

No. 8419

UNITED STATES OF AMERICA
and
SAUDI ARABIA

Exchange of notes (with appendices) constituting an agreement concerning construction of a water desalting and electric power plant. Jidda, 11 and 19 November 1965

Official texts of the notes and appendix I : English and Arabic.

Official text of appendix II : English.

Registered by the United States of America on 1 December 1966.

ÉTATS-UNIS D'AMÉRIQUE
et
ARABIE SAOUDITE

Échange de notes (avec appendices) constituant un accord relatif à la construction d'une installation de dessalement de l'eau et de production d'énergie électrique. Djeddah, 11 et 19 novembre 1965

Textes officiels des notes et de l'appendice I : anglais et arabe.

Texte officiel de l'appendice II : anglais.

Enregistré par les États-Unis d'Amérique le 1^{er} décembre 1966.

No. 8419. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND SAUDI ARABIA CONCERNING CONSTRUCTION OF A WATER DESALTING AND ELECTRIC POWER PLANT. JIDDA, 11 AND 19 NOVEMBER 1965

I

*The American Chargé d'Affaires ad interim
to the Saudi Arabian Deputy Minister of Foreign Affairs*

EMBASSY OF THE UNITED STATES OF AMERICA

No. 362

Jidda, November 11, 1965

Excellency :

I have the honor to refer to recent discussions concerning the plans of the Saudi Arabian Government to construct a water desalting and electric power plant in the Jidda area.

I have been instructed by my Government to confirm that, pursuant to the request of the Saudi Arabian Government and subject to the provisions hereof, the United States Government shall assume responsibility for negotiating contracts on behalf of the Saudi Arabian Government with a United States firm or firms for the architectural and engineering study and design, and with all qualified firms for supply of equipment, construction, installation, and initial operations of the project. The installations and their operation shall be based generally on the report of June 1964, submitted to the Saudi Arabian Government by Stewart L. Udall, Secretary of the Interior, entitled "Preliminary Appraisal Report on Combination Sea Water Desalting and Electric Power Plant for Jidda, Saudi Arabia", a copy of which is appended hereto (Appendix I).² Contracts shall be awarded by the United States Government on behalf of the Saudi Arabian Government after solicitation of proposals from firms to be selected by the United States Department of the Interior subject to Saudi Arabian Government approval. The Department of the Interior, through its Office of Saline Water, shall be responsible for United States Government functions except when otherwise noted in this Agreement. The Department of the Interior shall utilize its contracting procedures and contract forms with such modifications or adaptations as it in its discretion deems desirable.

The obligations undertaken by the United States Government and the United States Department of the Interior are understood to be subject of the following terms and conditions :

¹ Came into force on 19 November 1965 by the exchange of the said notes.

² See p. 41 of this volume.

1. (a) In the interest of allowing the work undertaken by the Department of the Interior to proceed as expeditiously as possible, the Saudi Arabian Government shall establish within thirty (30) days after its acceptance of the terms of this note an irrevocable letter of credit to cover the entire estimated cost of the project to be paid by the Saudi Arabian Government, in the amount of Fourteen Million Dollars (\$14,000,000). The project's estimated cost includes the expense of site selection and preconstruction planning, design, plans and specifications, construction, installation, initial operations, training of Saudi Arabian personnel, and completion of documentary. The estimated cost also includes the expenses of the Department of the Interior with the exception of (1) salaries of employees of the Department assigned to the project, (2) cost of providing an architectural and engineering study and design for the desalting plant, and (3) field supervision of the construction of the desalting plant.

(b) The letter of credit shall be payable through a bank in the United States and shall be in the form attached hereto as Appendix II¹ or in the approved format of the issuing bank. The Department of the Interior will draw upon the letter of credit by the submission of demand drafts on the paying bank for obligations actually incurred by the Department of the Interior. The Department of the Interior will provide at three-month intervals to the Saudi Arabian Government an accounting of the funds so expended, in such format and detail as may be mutually agreed upon by the Department of the Interior and the Saudi Arabian Government. The Saudi Arabian Government shall be advised of the amount of unexpended balances remaining upon final completion of and accounting for the work involved.

(c) Appeals in disputes arising out of contracts of the United States Government made in furtherance of this Agreement shall be heard and decided, pursuant to the "Disputes" clause contained in such contracts, by the Secretary of the Interior through the Department of the Interior Board of Contract Appeals. The Saudi Arabian Government agrees to make such additional funds available as may be necessary to cover the payment of successful claims.

2. (a) The Saudi Arabian Government shall make available in a timely manner, consistent with construction phasing, all lands, easements, and rights-of-way required for the entire project. In addition, the Saudi Arabian Government shall timely construct necessary access roads to the plant site, fuel supply lines and facilities, fresh water lines, pumping stations and reservoirs and electric transmission and distribution lines and substations, in accordance with the design of the project.

(b) The Saudi Arabian Government shall make arrangements for fuel of the type for which the project is designed in adequate quantity and of adequate quality for use in connection with the construction, testing, and initial operation of the project.

(c) The Saudi Arabian Government shall also furnish, and the Department of the Interior will accept, personnel of the Saudi Arabian Government, to observe the initial operation of the project; and such personnel shall be trained by or at the direction of the Department of the Interior as competent plant operators and maintenance employees. The number and kinds of such personnel and their training location shall be mutually determined.

