

File

February 1, 1955

Ralph Elson, Chief, Contract Coordination Branch

CONTRACT W-7504-eng-276 - HARSHAW CHEMICAL COMPANY

SYMBOL: ADC:RE

After reviewing S. R. Sapiris's memorandum dated November 17, 1954, in which, among other things, there was a detailed description of Harshaw's proposal dated November 1, 1954 for maintaining the refinery in a standby condition, the Acting Director of Production advised by memorandum dated December 31, 1954 that we should proceed to negotiate with Harshaw the best possible arrangement for maintaining the refinery in standby for a period through January 1, 1957.

A meeting with Harshaw has been arranged in Cleveland for February 4, 1955. For the purpose of identifying, but not necessarily resolving, the primary problems in connection with this matter, F. R. Dowling, A. S. Newmann, J. C. Winkles and the undersigned met for a short while on January 28, 1955. There follows an identification of the problems which were developed, and which should be discussed again prior to entering the negotiation in order to determine a definite approach:

1. The Harshaw proposal was based upon a termination standby date of January 1, 1958. In a previous meeting with Harshaw on October 15, 1954, we had talked about a date of January 1, 1957. It is my understanding, however, that Mr. Elson subsequently requested Harshaw to figure on the date contained in their proposal. In the December 31 memorandum, Washington used the January 1, 1957 date. The word "standby" has been used rather loosely and we must make a determination as to whether we actually want the standby period to run through January 1, 1957 or whether that it is the date through which we might request Harshaw to operate the plant. In the previous meeting, that date was considered as one through which they might be required to operate. This concept would effectively reduce the actual standby period by some six (6) or eight (8) months in view of the fact that we would have to give several months notice prior to placing the plant in operation and it is probable that we would not wish to operate the plant for a period of only a few months. In the previous meeting, for example, we had considered a final notice date of

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April 1, 1956 as reasonable. If we had not given notice of intent to operate on or before that date, Harshaw would then be relieved of further responsibility except insofar as they might be involved in disposal of Government-owned property.

It was my understanding that Mr. Dowling intended to check this point further with Mr. Neude and possibly with Washington.

2. We feel that Harshaw's proposal is substantially on the high side so far as monetary considerations are concerned, and we should make an attempt to negotiate the best possible monetary arrangement. It appears that obtaining anything better than their proposal will be most difficult, if not impossible, in view of the fact that Harshaw evidences no active interest in maintaining the plant in standby and would obviously prefer that we get out. Furthermore, we at the moment have no contractual right to stay in the contractor-owned building after September 30, 1955. In that respect we are at his mercy.
3. As suggested by Washington, we should endeavor to include in any contract, extension, cancellation or termination rights without additional cost to the Government. In regard to this point, the Harshaw proposal is somewhat difficult to interpret. They state "In case of cancellation by the Government...., the Government will pay as a cancellation charge \$60,000 less the length of notice of cancellation given in months times \$15,000. We feel that with notice of four (!) months, we can make substantial progress toward utilization of the plant for our own purposes whereas it will not likely be difficult for the Commission to give this much notice." It appears to the writer that Harshaw intends that we pay them the \$15,000 per month as long as we are in occupancy of their building and that, in any event, we would give them four months notice prior to the time of vacating the plant. Should we vacate within two months after notice, they would still want us to pay them a four month charge of \$60,000. This matter should certainly be made clear.
4. Harshaw has proposed that we pay them \$15,000 per month, in addition to actual costs of standby, for any period subsequent to September 30, 1955 during which the plant is not being operated. Under the present contractual arrangement, in which we are not required to entirely vacate the plant until September 30, 1955, we are paying Harshaw about \$3,500 per month. It would seem reasonable as a negotiating point that we should continue to pay the \$3,500 through that date and not start the payment of \$15,000 per month until that time has expired. It is probable that Harshaw will not agree to such an arrangement, but we should at least make an attempt in this respect.

5. Harshaw has alleged all along that the whole building is useless to them as long as the refinery utilizes a part of such building. If it should develop, however, that Harshaw finds a use for a portion of the building, arrangement should be made for an appropriate abatement in the \$15,000 per month charge.
6. In their proposal, Harshaw declined to make any specific offer in respect to their utilizing the refinery for their own purposes. In view of this declination, it will probably be unnecessary to cover this point in a contract modification. As I understand it, however, we would probably be willing to negotiate an arrangement at a later date which would permit them to use the plant, providing we would realize a worthwhile abatement in the monthly charge, and providing the plant could be put back in operation in the length of time we would require.
7. If we should permit Harshaw to use the plant for their own purposes, they should stand the cost of placing the plant in the same condition that it would have been in had it been maintained in standby. The Commission would then stand the cost of converting the plant from standby to operating condition should we require it to be operated.
8. In respect to allowable costs for standby and costs allowed in determining unit prices of material under an operating condition, we are in no position to attempt to change the basis for reimbursement. This contract was negotiated long before GS-ACC-17 and the pattern of pricing has been well established. Harshaw will undoubtedly insist upon the same type of pricing arrangement and, should we suggest any changes to their disadvantage, they would no doubt demand an adjustment through the profit factor.
9. Harshaw declined to make any offer for the purchase of Government-owned equipment. This matter can be left to future negotiation as appropriate. On this point, Mr. Linker pointed out that certain legal implications would have to be given due consideration.
10. Because Harshaw will be paid its costs, or such estimated costs would have to be included in any lump sum type arrangement, for maintaining the plant in standby, it becomes important that we define to the extent practicable the term "standby". We concluded that any definition would certainly not be all inclusive and that the operating notice period might well serve to indicate the condition in which the plant should be maintained. Furthermore, we could inspect the plant periodically and direct or request Harshaw to do certain work on the equipment which would be reimbursable. There is a vast difference, however, between "cold storage" and some more active standby condition. I believe that the contract modification should be somewhat definitive in this respect.

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11. Mr. Winkles pointed out a problem of law in respect to rental of real property. There was some discussion as to whether we will in effect be paying rent or whether we will simply be paying a lump sum amount for all costs including an allowance for use of Harshaw property. This problem will be studied farther prior to the negotiation meeting.

Ralph Elson

CC: E. A. Wehrle
Y. R. Dowling ✓
J. C. Winkles
A. W. Neumann, Cleveland

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