

SECTION B
SUPPLIES OR SERVICES AND PRICES/COSTS

NOTICE TO OFFERORS:

A. Consent to Subcontracts. With respect to the Contract Clause 52.244-2 Subcontracts (Cost-Reimbursement and Letter Contracts), the following will apply: Notwithstanding any approved purchasing system of the PMC prime contractor, all proposed subcontracts expected to be valued at \$500,000 or more are subject to the Contracting Officer's written consent within the meaning of the clause.

B The Minimum Quantity to be awarded under this contract is One Task. The Maximum which may be awarded under this contract is \$1.2 Billion.

| <u>ITEM</u> | <u>DESCRIPTION</u> | <u>QUANTITY</u> | <u>U/I</u> | <u>UNIT PRICE</u> | <u>AMOUNT</u> |
|-------------|--------------------------------------|-----------------|------------|-------------------|---------------|
| 0001 | PROGRAM MANAGEMENT CONTRACT SERVICES | 1.00 | JB | NSP | NSP |

END OF SECTION B

SECTION C
DESCRIPTION/SPECS./WORK STATEMENT

STATEMENT OF WORK

FOR

PROGRAM MANAGEMENT CONTRACT

SOLICITATION DAAM02-96-R-0016

SEE ATTACHMENT 03 - STATEMENT OF WORK

END OF SECTION C

SECTION D NOT USED

SECTION E
INSPECTION AND ACCEPTANCE

- E.1 52.246-6 INSPECTION--TIME-AND-MATERIAL AND LABOR-HOUR (JAN 1986)
(Reference 46.306)
- E.2 52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)
(Reference 46.312)
- E.3 52.246-13 INSPECTION--DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS
(AUG 1996)
(Reference 46.313)

END OF SECTION E

SECTION F NOT USED

SECTION G
CONTRACT ADMINISTRATION DATA

G.1 Invoices (Services)

The contractor shall prepare and submit 5 copies of the invoice to the address listed below for certification of services performed:

Program Manager, Rocky Mountain Arsenal
Contracting Team/ATTN: AMSCB-PCR
Commerce City, CO 80022-1748

In conjunction, the contractor shall send the original invoice of copies cited above to the following address:

DFAS-APG, Commercial Accounts
DFAS-IN/EM-BJ-V, Bldg. 310
Aberdeen Proving Grounds, MD 21005-5001

NOTE: Payment on original invoice will not be made by DFAS Commercial Accounts until certification and approval of invoice is received by the Contracting Officer, Rocky Mountain Arsenal.

THE INVOICE SHALL CITE THE CONTRACT NUMBER (DAAM02-__-__-____)
FOR PROPER PAYMENT

The offeror shall indicate below the address to which payment should be mailed, if such address is different from that cited in Block 15A of the Standard Form 33, Solicitation, Offer, and Award.

Foster Wheeler Environmental Rocky Mountain Arsenal Division
P.O. Box 18320
Newark, NJ 07191-8320

G.2 ADDITIONAL INVOICE REQUIREMENTS

SECTION H
SPECIAL CONTRACT REQUIREMENTS

H.1 Rocky Mountain Arsenal (RMA) Consent Decree/Financial Manual

The following clause is intended to establish certain rights in the Government and Shell or their agents respecting the settlement of the RMA litigation and is intended to be coextensive with any similar rights the Government may have under any other clause of this solicitation/contract.

This clause is included in this contract to insure that the contract is performed in such a manner as to comply with the requirements of the Financial Manual signed by the United States and Shell Oil Company in the litigation between them regarding Rocky Mountain Arsenal. This clause shall not be construed to decrease any rights the Government may have under any other provisions of this contract. Any inconsistency between this clause and other provisions of this contract shall be resolved so as to minimize any loss the Government may sustain due to such inconsistency.

All special clauses relating to the Consent Decree and the Financial Manual shall be incorporated in all subcontracts at all tiers regardless of the type or subcontract or the pricing arrangement for the subcontract.

