

No. 3878

UNITED STATES OF AMERICA
and
TURKEY

Exchange of notes (with Memorandum of Understanding and model contract) constituting an agreement relating to the offshore procurement program. Ankara, 29 June 1955

Official text: English.

Registered by the United States of America on 18 June 1957.

ÉTATS-UNIS D'AMÉRIQUE
et
TURQUIE

Échange de notes (avec Mémorandum d'accord et contrat type) constituant un accord relatif à un programme d'achats offshore. Ankara, 29 juin 1955

Texte officiel anglais.

Enregistré par les États-Unis d'Amérique le 18 juin 1957.

No. 3878. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND TURKEY RELATING TO THE OFFSHORE PROCUREMENT PROGRAM. ANKARA, 29 JUNE 1955

I

*The American Ambassador to the Turkish President of the Council of Ministers
and Acting Minister of Foreign Affairs*

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA
AMERICAN EMBASSY

No. 1662

Ankara, June 29, 1955

Excellency :

I have the honor to refer to the conversations held recently between representatives of our two Governments, resulting in the preparation of a "Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Turkey relating to Offshore Procurement"² and an attached "Model Contract".³ These documents, the texts of which are attached, are acceptable to the United States Government.

As soon as the Embassy receives a note from your Government, indicating that the texts of the attached documents are acceptable to the Turkish Government, the United States Government will consider that this note and your reply to it constitute an Agreement between our two Governments concerning offshore procurement, such Agreement to enter into force on the date of your note in reply.

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

A. M. WARREN

His Excellency Adnan Menderes
President of the Council of Ministers
and Acting Minister of Foreign Affairs
Ankara, Turkey

¹ Came into force on 29 June 1955 by the exchange of the said notes.

² See p. 100 of this volume.

³ See p. 108 of this volume.

MEMORANDUM OF UNDERSTANDING

This memorandum sets forth certain principles and policies which the Government of the United States of America (hereinafter called the United States Government) and the Government of the Republic of Turkey (hereinafter called the Turkish Government) have agreed will govern the United States Offshore Procurement Program in Turkey.

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 Turkey 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 Treaty¹ Organization and nations allied or associated with them for common defense, 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 Turkey in furtherance of the principles set forth in Section 413 of the Mutual Security Act of 1954, the Mutual Defense Assistance Control Act of 1951, and Article II (3) of the Economic Cooperation Agreement between the United States and Turkey of July 4, 1948, as amended.²

2. *Intergovernmental Coordination*

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

3. *Contract Placement by Contracting Officers*

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

¹ United Nations, *Treaty Series*, Vol. 34, p. 243; Vol. 126, p. 350, and Vol. 243, p. 308.

² United Nations, *Treaty Series*, Vol. 24, p. 67; Vol. 76, p. 258; Vol. 152, p. 276, and Vol. 185, p. 330.

4. *Parties to Contracts*

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

5. *Contract Assistance*

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

6. *Supply of Equipment, Materials and Manpower*

The Turkish Government 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 Turkish Government.

7. *Security*

In the case of procurement contracts placed by the United States Government with the Turkish Government, any classified material, including information, delivered by one Government to the other will be given a security classification by the recipient Government which will afford to the material substantially the same degree of security as that afforded by the originating Government and will be treated by the recipient Government as its own classified material of that security grading. The recipient Government will not use such material, or permit it to be used, for other than military purposes and will not disclose such material, or permit it to be disclosed, to another nation without the consent of the originating Government.

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

The Turkish Government will, upon request, conduct a security investigation of any prospective Turkish contractor to the United States Government in the same manner as such investigations are conducted in cases of defense procurement by the Turkish

Government, and a recommendation resulting from such investigation will be made to the United States Government.

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

8. *Inspection*

Inspection of all materials, services, supplies, construction and equipment procured by the United States Government in Turkey either from the Turkish Government or Turkish manufacturers and suppliers shall be carried out by representatives of the Turkish Government when requested by the United States Government. In such cases, the Turkish Government 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 inspections made by the Turkish Government, but the United States Government shall have the right to make independent inspections and verifications, and to make final decisions as to the acceptability of products. Inspection services (which term includes all materials and components furnished) rendered by the Turkish Government will be free of cost or charge to the United States Government.

