

No. 3951

**UNITED STATES OF AMERICA
and
YUGOSLAVIA**

**Memorandum of Understanding (with exchange of letters
and model contract) relating to offshore procurement.
Signed at Belgrade, on 18 October 1954**

Official text: English.

Registered by the United States of America on 26 July 1957.

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

**Mémorandum d'accord (avec échange de lettres et contrat
type) au sujet des achats *offshore*. Signé à Belgrade,
le 18 octobre 1954**

Texte officiel anglais.

Enregistré par les États-Unis d'Amérique le 26 juillet 1957.

No. 3951. MEMORANDUM OF UNDERSTANDING¹ BETWEEN THE UNITED STATES OF AMERICA AND YUGOSLAVIA RELATING TO OFFSHORE PROCUREMENT. SIGNED AT BELGRADE, ON 18 OCTOBER 1954

This memorandum sets forth certain principles and policies which the Government of the Federal People's Republic of Yugoslavia and the Government of the United States of America have agreed will govern the United States Offshore Procurement Program in Yugoslavia.

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. It is intended that offshore procurement will materially contribute to the combined defense productive capacity of the nations participating in the mutual security program and will at the same time provide a means for increasing the dollar earnings of these countries. The extent of this program in Yugoslavia is dependent upon various considerations, including the ability of the U.S. Government to place contracts at reasonable prices with satisfactory delivery dates.

The United States Government will conduct offshore procurement in accordance with the Mutual Security Act of 1951, or any successor thereto, and other laws of the United States governing the mutual security program and military procurement. The obligations of the Yugoslav Government under OSP contracts will be limited to the undertakings contained in this memorandum and in such contracts.

The two Governments agree that no offshore procurement contracts in Yugoslavia or subcontracts thereunder should be placed with any contractor which either government has reason to believe has acted contrary to the mutual security interest of the two countries. The two Governments therefore agree to consult together with respect to the placing of any offshore procurement contract or subcontract with any contractor which either government reports to the other as having acted contrary to the mutual security interest of the two countries.

¹ Came into force on 18 October 1954 by signature.

2. *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.

3. *Parties to Contracts*

United States contracting officers may contract with the Yugoslav Government or directly with enterprises or other legal entities in Yugoslavia.

4. *Contract Assistance*

In the event that the United States Government is to procure directly from an enterprise or other legal entity in Yugoslavia, the Government of Yugoslavia will facilitate the execution and administration of such offshore procurement contracts.

5. *Supply of Equipment, Materials and Manpower*

The Government of Yugoslavia will accord to offshore procurement contractors and subcontractors in Yugoslavia priorities for securing equipment, materials, manpower and services equal to those which are accorded contractors having defense contracts with the Government of Yugoslavia or subcontracts thereunder.

6. *Security*

a : In accordance with the provisions of Article II, 2 of the Military Assistance Agreement between the two Governments dated November 14, 1951,¹ the following procedural arrangements will be applicable to the transfer of classified material including information from the United States Government to the Yugoslav Government, or to enterprises or other legal entities having contracts with the United States Government.

(1) In the case of procurement contracts placed by the United States Government with the Yugoslav Government, or in the case of data submitted by the Yugoslav Government to the United States 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.

¹ United Nations, *Treaty Series*, Vol. 174, p. 201, and Vol. 258, p. 420.

(2) In the case of contracts placed by the United States Government directly with enterprises or other legal entities, 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 Secretariat of the Yugoslav Government. An official of that Secretariat will transmit the material to the contractor. Such material will, prior to transmittal, receive a security classification of the Yugoslav Government which will afford to the material substantially the same degree of security as that afforded by the United States Government. The Yugoslav Government will take steps to ensure that the security of such classified material is safeguarded.

(3) Upon request of the United States Government the Government of Yugoslavia will make recommendations with regard to the reliability of any prospective offshore procurement contractor in Yugoslavia from a security standpoint.

b : Any classified material which is to be delivered under contracts placed by the United States Government with the Yugoslav Government, enterprises or other legal entities in Yugoslavia, to a subcontractor in any country other than Yugoslavia, shall be transferred by the United States Government in accordance with procedures and subject to conditions governing transfer of classified material from the United States Government to contractors in such other country.