1. RMA DEFINITIONS

a. Cost documentation is defined as the contract with all modification, amendments, changes and orders placed on the contract and all documentation evidencing costs or charges incurred in performance of the contract. Such documentation shall, to the extent applicable, consist of labor distribution sheets, time and attendance cards, time sheets, purchase orders, requisition forms, contract with subcontracts, delivery orders, invoices, vouchers, travel orders, travel vouchers, receipts, expense statements, transfer vouchers, work orders, project orders, interoffice transfers, journal entries, labor and material overhead and general and administrative burdens, profits, and any other type of documentation generated on a regular basis or for performance of the contract which evidences the cost or price for contract performance.

b. Shell is defined as Shell Oil Company, Julius Hyman & Co., or Shell Chemical Corporation and their successors and assigns or divisions thereof or companies owned or controlled by them.

c. Consent Decree is defined as the Consent Decree agreed to by Shell and the United States and lodged with the court in "United States of America v. Shell Oil Company, Inc.", Civil Action No. 83-C-2386, and any amendments or modifications therein and specifically made a part thereof.

d. Financial Manual is defined as the operative document agreed upon by the Government and Shell which establishes the financial accounting and auditing procedures for costs and natural resource damages incurred at Rocky Mountain Arsenal.

2. RMA REVIEW AND AUDIT AND COPYING OF CONTRACTOR RECORDS

a. The Government and Shell shall have the right to jointly or independently review, audit and copy by any means the Cost Documentation of Contractor as permitted by the provisions of the Financial Manual. Reports of any such review and audit performed by the Government or Shell may be provided to the other. Government or Shell may exercise its rights using independent auditors provided said auditor execute a confidentiality agreement in favor of Contractor. Shell is obligated to treat all Cost Documentation as confidential information in accordance with Section 11A of the Financial Manual.

b. Cost Documentation may be disclosed to an independent mediator who shall be required by the terms of his employment contract to keep confidential all information acquired by him in accordance with Section 9D of the Financial Manual.

c. Review, audit and copying shall take place at the prime contractor's office for prime and subcontract Cost Documentation unless the parties involved in a particular action agree to other suitable arrangements. The Contractor shall provide adequate space for an atmosphere conducive to the conduct of review and audit and copying of the Cost Documentation. If Contractor Cost Documentation is on microfilm type media or magnetic media, the

Contractor shall provide access to equipment for reading the media at least equivalent to that utilized by itself or hard-copy at Contractor's option. Upon request, the Contractor shall also provide copies of all Contractor Cost Documentation as required by Section 11 of the Financial Manual.

3. RMA RETENTION OF RECORDS

The contractor shall retain all Cost Documentation for a period of not less than three and one-half years after submission of its final voucher for payment under the contract. If the contractor is notified by the Contracting Officer of a dispute between the Government and Shell concerning contract costs which requires retention of Cost Documentation by the contractor beyond the above period, the contractor shall continue to retain all Cost Documentation or such portions thereof as the Contracting Officer may direct and the contract shall be subject to an equitable adjustment. Government shall have the right to copy Cost Documentation and retain it at its own facilities.

4. FORM AND CREATION OF COST DOCUMENTATION

Unless specifically set forth as a requirement of this contract, Contractor is not required to create or maintain Cost Documentation in any particular form for this contract provided that the Cost Documentation is created and maintained in a manner consistent with its customary business practices or as otherwise required for a cost accounting system required for award of this contract.

5. FAILURE TO MAINTAIN COST DOCUMENTATION

The Contractor shall be liable to the Government for any costs and interest thereon which the Government is unable to collect from Shell in accordance with the Financial Manual due to the failure of the Contractor to maintain Cost Documentation as required by this contract. Said liability shall not be an allowable cost under this or any other Government contract or be reimbursable in whole or in part either directly or indirectly by the Government by any other means whatsoever.