3. (a) Personnel of the Department of the Interior, when in residence in the Kingdom of Saudi Arabia as special representatives of the Department pursuant to this Agree-

¹ See p. 69 of this volume.

ment, will be entitled to the same privileges and immunities as personnel of comparable rank and status of the Embassy of the United States of America in the Kingdom of Saudi Arabia.

(b) The Saudi Arabian Government shall bear the costs of taxes of all non-Saudi Arabian personnel of public or private organizations present in the Kingdom of Saudi Arabia to perform work in connection with this Agreement. Such taxes shall include property taxes on personal property intended for their own use, and any tariff or duty upon personal or household goods brought into the Kingdom of Saudi Arabia for the personal use of themselves and members of their families. Such reimbursement for any tariff or duty shall not apply to such personal or household goods as may be sold by any such personnel in the Kingdom of Saudi Arabia. It is further understood that whenever such personnel shall undertake work outside the limits of the project to be performed in accordance with this Agreement, they shall be subject to the regulations of the Saudi Arabian Government with respect to taxes and duties.

4. All property, material, equipment, services, and supplies brought into the Kingdom of Saudi Arabia by the Department of the Interior or its contractors to carry out the functions contemplated by this Agreement shall not be subject to import and export duties, licenses, excises, imposts, bonds, deposits, and any other charges except for services requested and rendered, provided they will be reexported upon completion of the work. Property, materials, equipment, and supplies belonging to the Department of the Interior or its contractors that do not become a part of the completed works shall remain the property of the Department of the Interior or its contractors and may at any time be removed from or disposed of in the Kingdom of Saudi Arabia free of any restrictions or any claims which may arise by virtue of such removal or disposal, provided that the duty thereon shall be paid in the event of their sale or disposal in the Kingdom of Saudi Arabia.

5. (a) The Saudi Arabian Government agrees that the United States Government, its officers and its employees, will be held harmless from causes of action, suits at law or equity, or from any liability or damages in any way growing out of :

- (i) the performance of the functions covered by this Agreement, or
- (ii) the construction, operation, and maintenance of project facilities.

(b) In order to effect the proper indemnification of the United States Government, its officers and its employees, as indicated in subparagraph (a) hereof, the Saudi Arabian Government further agrees that it will post sufficient sureties as may be mutually agreed upon with the United States Government to indemnify the United States Government for any final judgments or final decisions of administrative tribunals, which judgments or decisions require payment by the United States Government for any liability arising from the performance of the functions covered by this Agreement or from the construction, operation and maintenance of the project facilities.

6. (a) The United States and Saudi Arabian Governments will consult, upon request of either of them, regarding any matter relating to the terms of this Agreement, and will endeavor jointly in the spirit of cooperation and mutual trust to resolve any difficulties or misunderstandings that may arise.

(b) The Kingdom of Saudi Arabia shall designate an Authority to act finally for the Government of Saudi Arabia in connection with all project matters that may properly be referred to it by the Contracting Officer, who will be appointed by the Department of the

Interior and identified to the Saudi Arabian Government. The Contracting Officer shall establish and maintain constant liaison with such Authority and shall keep it constantly advised with respect to the progress of work undertaken by the Department of the Interior hereunder. It is contemplated by both Governments that the proposed project work will be in two phases, that is, the preconstruction phase and the construction and initial operation phase. The Contracting Officer shall consult with, and obtain the approval of, the Authority prior to taking any of the following actions :

(i) With respect to Phase I :

- a. giving instructions to the Contractor to perform preconstruction work and preparation of plans and specifications, or to make basic alterations in performance of the contract ;
- b. giving approval to the final plans and specifications to be included in the proposal to the Contractor ;
- c. giving instructions to terminate the performance of the contract, in whole or in part, unless the reason for the termination notice shall be lack of funds to meet contractual commitments.

(ii) With respect to Phase II :

- a. giving instructions to the Contractor to introduce changes in the design parameters of the proposed plant, or with respect to any change of a basic feature of the proposed plant ;
- b. giving final acceptance to the Contractor for the completed installation ;
- c. giving instructions to terminate the performance of the contract, in whole or in part, unless the reason for the termination notice shall be lack of funds to meet contractual commitments.

(c) The Contracting Officer shall give notice to the Authority at any time when he has reason to believe that available funds are insufficient to complete the work. The Authority shall take such action as may be required to promptly supplement the funds or to notify the Contracting Officer that no further funds shall be made available.

7. The Agreement set forth herein will be binding upon both Governments until completion and acceptance of the project and until the final accounting of all funds involved has been made. In the event of a change of circumstances, making it necessary or desirable to terminate the arrangements agreed to herein, either Government may give 60 day's notice in writing of its intention to terminate those arrangements. Thereafter, the United States and Saudi Arabian Governments shall consult together with the aim, insofar as possible, of fixing mutually satisfactory termination date and procedures. Further, insofar as possible, the termination date shall be fixed sufficiently in advance so that the Department of the Interior may make personnel and other adjustments in their operations in light of such termination.

8. Upon completion of the project, the Department of the Interior will arrange for the removal of its property and the Contractor's property as expeditiously as possible, and will deliver to the Saudi Arabian Government the project in an operable condition. For the purpose of developing data and information which may be of significance in further research and development in the field of saline water conversion, the United States, for a period of five (5) years following the completion and acceptance of the project by the Saudi Arabian Government, will inspect the project and observe its operation through