7. *Inspection*

Inspection of all materials, services, supplies, construction and equipment procured by the United States Government in Yugoslavia either from the Government of Yugoslavia or Yugoslav manufactures and suppliers shall be carried out by representatives of the Government of Yugoslavia when requested by the United States Government. In such cases, the Government of Yugoslavia will certify to the United States Government that the products meet all specifications and other requirements of the contract. It is not the intention of the United States Government generally to duplicate inspection made by the Government of Yugoslavia but the United States Government shall have the right to make independent inspections and verifications. Accordingly, passage of any item by the inspectors of the Government of Yugoslavia may not necessarily be considered as acknowledgment by the United States that the supplies or services satisfy the contract requirements ; such acknowledgment is made by the final acceptance of the United States Government. Final acceptance by the United States Government shall be conclusive and shall relieve the Government of Yugoslavia from any further responsibility whatever regarding the quality of supplies or services, except as to latent defects. Inspection services rendered by the Government of Yugoslavia will be free of cost or charge to the United States Government.

8. *Credit Arrangements*

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

9. *Licenses*

With respect to offshore procurement contracts or subcontracts that have been placed in Yugoslavia the Government of Yugoslavia will grant and facilitate the obtaining of any necessary licenses, including exchange control, export and import licenses which may be required in connection therewith.

10. *Taxes*

The provisions of the relief agreement between the Government of Yugoslavia and the United States Government dated July 23, 1953¹ and agreed procedural arrangements thereunder, are applicable to the offshore procurement program of the United States Government in Yugoslavia. The two governments may consult from time to time as the occasion arises regarding further implementation of that agreement.

11. *Standard Contract Clauses*

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

12. *Protection Against Legal Proceedings*

a : (1) It is understood that any ownership, lien or similar interest of the United States Government in property acquired through or used in connection with offshore procurement contracts in Yugoslavia will be immune from legal process or seizure. For purposes of protection against legal proceedings the United States Government will be considered to have such an interest in any unfinished or undelivered supplies or any work in process, raw materials, parts or sub-assemblies used in, acquired for, or allocated to production under any offshore procurement contract.

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

¹ United Nations, *Treaty Series*, Vol. 221, p. 365.

b : The status and number of contracting officers and other authorized procurement personnel who are in Yugoslavia in connection with the offshore procurement program and whose names are reported to the Yugoslav Government will be determined in accordance with the provisions of Article V of the Military Assistance Agreement between the United States of America and Yugoslavia dated November 14, 1951.

13. *Destination of End-Items*

a : 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 transferred, it is understood that the United States may subsequently amend any prior determination and identification as to which country shall be the ultimate recipient of the end-items produced.

b : In the event that procurement contracts are placed with the Yugoslav Government or Yugoslav contractors for items which are to be transferred by the United States to other countries it is agreed that deliveries will be made exclusively to representatives of the United States Government who will subsequently transfer the items to representatives of recipient countries. In such cases the Yugoslav Government agrees that it will :

- (1) permit entry into Yugoslavia of representatives of recipient countries for the purpose of taking delivery of such items ;
- (2) permit travel within Yugoslavia and provide transportation to recipient countries' representatives in connection with each delivery made, unless regular transportation is available ;
- (3) issue without delay all necessary export documents required for out-shipment of each lot delivered ;
- (4) make available without delay such transportation facilities as may be required.

14. *Contract Terms*

Since the statutes of the United States prohibit utilization of a contract upon which payment consists of reimbursement of cost of performing the contract plus a percentage of such cost as profit it is understood that such a system of determining the amount to be paid to a contractor shall not be employed in contracts entered into between the United States Government and either the Government of Yugoslavia or other Yugoslav contractors. Further, the Government of Yugoslavia advises that it will not utilize the type of contract in which the amount of payment is made on that basis in subcontracts under any contracts between the United States Government and the Government of Yugoslavia.

15. *Reporting of Subcontracts*

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

16. *No Profits*

a : The Government of the FPRY disclaims, under the terms of this Agreement, any and all participation in the profits accruing from any offshore procurement contract placed in Yugoslavia, including net gains resulting from fluctuations in currency exchange rates. The Government of Yugoslavia agrees to determine whether it has realized any such profit, in which event or in the event that the United States considers that such profit may have been realized, the Government of Yugoslavia agrees that it will immediately enter into conversation with the United States Government for the purpose of determining the existence and the amount of such profit. During these conversations, the Yugoslav Government shall furnish the United States Government such documents and accounting data as may be necessary to determine the facts. In the computation of profits hereunder, the contracts shall be taken collectively. If as a result of conversations between the respective Governments it is established that profit has been realized by the Yugoslav 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. A refund adjustment will be accomplished on completed contracts at the earliest practicable date, but an initial adjustment will be effected and the refund, if any, made covering the period ending December 31, 1956. Periodic adjustments and refunds will be made for subsequent periods at 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 special profit refunding or price revision provisions as may be contained in individual contracts.