6. RMA CONFIDENTIALITY PROVISIONS

a. The Contractor recognizes that, in order to facilitate the Contractor's performance of its obligation under the Contract, the Government may make available to the Contractor, or the Contractor may otherwise be exposed to, Confidential Information belonging to other entities working in conjunction with or providing services to the Government or Shell. The Contractor therefore agrees as follows:

(1) The Contractor shall treat all Confidential Information as highly confidential and shall not publish, divulge, disclose, or make known in any manner or to any extent not authorized by law any Confidential Information to third parties who have not executed a confidentiality agreement that contains the provisions of this Section. Shell or Government shall not be deemed to constitute third parties for purpose of this Section. The Contractor shall not disclose such Confidential Information for so long as it remains Confidential Information, except to such subcontractors and suppliers that have executed a confidentiality agreement which contains the provisions of this Section and only to the extent necessary to enable the subcontractor or supplier to fulfill its responsibilities under its contract with the Contractor.

(2) The Contractor shall disclose Confidential Information only to those of its officers and employees who require it in conjunction with the Contractor's performance of its obligations under this Contract.

(3) Under no circumstances shall the Contractor make any commercial use of Confidential Information, except in connection with the performance of this Contract for so long as such information remain Confidential Information, unless it first obtains written consent of the Government.

(4) Upon the request of the Government, or within a reasonable time after completion or termination of the Contract, the Contractor shall return or destroy, at the option of the Government, all documents in the Contractor's possession containing Confidential Information, whether or not prepared by the Contractor, except that the Contractor may retain one reproduction

of such documents for record-keeping purposes, provided the Contractor remains in compliance with the other requirements of the Section and that the Contractor secures such documents in a segregated file.

b. For purposes of this Section, "Confidential Information" means all records, reports, or information

(1) designated in accordance with Section 104(e)(7)(C) of CERCLA, 42 U.S.C. 9604(e)(7)(C); or,

(2) marked or stamped by the Government, Shell, or the Contractor, with the legend "Confidential Information"

that concerns or relates to the trade secrets, processes, operations, styles or work, or apparatus, or to the confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; and all other records, reports, or information that Shell or the Government is required by law or contract to maintain confidential.

c. The Contractor's obligation under this Section shall continue after completion or termination of this Contract, and shall remain in full force and effect for so long as Confidential Information remains Confidential Information.

Section H: Continued

H.2 ANNUAL WORK PLANS. Since the work under this contract will be funded through annual appropriations, the Government is unable to accurately predict future funding levels. The Contracting Officer will notify the Contractor no later than April 30 of each year of the Government's best estimate of the available budget for the subsequent fiscal year. No later than June 30 the contractor shall prepare a work plan for the succeeding fiscal year based on these funding projections and present it to the Contracting Officer with sufficient estimates of cost and work detail to allow analysis and subsequent discussion of the plan, if necessary, and preparation and assignment of Task Orders for execution of the work. The contractor shall prepare a work plan for FY1998 within 60 days after the contracting officer notifies the contractor of the Government's best estimate of the available budget for FY1998. The contracting officer and contractor will agree on a work plan not later than 15 days after contractor's submittal of the FY1998 work plan. For FY1998 the Contracting Officer will make the estimate available upon award. The Contractor agrees to project its work plan as soon as practicable to facilitate agreement on a work plan. In addition, the Contractor shall provide on June 30 of each year an updated five-year projection which will set forth future plans for the next fiscal year and anticipated work for the successive four years. The first five-year projection shall be due no later than six months after award. The second year of the five-year plan must contain adequate detail to permit early performance of some components of the work in the event unanticipated funding becomes available, if the work in the current year is reprioritized, or if efficiencies of operation permit additional work within existing funding. The Contracting Officer and the Contractor will agree on a work plan no later than 15 days prior to the new fiscal year. In the event a mutually agreed to plan cannot be placed, the Contracting Officer reserves the right to unilaterally impose a plan.

