United States of America shall have the right to make independent inspections and verifications. Accordingly, passage of any item by the inspectors of the Government of Luxembourg may not necessarily insure acceptance of the item by the United States contracting officer who has the responsibility to decide whether the item meets the contract specifications as to quality and quantity. Inspection services rendered by the Government of Luxembourg will be free of cost or charge to the Government of the United States of America.

Article 9

CREDIT ARRANGEMENTS

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

Article 10

LICENCES

The Government of Luxembourg will grant, and facilitate the obtaining of, any necessary licences, including exchange control, export and import licences, which may be required in connection with any offshore procurement contract of the Government of the United States of America, whether placed in Luxembourg or in other North Atlantic Treaty or European Defense Community countries.

Article 11

TAXES

The provisions of the Agreement between the United States of America and Luxembourg relating to relief from taxation on defense expenditures, dated March 13, 1952,¹ as well as the agreed procedures thereunder, are applicable to the procurement program of the Government of the United States of America in Luxembourg.

¹ United Nations, *Treaty Series*, Vol. 168, p. 57.

In contracts between the two Governments, the Government of the United States of America will be accorded exemptions from taxes and charges equal in amount to those which it would receive if it contracted directly with private contractors in Luxembourg. In those cases, therefore, in which contracts are made between the two Governments, the Agreement of March 13, 1952 shall be construed to mean that exemptions on the taxes enumerated in the Agreement shall apply (a) on sales made by the Government of Luxembourg to the Government of the United States of America; (b) on sales to the Government of Luxembourg by its dealers and suppliers; and (c) on sales to the dealers and suppliers who are selling to the Government of Luxembourg.

The two Governments may consult from time to time as the occasion arises regarding further implementation of the Agreement of March 13, 1952.

Article 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.

Article 13

PROTECTION OF UNITED STATES PROPERTY AND PERSONNEL

It is understood that any property of the Government of the United States of America acquired through or used in connection with offshore procurement contracts in Luxembourg will be immune from legal process or seizure. Likewise, it is understood that the Government of the United States of America is protected against any suits or other legal action in Luxembourg which may arise out of an offshore procurement contract.

Contracting officers and other authorized procurement personnel who are in Luxembourg in connection with the Offshore Procurement Program and whose names will have been duly reported to the Government of Luxembourg will be accorded the privileges and immunities set forth in paragraph (B) and (C) of Annex E to the Mutual Defense Assistance Agreement between the United States of America and Luxembourg signed at Washington on January 27, 1950¹ provided that upon entry into force of the NATO Status of Forces Agreement between the United States of America and Luxembourg,² 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.

¹ United Nations, *Treaty Series*, Vol. 80, p. 187.

² United Nations, *Treaty Series*, Vol. 199, p. 67, and Vol. 200, p. 340.

Article 14

DESTINATION OF 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 items produced under the contracts are to be delivered, it is understood that the Government of the United States of America may subsequently amend any such prior determination and identification as to which country shall be the ultimate recipient of the items produced.

Article 15

CONTRACT TERMS

Inasmuch as the statutes of the United States of America 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 Government of the United States of America and either private contractors or the Government of Luxembourg. Further, the Government of Luxembourg 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 Government of the United States of America and the Government of Luxembourg.

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

Article 16

REPORTING OF SUBCONTRACTS

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

Article 17

NO PROFITS CLAUSE

On offshore procurement contracts entered into between the Government of the United States of America and the Government of Luxembourg, 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 Luxembourg. The Government of Luxembourg agrees to determine whether it has realized any such profit, in which event, or in the event that the Government of the United States of America considers that such profit may have been realized, the Government of Luxembourg agrees that it will immediately enter into

conversations with the Government of the United States of America for the purpose of determining the existence and the amount of such profit. During these conversations, the Government of the United States of America shall have access to such documents and accounting data as may be necessary to determine the facts. In the computation of profits hereunder, the contracts shall be taken collectively. If, as a result of conversations between the respective Governments, it is established that profit has been realized by the Government of Luxembourg on such contracts it shall refund the amount of the profit to the Government of the United States of America 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 possible 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.

Article 18

RATIFICATION AND ENTRY INTO FORCE

This Agreement shall come into force when the Government of Luxembourg has notified the Government of the United States of America of ratification by Luxembourg.