b : With respect to any offshore procurement contract as to which the Government of Yugoslavia places a subcontract with an enterprise, if the cost to the Government of Yugoslavia of subcontracting is less than the total amount paid by the United States Government to Yugoslavia under the prime contract, the difference between the two amounts would be profit subject to refund. To the extent that the Government of Yugoslavia does not subcontract an offshore procurement contract but performs it directly, then irrespective of whether or not it makes use of a government department or agency for such performance the entire difference between the cost of performing the contract and the amount paid by the United States Government would be refundable profit.

DONE at Belgrade this 18th day of October, 1954 in two originals.

For and on behalf
of the Government
of the United States
of America :

James S. KILLEN

[SEAL]

For and on behalf
of the Government
of the Federal People's
Republic of Yugoslavia :

Stanislav KOPCOK

[SEAL]

EXCHANGE OF LETTERS

I

*The Director, U. S. Operations Mission, to the Yugoslav Ambassador, State's
Counsellor, Secretariat of State for Foreign Affairs*

Belgrade, October 18, 1954

Dear Ambassador Kopcok :

The Memorandum of Understanding relating to offshore procurement signed today¹ by representatives of the Government of the FPRY and the Government of the United States, refers in Paragraph 11 to certain standard contract clauses, to be used, as appropriate in contracts between the two Governments. The Government of the United States believes these standard contract clauses should be considered a part of the Memorandum of Understanding.

Pursuant to the confirmation of this view by the Government of the FPRY, these standard clauses shall be so considered.

Accept, Sir, the assurance of my highest consideration.

Sincerely yours,

James S. KILLEN
Director
U. S. Operations Mission
Belgrade, Yugoslavia
American Embassy

Ambassador Stanislav Kopcok
State's Counsellor
Secretariat of State for Foreign Affairs
Federal People's Republic of Yugoslavia
Belgrade

¹ See p. 164 of this volume.

II

The Yugoslav Ambassador, State's Counsellor, Secretariat of State for Foreign Affairs, to the Director, U. S. Operations Mission

Belgrade, October 18, 1954

Dear Mr. Killen :

This will acknowledge receipt of your letter of October 18, 1954, the text of which reads as follows :

[See letter I]

I have the honour to inform you on behalf of the Government of the FPRY of my concurrence with the above letter.

Sincerely yours,

Ambassador Stanislav KOPCOK
State's Counsellor
Secretariat of State for Foreign Affairs
Federal People's Republic of Yugoslavia
Belgrade

Mr. James S. Killen, Director
U. S. Operations Mission
Belgrade, Yugoslavia
American Embassy

III

The Director, U. S. Operations Mission, to the Yugoslav Ambassador, State's Counsellor, Secretariat of State for Foreign Affairs

Beograd, October 18, 1954

Dear Ambassador Kopcok :

With reference to the Memorandum of Understanding between Yugoslavia and the United States of America relating to offshore procurement, signed today by the representatives of the Government of the FPRY and the Government of the United States of America, and with specific reference to paragraph 13, "Destination of End Items" therein, I have the honor to inform you that the Government of the United States would not expect the Government of the FPRY to permit entry into nor travel within Yugoslavia of representatives of a government with which the Government of the FPRY does not have diplomatic relations.

In the event that end items produced in Yugoslavia under offshore procurement contracts are to be transferred to such a government, the Government of the United

States considers that the provisions in paragraph 13-b : (3) and (4) would be honored by the Government of the FPRY and, further, in such a case the Government of the United States would arrange that the delivery and transfer of such end items be undertaken outside of Yugoslavia.

It is further agreed, however, that the Government of the United States will retain exclusively for itself the option, under the terms of this Agreement, to determine originally or by subsequent amendment, the destination and ultimate recipient of end items produced under any offshore procurement contract placed in Yugoslavia.

Would you kindly inform me whether the Government of the FPRY concurs in the above.

Accept, Sir, the assurance of my highest consideration.