H.2.1 TASK ORDER ASSIGNMENT. Task orders will be awarded by the contracting officer based upon the annual work plan developed pursuant to paragraph H.2 and the availability of funding.

H.3 TIME AND MATERIAL RATES. Task orders will be awarded in a modified time and material (T&M) format. Unlike the usual T&M instrument, the fee will be separated from the fixed labor rates and accumulated in the award fee pool as set forth in Section H.5.

H.3.1 TIME. The time portion of the T&M instrument will consist of fully burdened labor rates for each labor category. Each fully burdened labor rate shall include contractor expenses for: direct labor, fringe benefits, all applicable overhead and general & administrative expenses, other direct costs (as defined in Attachment 01 to Section J) The fixed contract rates will be used for purposes of negotiation and award of T&M task orders for each year of the first five years of the contract. The contractor will have the opportunity to renegotiate these rates every five years of the contract beginning in year six.

H.3.2 MATERIAL. Material not included in the ODC list (attachment 01 to Section J) and subcontracted remedy work will be considered material costs (cost reimbursable with no fee) under the T&M task order instrument.

H.4 OTHER DIRECT COSTS. The fully burdened labor rates proposed shall cover offeror expenses for all other direct costs identified in Attachment 01 to Section J. The Government will not pay for these ODC elements except through the fully burdened labor rates. All other direct costs not included in Attachment 01 shall be considered cost reimbursable with no fee (i.e., material portion of the T&M) subject to contracting officer approval.

H.5 CONTRACT TYPE. The contract is an Indefinite Delivery Indefinite Quantity Contract in accordance with FAR 16.504. Task orders issued under this contract will be on a time and materials basis, in accordance with FAR16.601, incorporating performance-based award fee provisions as set forth in the task order with the intent that the Contractor will assume a greater "fee at risk" posture. The objective is to incentivize the Contractor for total quality performance of the remedy. Accordingly, the contract provides for no base fee. The task orders will for the most part be a collection of fully-funded non-severable individual, though not independent, projects which may be of multiple year duration.

H.5.1 The PMC award fee pool will accumulate according to the single fixed dollar-per-hour rate in the basic contract award. This dollar-per-hour fee pool rate will accumulate only on Contractor personnel performing work at Rocky Mountain Arsenal, all team member personnel performing work at Rocky Mountain Arsenal, and professional personnel (either prime or subcontractor) performing design engineering work under task orders in existence in a particular year or evaluation period. The fee pool shall be a single combined pool of all fees accumulating from task order performance. This fee pool represents the total available amount of fee which may be awarded in accordance with the award fee plan.

H.5.2 In keeping with the intent to reward performance, the Contractor and the Government shall agree to a incentive fee plan that maximizes reliance on performance-based objectives while eliminating base or fixed fees. Specific award fee plans will detail the criteria which will be used by an Award Fee Determining Official (AFDO) to assess the amount of fee earned during a period of one year. The fee plan will be negotiated following contract award for the initial Fiscal Year period, and it will be renegotiated yearly thereafter concurrent with the annual work plan. The annual fee plans will be in force only during the period of the respective annual work plan and they will be negotiated with the mutual goal of maximizing performance under the work plan. Fee Bearing task order work performed during any particular year or evaluation period will be used for purposes of feeding the fee pool.

H.5.3 While the Contract Type is Indefinite-Delivery Indefinite Quantity, the award fee plans shall consist of measurable performance components to the extent practicable, with a portion of the available fee allocated to each component. All components subject to incentivization must be

related to a specific contract requirement and for a defined period of time. The plan shall contain a Performance Evaluation Plan which will detail the areas of evaluation, the percentage of award fee allocated as available for the respective areas, and to the extent possible, criteria which will be considered by the AFDO and staff in assessing total contract performance.