9. *Credit Arrangements*

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

10. *Licenses*

The Turkish Government will grant, and facilitate the obtaining of, any necessary licenses, including exchange control, export and import licenses, which may be required in connection with any United States Government offshore procurement contract, whether placed in Turkey, other North Atlantic Treaty Organization countries, or other nations allied or associated with them for common defense, providing that the country concerned grants reciprocal treatment to Turkey in respect to offshore procurement contracts placed in Turkey.

11. *Taxes*

The provisions of the Tax Relief Agreement between the United States of America and Turkey, dated June 23, 1954,¹ as well as the agreed procedures thereunder, are applicable to contracts and subcontracts previously let or which may be let under the United States offshore procurement program in Turkey.

12. *Standard Contract Clauses*

Standard clauses have been approved by the two Governments for use, as appropriate, in contracts between them. Other clauses, including modification of standard clauses, may be included in individual contracts between the two Governments.

¹ United Nations, *Treaty Series*, Vol. 222, p. 161.

13. *Protection of United States Property and Personnel*

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

b) Likewise, it is understood that the United States Government is protected against suits or other legal action in Turkey as to any matter which may arise out of an offshore procurement contract.

(2) Contracting officers and other authorized procurement personnel of United States nationality who are in Turkey in connection with the offshore procurement program will be considered to enjoy the status of members of the United States Forces and their civilian component under the NATO Status of Forces Agreement signed at London on June 19, 1951,¹ and supplementary arrangements. Such contracting officers and other authorized procurement personnel are also protected from legal suits or process in Turkey as to any matter which may arise out of an offshore procurement contract.

14. *Destination of End-Items*

Although the determination of specifications and other requirements of particular offshore procurement contracts may require a tentative identification of the recipient country to which the end-items are to be delivered, it is understood that the United States may subsequently amend any such prior determination and identifications as to which country shall be the ultimate recipient of the end-items produced.

15. *Contract Terms*

Inasmuch as the statutes of the United States prohibit utilization of a contract upon which payment is based on cost plus a percentage of cost, it is understood that such a system of determining payment shall not be employed in contracts entered into between the United States Government and either private contractors or the Turkish Government. Further, the Turkish Government advises that it will not utilize the type of contract in which payment is made on the basis of cost plus a percentage of cost in subcontracts under any contract between the United States Government and the Turkish Government.

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

16. *Reporting of Subcontracts*

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

17. *No Profits Clause*

On offshore procurement contracts, it is understood that no profit of any nature, including net gains resulting from fluctuations in exchange rates, will be made by the

¹ United Nations, *Treaty Series*, Vol. 199, p. 67 ; Vol. 200, p. 340, and Vol. 260, p. 452.

Turkish Government. The Turkish Government 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 Turkish Government agrees that it will immediately enter into conversations with the United States Government for the purpose of determining the existence and the amount of such profit. During these conversations, the Turkish Government shall furnish the United States Government such information 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 Turkish 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 affected on or before December 31, 1956, or such later dates as may be mutually agreed upon by the two Governments. This article shall not be construed as affecting in any manner any profit refunding provisions as may be contained in individual contracts.

MODEL CONTRACT

Contract No. —

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

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 Turkey (hereinafter called the Turkish Government) represented by _____.

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

The parties hereto agree that the Turkish 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 "Turkish Government" means the Republic of Turkey, or any officer duly authorized to act on behalf of the Turkish 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 Turkish Government with another party for the purpose of fulfilling the labor and material requirements which are directly attributable to the item to be manufactured or supplied under this contract, and any such agreements, contracts, subcontracts or purchase orders under such subcontract.

2. *Changes*

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

- (i) Drawings, designs, or specifications ;
- (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 Turkish Government for adjustment under this clause must be asserted within thirty days from the date of receipt by the Turkish Government of the notification of change ; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. The Turkish Government shall proceed 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 Turkish Government.