Sincerely yours,

James S. KILLEN
Director
U. S. Operations Mission
Belgrade, Yugoslavia
American Embassy

Ambassador Stanislav Kopcok
State's Counsellor
Secretariat of State for Foreign Affairs
Federal People's Republic of Yugoslavia
Belgrade

IV

The Yugoslav Ambassador, State's Counsellor, Secretariat of State for Foreign Affairs, to the Director, U. S. Operations Mission

Belgrade, October 18, 1954

Dear Mr. Killen :

This will acknowledge receipt of your letter of October 18, 1954, the text of which reads as follows :

[See letter III]

I have the honour to inform you on behalf of the Government of the Federal People's Republic of Yugoslavia of my concurrence with the above letter.

Accept, Sir, the assurances of my highest consideration.

Sincerely yours

Ambassador Stanislav KOPCOK
State's Counsellor
Secretariat of State for Foreign Affairs
Federal People's Republic of Yugoslavia
Belgrade

Mr. James S. Killen
Director, U. S. Operations Mission
Belgrade, Yugoslavia
American Embassy

V

The Yugoslav Ambassador, State's Counsellor, Secretariat of State for Foreign Affairs, to the Director, U. S. Operations Mission

Belgrade, October 18, 1954

Dear Mr. Killen :

Referring to the Memorandum of Understanding between the United States of America and Yugoslavia relating to offshore procurement, signed today by the representatives of the Government of FPRY and the Government of the USA, I have the honour to inform you as follows :

In order to expedite operations under this Memorandum of Understanding, the Government of FPRY is prepared to give instructions to its diplomatic and consular representatives in Washington, Paris, London, Bonn and Munich to issue, in as prompt a fashion as possible, official entry and exit visas to such representatives of US military authorities who have duties and responsibilities in the field of offshore deliveries and who would be coming to Yugoslavia in connection with the offshore business. Appropriate US Government authorities will officially request the issuance of visas for such representatives.

Sincerely yours,

Ambassador Stanislav KOPCOK
State's Counsellor
Secretariat of State for Foreign Affairs
Federal People's Republic of Yugoslavia
Belgrade

Mr. James S. Killen
Director, U. S. Operations Mission
Belgrade, Yugoslavia
American Embassy

VI

*The Director, U. S. Operations Mission, to the Yugoslav Ambassador, State's
Counsellor, Secretariat of State for Foreign Affairs*

Belgrade, October 18, 1954

Dear Ambassador Kopcok :

You have asked for a statement concerning our interpretation of the phrase "including net gains resulting from fluctuations in currency exchange rates" in the first sentence of Para. 16 of the Memorandum of Agreement between our two Governments, governing offshore procurement matters.

This phrase is intended to insure the right of the United States to seek reimbursement of any "windfall" profit which accrues to the Government of the FPRY or to the National Bank of Yugoslavia as a result of changes in the rates of exchange between any of the currencies involved in offshore procurement contracts or sub-contracts in Yugoslavia. Such profits would have no relationship to the provision of goods and/or services under any such contract and could in no way be represented as proper or legitimate under the overall waiver of "profits" which this paragraph provides.

I trust this clarification is satisfactory to you.

Sincerely yours,

James S. KILLEN
Director
U. S. Operations Mission
Belgrade, Yugoslavia
American Embassy

Ambassador Stanislav Kopcok
State's Counsellor
Secretariat of State for Foreign Affairs
Federal People's Republic of Yugoslavia
Belgrade

STANDARD CONTRACT FORM FOR USE IN CONTRACTS BETWEEN THE GOVERNMENTS OF THE UNITED STATES AND YUGOSLAVIA

[NOTE: The text of this standard contract is exactly the same as that of contracts already signed by the Yugoslav Government except for plainly indicated typewritten changes. "Notes" are explanatory only and not part of the standard contract.]

COVER SHEET

Contract No . . .

NEGOTIATED CONTRACT FOR THE PROCUREMENT OF SUPPLIES AND SERVICES IN YUGOSLAVIA.

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 Federal People's Republic of Yugoslavia (hereinafter called the Yugoslav Government) represented by

This contract is executed subject to the agreement and conditions included in the Memorandum of Understanding¹ between the United States Government and the Yugoslav Government relating to procurement of supplies, services and materials dated . . .

[NOTE: Existing contracts contain the following language in lieu of that set forth above: The United States Government and the Yugoslav Government expect to consummate a Memorandum of Understanding between the two Governments relating to procurement of supplies and services and do hereby agree that the provisions of such Memorandum shall be applicable to this contract.]