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

DONE at Luxembourg, in duplicate, in the English and French languages, both texts being equally authentic, this seventeenth day of April, one thousand nine hundred fifty four.

For the United States of America :
Wiley T. BUCHANAN, Jr.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹
BETWEEN THE UNITED STATES OF AMERICA AND
THE GRAND DUCHY OF LUXEMBOURG RELATING
TO THE STANDARD CONTRACT FORM FOR USE IN
THE OFFSHORE PROCUREMENT PROGRAM. LUXEM-
BOURG, 17 APRIL, 10 MAY AND 16 JULY 1954

I

The American Minister to the Luxembourg Minister of Foreign Affairs

AMERICAN LEGATION

No. 57

Luxembourg, April 17, 1954

Excellency :

I have the honor to refer to the Agreement between the United States of America and Luxembourg relating to Offshore Procurement which was signed in Luxembourg on this date² and to the discussions between representatives of our two Governments regarding government-to-government contracts for procurement under the terms of this Agreement. I attach a copy of the standard contract³ prepared during the course of these discussions and agreed to by those representatives.

I am now instructed to inform you that the standard contract attached hereto has been agreed to by the Government of the United States of America. I would appreciate it if you would confirm that this document is acceptable to your Government. My Government will consider that this note and your reply constitute an Agreement between our two Governments, effective on the date on which the Agreement relating to Offshore Procurement comes into force.

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

Wiley T. BUCHANAN, Jr.

Enclosure:

Copy of Standard Contract.

His Excellency Joseph Bech
Minister of Foreign Affairs for the Grand Duchy
of Luxembourg

¹ Came into force on 30 September 1955, the date of entry into force of the Agreement of 17 April 1954 relating to offshore procurement, in accordance with the terms of the said notes.

² See p. 256 of this volume.

³ See p. 272 of this volume.

MODEL CONTRACT

Contract No.

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

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 Government of the United States of America (hereinafter called the United States Government) represented by the Contracting Officer executing this contract and the Grand Duchy of Luxembourg (hereinafter called the Luxembourg Government) represented by

This contract is executed subject to the agreement and conditions included in the Agreement between the United States Government and the Luxembourg Government relating to Offshore Procurement dated April 17, 1954.

The parties hereto agree that the Luxembourg 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

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

* See Clause 8 of General Provisions.

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 "Luxembourg Government" includes any officer duly authorized to act on behalf of the Luxembourg Government in relation to this contract.

(d) Except as otherwise provided in this contract, the term "subcontracts" means any agreement, contract, subcontract, or purchase order made by the Luxembourg 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 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 Luxembourg Government for adjustment under this clause must be asserted within thirty days from the date of receipt by the Luxembourg 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 Luxembourg 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 Luxembourg Government.

(b) The Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg Government of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Luxembourg 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 Luxembourg 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 Luxembourg 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 than 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 Luxembourg 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 Luxembourg 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, as it may be amended from time to time, the Luxembourg 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 inter 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 Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg Government by reason of the termination and shall thereupon pay to the Luxembourg Government the amount so determined.

(d) Subject to the provisions of paragraph (c), the Luxembourg Government and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Luxembourg Government by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Luxembourg 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 Luxembourg Government under this clause there shall be deducted (1) all unliquidated payments on account theretofore made to the Luxembourg Government, (2) any claim which the United States Government may have against the Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg Government that the Luxembourg 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 Luxembourg Government to perform it, the United States Government may terminate this contract by reason of the inability of the Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg 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 United States Government and the Luxembourg Government have agreed shall not be applicable to expenditures in Luxembourg by the United States, or any other tax or duty not applicable to this contract under the laws of Luxembourg. 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 United States Government and the Luxembourg Government shall agree that any tax or duty included in the contract prices shall not be applicable to expenditures in Luxembourg by the United States, the contract prices shall be reduced accordingly.

9. *Subcontracting*

(a) The Luxembourg 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 Luxembourg 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 Luxembourg Government or the United States Government.

10. *Payments*

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

14. *Filing of patent applications*

While and so long as the subject matter of this contract is classified security information, the Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg Government agrees to report to the Contracting Officer, promptly and in reasonable written detail, any notice or claim of copyright infringement received by the Luxembourg Government with respect to any material delivered under this contract.