(b) The Turkish 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 Turkish Government representatives when they intend to conduct inspections and such inspections will, insofar as feasible, be conducted promptly. Representatives of the Turkish Government shall have the right to participate in such verifications.

(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 recommendations 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 Turkish 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 Turkish 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 by the United States Government to inspect and accept or reject supplies shall neither relieve the Turkish Government from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the United States Government therefor. However, if the Turkish Government considers that there is an undue delay by the United States Government in taking action on acceptance or rejection, it will so notify the United States and the two Governments will consult with a view toward amending the contract to provide for an equitable adjustment of the price or delivery schedule.

(2) The inspection and test by the United States Government of any supplies or lots thereof does not relieve the Turkish 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 defects which could not have been discovered by normal inspection methods appropriate to the industry concerned.

(e) The Turkish 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 Turkish 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 Turkish 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 Turkish 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 Turkish Govern-

ment 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 requested by the Contracting Officer, the Turkish 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 requested by the Contracting Officer, all of the right, title, and interest of the Turkish 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 requested by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the United States Government; (7) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices requested or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph; *provided, however*, that the Turkish 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 Turkish 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 request; (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 request, for the protection and preservation of the property related to this contract which is in the possession of the Turkish Government and in which the United States Government has or may acquire an interest. Within sixty (60) days following the receipt by the Contracting Officer of acceptable inventory schedules covering all items of a particular property classification, such as raw materials, purchased parts and work in process, of the termination inventory at any one plant or location, or by such later date as may be agreed to by the Contracting Officer, the Turkish Government may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been requested or authorized by the Contracting Officer, and may request the United States Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the United States Government will accept title to such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Turkish 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 Turkish 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. If no such claim is submitted within said period of two years plus any extensions, the Contracting Officer may determine the amount due and the amount so determined shall be paid to the Turkish Government in full settlement of the termination; *provided* that the Contracting Officer shall

first give the Turkish Government written notice of the amount thus determined and the Turkish Government shall have ninety (90) days from receipt of such notice within which to protest the amount of the determination. If the Turkish Government does make such a protest to the United States Government, the two Governments shall, as promptly as possible, consult with each other with a view toward settling the amount due.

(d) In mutually arriving at a settlement hereunder, the Turkish Government and the Contracting Officer may agree upon the amount to be paid to the Turkish Government as fair compensation for the work under the terminated contract, or, if the contract is only partially terminated, as fair compensation for the terminated part thereof.

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

(f) In arriving at the amount due the Turkish Government under this clause there shall be deducted (1) all unliquidated payments on account theretofore made to the Turkish Government, (2) any claim which the United States Government may have against the Turkish 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 Turkish 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 Turkish 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 Turkish Government that the Turkish 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 Turkish Government to perform it, the United States Government may terminate this contract. Any such termination shall be without cost to the United States Government and without liability of either Government to the other; *provided* that the parties hereto may agree upon the transfer to the United States Government of any or all of the property of the types described in paragraph (b) (6) above, in which event the United States Government will pay to the Turkish 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, the Turkish Government, from the effective date of termination and for a period of three 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 Turkish 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 Turkish 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, do not include any tax or duty, which the United States Government and the Turkish Government have agreed shall not be applicable to expenditures in Turkey by the United States, or any other tax or duty not applicable to this contract under the laws of Turkey. 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 Turkish Government shall agree that any tax or duty included in the contract prices shall not be applicable to expenditures in Turkey by the United States, the contract prices shall be reduced accordingly.

9. *Subcontracting*

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

10. *Payments*

The Turkish 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 Turkish 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 Turkish 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 Turkish 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*

Provisions embodied in United States statutes relating to the action which may be taken in the event it is determined that a gratuity has been offered or given to any officer or employee of the United States Government in connection with a contract shall be applicable to this contract.

14. *Filing of patent applications*

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

15. *Copyright*

(a) The Turkish 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 Turkish 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 Turkish 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 Turkish 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 Turkish 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 or privacy therein contained.