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

¹ See p. 164 of this volume.

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 Yugoslav Government means The Federal People's Republic of Yugoslavia or any officer duly authorized to act on behalf of the Yugoslav 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 Yugoslav 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 Yugoslav Government for adjustment under this clause must be asserted within thirty days from the date of receipt by the Yugoslav 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 Yugoslav 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 Yugoslav Government.

(b) The Yugoslav 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) The United States Government representatives shall have the right to make independent inspection and verification and to verify that (1) the end items conform to standards and drawings, designs and specifications, and (2) the quantity of end items specified is delivered. The United States representatives will notify the appropriate Yugoslav Government representatives when they intend to conduct inspections and such inspection 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 Yugoslav 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 Yugoslav 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 Yugoslav 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 Yugoslav 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 Yugoslav 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 Yugoslav 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 Yugoslav 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 Yugoslav 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 Yugoslav 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 required by the Contracting Officer, the Yugoslav 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 time, and to the extent required by the Contracting Officer, all of the right, title and interest of the Yugoslav 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, required 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 has 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 time, to the extent, and at the price or prices required or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph, provided, however, that the Yugoslav 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 Yugoslav 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 require; (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 require for the protection and preservation of the property related to this contract which is in the possession of the Yugoslav 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 Yugoslav 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 required 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 Yugoslav 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 Yugoslav 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 Yugoslav 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 Yugoslav Government by reason of the termination and shall thereupon pay to the Yugoslav Government the amount so determined.

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

9. *Subcontracting*

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

10. *Payments*

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

14. *Filing of patent applications*

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

16. *Guaranty*

The Yugoslav 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 Yugoslav Government and any materials, documents, designs, drawings, specifications or supplies delivered by the Yugoslav 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, on 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.

[NOTE : Above clause is one inserted in ordnance contracts placed in June 1954.]

18. *Technical information*

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

19. *Assignment of claims*

No claim arising under this contract shall be assigned by the Yugoslav 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 Yugoslav 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. *Reporting of royalties*

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

SIGNATURE SHEET

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

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

The United States of America:

.....

By

By

.....
(Authorized Officer)

.....
(Contracting Officer)

.....
(Address)

.....
(Address)

For

*The Director, U. S. Operations Mission, to the Yugoslav Ambassador, State's
Counsellor, Secretariat of State for Foreign Affairs*

October 18, 1954

Dear Ambassador Kopcok :

You have asked for clarification of the intent of the United States Government with reference to Para. 16 (entitled "no profits") of the Memorandum of Understanding between our two governments concerning OSP in Yugoslavia.

The intent of this paragraph is twofold : first, to obtain the agreement of the Yugoslav Government that it disclaims all "profit" from the production of OSP items in Yugoslavia and, second, to insure the right of the U. S. Government to seek reimbursement in any case in which the Yugoslav Government appears to have received such a "profit." Whereas the Tax Agreement signed by our two governments on July 23, 1953, provides that no taxes will be included in the cost to the United States of any OSP item produced in Yugoslavia, the subject paragraph would prevent the Yugoslav Government from enjoying any "windfall profit" from OSP operations or participating in any normal operating profit earned by the producing enterprise.

Para. 16 does not seek to prevent the Government of Yugoslavia, or local subdivisions thereof, from exercising the usual governmental function of collecting public revenues, for public purposes, from the profits of industrial enterprises in Yugoslavia, including those involved in OSP production, through the operation of legislatively-determined revenue laws. The right and responsibility of public authorities to collect public revenues is recognized and acknowledged. However, in any case in which the revenue demands placed against an enterprise producing OSP appear discriminatory (as compared with revenue demands placed against non-OSP enterprises), or in which the rate of revenue demanded appears to be in excess of that usually applied to Yugoslav enterprises, thereby providing governmental bodies with a "profit" over and above usual revenue, the U. S. Government under the language and intent of Para. 16 is privileged to enter into discussions with the Yugoslav Government for the purpose of seeking reimbursement of such "profit."

I trust this clarification will be satisfactory to your Government.

Very truly yours,

(Signed) James S. KILLEN
Director

Ambassador Stanislav Kopcok
State Counsellor
Secretariat of State for Foreign Affairs
Federal People's Republic of Yugoslavia
Belgrade