16. *Guaranty*

The Luxembourg Government undertakes that the benefit of any guarantee obtained in respect of 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 Luxembourg Government and any materials, documents, designs, drawings, specifications or supplies delivered by the Luxembourg 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 Luxembourg 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 Luxembourg Government to the United States Government under this contract.

19. *Assignment of claims*

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

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

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret", "Secret", "Confidential", or "Restricted" be furnished to any assignee of any claim arising under this contract or to any

other person not entitled to receive the same; *provided*, that a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed to such assignee upon the prior written authorization of the Contracting Officer.

20. *Labor relations and standards*

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

21. *Reporting of royalties*

If this contract is in an amount which exceeds \$10,000 the Luxembourg 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 Luxembourg 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 Luxembourg 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 Luxembourg Government involving transactions related to this contract.

(b) The Luxembourg 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 15 numbered pages and this Signature Sheet. To the extent of any inconsistency between the Schedule or the General Provisions, and any specifications or other provisions which are made a part of this contract by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control. To the extent of any inconsistency between this contract and the Agreement dated April 17, 1954, the Agreement 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 Agreement dated April 17, 1954, constitute 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 this contract.

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

The Grand Duchy of Luxembourg :

The United States of America :

By _____

By _____

(Authorized Officer)

(Contracting Officer)

(Address)

(Address)

For _____

II

The Luxembourg Minister of Foreign Affairs to the American Minister

[TRANSLATION¹ — TRADUCTION²]

MINISTRY OF FOREIGN AFFAIRS

Luxembourg, April 17, 1954

Mr. Minister,

I have the honor to acknowledge the receipt of note No. 57 of this date, in which Your Excellency was good enough to transmit to me a copy of the standard contract prepared at the conclusion of the conversations between the representatives of our two Governments concerning the government-to-government contracts within the framework of the agreement between the Grand Duchy of Luxembourg and the United States of America relating to offshore procurement, signed at Luxembourg today.

Your Excellency's note and the present reply shall be considered an agreement between our two Governments to become effective on the date on which the agreement itself relating to offshore procurement enters into force.

I avail myself of this occasion, Mr. Minister, to renew to Your Excellency the assurance of my high consideration.

Jos. BECH

His Excellency Wiley T. Buchanan, Jr.
Minister of the United States of America
Luxembourg

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

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

III

The American Minister to the Luxembourg Minister of Foreign Affairs

AMERICAN LEGATION

No. 61

Luxembourg, May 10, 1954

Excellency :

I have the honor to refer to Your Excellency's note of April 17, 1954, acknowledging receipt of my note No. 57, April 17, 1954, which transmitted a copy of the standard contract in connection with the Offshore Procurement Agreement signed the same day.

In order that Clause 13 of the Model Contract may always refer to current legislation, it is desired that it be changed to read as follows :

“ The Luxembourg Government agrees to apply to this contract the provisions embodied in Section 631 of Public Law 179 and Section 629 of Public Law 488, 82nd Congress of the United States, and like provisions embodied in subsequent United States appropriation acts.”

I would appreciate it if Your Excellency might indicate that this change is acceptable to the Government of Luxembourg.

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

Wiley T. BUCHANAN, Jr.

His Excellency Joseph Bech
Minister of Foreign Affairs for the Grand Duchy
of Luxembourg

IV

*The Luxembourg Acting Minister of Foreign Affairs and Foreign Trade
to the American Minister*

[TRANSLATION¹ — TRADUCTION²]

MINISTRY OF FOREIGN AFFAIRS
OFFICE OF FOREIGN TRADE

Luxembourg, July 16, 1954

Mr. Minister,

I have the honor to acknowledge receipt of note No. 61, dated May 10, 1954, relating to Clause 13 of the Model Contract and to inform Your Excellency that the Luxembourg Government is agreeable to supplementing Clause 13 of the Model Contract with the words: “. . . and like provisions embodied in subsequent United States appropriation acts.”

I avail myself of this occasion, Mr. Minister, to renew to Your Excellency the assurance of my high consideration.

P. FRIEDEN
Acting Minister of Foreign Affairs
and Foreign Trade

His Excellency Wiley Buchanan
Minister of the United States of America
Luxembourg

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

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