

No. 4034

**UNITED STATES OF AMERICA
and
FEDERAL REPUBLIC OF GERMANY**

**Agreement relating to offshore procurement. Signed at
Bonn, on 4 April 1955**

Official texts: English and German.

Registered by the United States of America on 25 October 1957.

**ÉTATS-UNIS D'AMÉRIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Accord relatif au programme d'achats *offshore*. Signé à
Bonn, le 4 avril 1955**

Textes officiels anglais et allemand.

Enregistré par les États-Unis d'Amérique le 25 octobre 1957.

No. 4034. AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY RELATING TO OFFSHORE PROCUREMENT. SIGNED AT BONN, ON 4 APRIL 1955

Article 1

PURPOSE

The purpose of this Agreement is to set forth certain principles, policies and specific provisions which the United States of America (hereinafter called the United States) and the Federal Republic of Germany (hereinafter called the Federal Republic) have agreed shall govern procurement by the Armed Forces of the United States in the Federal Republic in the interests of the common defense. Such procurement is hereinafter referred to as offshore procurement. This Agreement shall apply to the contracts placed on and after the date hereof and also to uncompleted contracts placed prior to the date hereof; provided that this shall not impair the existing contract rights of private contractors.

Article 2

DEFINITIONS

For the purpose of this Agreement the following terms shall have the following meanings :

(a) United States Armed Forces shall mean the United States Army, the United States Navy and the United States Air Force.

(b) Offshore procurement shall mean procurement by means of contracts, purchase orders, and other instruments awarded and sub-contracts approved by the United States Armed Forces for goods and services of any description for which payment is made by the United States Armed Forces, provided, however, the term offshore procurement shall not include procurement by the United States Armed Forces for which payment is made from funds made available by the Federal Republic in discharge of occupation costs or from defense support funds contributed by the Federal Republic for support of the

¹ Came into force on 7 February 1957, upon the deposit of the instrument of ratification by the Federal Republic of Germany with the Government of the United States of America, in accordance with article 25.

United States Armed Forces, and shall not include procurement by the exchange systems of the Armed Forces and purchases by the individual members of the United States Armed Forces.

Article 3

OBJECTIVES

(a) The primary objectives of the United States in instituting the offshore procurement program are (i) to provide the United States Armed Forces with needed materials, supplies and services, (ii) to provide equipment as rapidly as possible to meet defense requirements of countries participating in the Mutual Security Program, and (iii) to increase the ability of participating countries to equip and maintain their own forces.

(b) Procurement under this program is not intended as substitute for the Federal Republic's own defense production and it is understood that the program will be carried out in such a manner that it takes into account the capabilities of the German economy as well as essential domestic and export requirements of the Federal Republic and that it will not have harmful effect on other defense production undertaken by the Federal Republic.

Article 4

CONDUCT OF PROGRAM

The United States shall conduct the offshore procurement program 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 the Federal territory in furtherance of the principles of the Mutual Security Act of 1954, the Mutual Defense Assistance Control Act of 1951 as amended, and the Economic Cooperation Agreement between the Federal Republic and the United States, signed at Bonn on 15 December 1949 as amended.¹

¹ United Nations, *Treaty Series*, Vol. 92, p. 269; Vol. 141, p. 390, and Vol. 212, p. 329.

Article 5

SCOPE OF THE OFFSHORE PROCUREMENT PROGRAM

The goods and services which may be procured under the offshore procurement program include all types of military end items, materials, supplies, equipment, and services appropriate for United States military procurement which may be required either for the United States military assistance program or for the United States Armed Forces. Unless otherwise specified, the provisions of this Agreement are applicable to procurement for both categories.

Article 6

EXCHANGE OF INFORMATION

The Governments of the parties to this Agreement, in order to achieve coordination, shall exchange information on a continuing basis with respect to procurement plans, available production facilities and progress in the achievement of the offshore procurement programs in the Federal Republic. The Government of the United States shall, insofar as feasible and appropriate, furnish to the Government of the Federal Republic information relating to the United States' procurement program in the Federal Republic and will inform the Government of the Federal Republic in due time of individual requests for bids. The Government of the Federal Republic shall be supplied by the Government of the United States with copies or other appropriate information of such orders as have been placed with German firms.

Article 7

RESTRICTIVE BUSINESS PRACTICES

The Governments of the parties to this Agreement, each within its own competence, shall implement the offshore procurement program, insofar as feasible under German law, in such a way as to :

- (a) eliminate the barriers to, and provide the incentive for, a steadily increased participation of free private enterprise in developing the resources of the Federal Republic consistent with appropriate international agreements;
- (b) discourage, as far as feasible, all cartel and monopolistic business practices which result in restricting production and increasing prices, and to encourage competition and productivity.

Article 8

CONTRACT PLACEMENT BY CONTRACTING OFFICERS

It is understood that offshore procurement contracts will be awarded and administered on behalf of the United States by contracting officers of the United States Armed Forces or persons acting under their authority.

Article 9

PARTIES TO CONTRACTS

It is understood that United States contracting officers will contract directly with individuals, firms or other legal entities in the Federal territory or with the Government of the Federal Republic in accordance with the contracting officer's judgment.

Article 10

ASSISTANCE IN THE SELECTION OF CONTRACTORS

The competent United States agencies may consult the Government of the Federal Republic or its authorized offices for advice with regard to potential contractors. In furnishing such advice, in addition to considering the ability to produce within the time required, efficiency, technical ability and plant facilities, the Government of the Federal Republic shall be guided by the various principles, policies and provisions set forth in this Agreement, including, but not limited to, those concerning free competition and free private enterprise, availability of credit facilities and materials, and security considerations. Plants and subcontractors selected by the Government of the Federal Republic or private contractors must be acceptable to the United States contracting officer who shall, however, when selecting contractors, take into account, as far as possible, the recommendations made during such consultations as may be had with the Government of the Federal Republic.

Article 11

ASSISTANCE TO OFFSHORE PROCUREMENT CONTRACTORS

(a) The Government of the Federal Republic shall, subject to the relevant German legislation, grant the contractors and the subcontractors of offshore procurement orders, of which it has been informed under Article 6, no less favorable treatment and assistance, with regard to the supply of materials or