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

16. *Guaranty*

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

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

The recipient Government will, upon request, give to the originating Government an 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 Turkish 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 Turkish Government to the United States Government under this contract, provided that the granting of such rights shall be to the extent that the

Turkish Government is able to obtain and grant such rights. Nothing contained in this clause, in itself, shall grant any right or license to use, sell, or reproduce any patented article ; it is strictly limited to reports, drawings, blueprints, data and technical information.

19. *Assignment of claims*

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

(a) If this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Turkish Government from the United States Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing.

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

20. *Reporting of royalties*

If this contract is in an amount which exceeds \$10,000, the Turkish 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 Turkish 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.

21. *Examination of records*

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

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

(b) The Turkish 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 10 numbered pages and this Signature Sheet. To the extent of any inconsistency between the Schedule or the General Provisions, and any specifications or other provisions which are made a part of this contract by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control. It is agreed that quotations and/or conversations leading up to and during the 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. While it is intended that the provisions of this contract will be carried out in a spirit of mutual agreement between the two Governments, it is understood that the Contracting Officer and other United States personnel concerned with the administration or interpretation of this contract will be guided by rules and principles which are applicable generally to procurement contracts of the United States Government.

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

The Republic of Turkey :

The United States of America :

By _____

By _____

(Authorized Officer)

(Contracting Officer)

(Address)

(Address)

For _____

II

The Turkish Secretary General of the Ministry of Foreign Affairs to the American Ambassador

TÜRKİYE CUMHURİYETİ
DİŞİŞLERİ VEKÂLETİ¹

EKO/OS(3)-2881

Ankara, June 29, 1955

Excellency :

I have the honor to acknowledge the receipt of your note No. 1662, of this date, enclosing texts of a "Memorandum of Understanding between the Govern-

¹ Republic of Turkey.
Ministry of Foreign Affairs.

ment of the United States of America and the Government of the Republic of Turkey relating to Offshore Procurement” and an attached “Model Contract”.

I am pleased to inform you, in accordance with the proposal in your Excellency's note, that the texts of these documents¹, also attached to this note, are acceptable to the Turkish Government. Your note No. 1662 and the present note, accordingly, are considered to constitute an Agreement between our two Governments concerning offshore procurement, which enters into force on this date.

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

M. NURI BIRGI

His Excellency Avra M. Warren
Ambassador of the United States of America
Ankara

III

*The American Ambassador to the Turkish President of the Council of Ministers and
Acting Minister of Foreign Affairs*

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA
AMERICAN EMBASSY

N° 1663

Ankara, June 29, 1955

Excellency :

I have the honor to refer to my note No. 1662 of this date and your reply thereto by note No. EKO/OS(3)2881 of this date, constituting an Agreement between our two Governments concerning offshore procurement.

In accordance with the understanding that the United States Government intends to conduct the offshore procurement program in accordance with relevant United States legislation and in furtherance of the principles set forth in certain United States statutes, it is understood that, in order to carry out this intention, the United States Embassy in Ankara may from time to time submit the names of certain firms and individuals who in its opinion have acted contrary to the mutual security interest of our two countries. It is further understood that no contract or subcontract will be awarded to these firms and individuals under the offshore procurement program except as mutually agreed by the United States and Turkish Governments.

¹ See pp. 100 and 108 of this volume.

I would be grateful, Excellency, if you would confirm the agreement of the Turkish Government with respect to the above understanding.

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

A. M. WARREN

His Excellency Adnan Menderes
President of the Council of Minister
and Acting Minister of Foreign Affairs
Ankara, Turkey

IV

The Turkish Secretary General of the Ministry of Foreign Affairs to the American Ambassador

TÜRKİYE CUMHURİYETİ
HARİCİYE VEKÂLETİ¹

EKO/OS(3)-2882

Ankara, June 29, 1955

Excellency :

I have the honor to refer to your note No. 1663 of this date, referring to the Agreement concerning offshore procurement entered into by our Governments on this date, in which you stated :

[See note III]

I am pleased to inform you of the agreement of the Turkish Government with respect to the above understanding.

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

M. NURI BIRGI

His Excellency Avra M. Warren
Ambassador of the United States of America
Ankara

¹ Republic of Turkey.
Ministry of Foreign Affairs.