H.5.4 If the parties are not able to agree upon an award fee plan or portion thereof, the Contracting Officer may unilaterally establish a plan prior to the performance period for a new annual work plan. The Contracting Officer reserves the right to initiate discussions or to unilaterally modify the award fee plan (but not the award fee pool accumulation structure) at any time due to changes in program requirements or objectives. Any unilateral modification to a fee plan shall be provided to the Contractor at least thirty (30) calendar days prior to its effective date, and in no event shall such change be made within sixty (60) days prior to the scheduled completion of any incentive milestone affected by the modification of the plan.

H.5.5 Award Fee Evaluation periods shall be semiannual based on the Government fiscal year. The first evaluation period shall end 30 March 1998.

H.5.6 The Contractor shall prepare a self assessment no later than 15 days after the end of the semi-annual evaluation period. This assessment will discuss the Contractor's view of any strengths or weaknesses in its performance during the evaluation period. When weaknesses or deficiencies are noted, the Contractor shall describe actions planned or taken to correct the deficiencies and to prevent recurrence. The AFDO will review the self assessment as part of the evaluation. The Contractor will not be penalized for a realistic self assessment, and the self-assessment will not be made available to individuals (other than the AFDO) who may serve as support staff to the AFDO.

H.5.7 The AFDO, with recommendations from a supporting evaluation board, will examine performance in accordance with the award fee plan and its performance evaluation plan. The AFDO, through the Contracting Officer, will present a preliminary award fee determination to the Contractor no later than 45 calendar days after the end of an evaluation period. The Contractor may review the determination, and at its option, discuss with the Contracting Officer and the AFDO specific portions of the findings. If the Contractor feels the determination in whole or in part does not reflect the quality of performance during the period, it may present such evidence as may support his position. The AFDO may consider the evidence and at his discretion modify the determination. However, under this contract, the determinations described in this paragraph are explicitly exempted from action under the "Disputes" clause of this contract, and the award fee determinations by the AFDO are final. Affording the Contractor the opportunity to review the AFDO's preliminary determination in no way divests the rights of the Government in this matter

H.6 AGREEMENT TO NOT COMPETE. During the performance of this contract the Contractor and its team members specifically agree not to compete for or act as a subcontractor for projects generally defined as remediation work at Rocky Mountain Arsenal under this or any

other contract.

H.7 ADJUSTMENTS TO TERMS AND CONDITIONS. The parties agree that due to the prospective extended period of performance of this contract, the Contracting Officer may, on an annual basis, enter into negotiations to modify, add, or delete provisions of the contract for which statutory or regulatory prescriptions may change.

H.8 PARTNERING. The parties agree that it is in their mutual best interest to promote a long term partnering culture to achieve the goals of this contract. It is recognized that a firm commitment to foster early and effective communication, to anticipate potential problems, and to design a dispute resolution process will maximize the effectiveness of the resources available. The Remediation Venture Office (RVO), in cooperation with the Contracting Officer, and the Contractor agree to establish such mechanisms as may be appropriate to organize and institutionalize an active and ongoing dialogue which may cause both the RVO and the Contractor to examine and modify internal processes and structure; identify inefficiencies; and share planning information, experience, procedures and lessons learned.

H.8.1 Any bilateral partnering agreement which may be executed will convey no legally enforceable rights or duties. Any changes to the contract must be made by the Contracting Officer under the terms of the written contract. Rather, a partnering agreement will be a team relationship that promotes the achievement of mutually beneficial goals.

H.9 ALTERNATIVE DISPUTES REVIEW PROCESS. Notwithstanding the expected effectiveness of the partnering to be fostered under the contract, the parties recognize that disputes or claims may arise during performance. In order to assist in the timely resolution of disputes or claims arising out of this project, the parties agree to establish an Alternative Disputes Review Process which may be invoked by the mutual agreement of the parties. When deemed mutually beneficial, a Disputes Review Board will consider disputes referred to it and will provide nonbinding recommendations to assist in the resolution of the differences between the parties. Specific procedures to be followed for disputes by the Disputes Review Board will be decided upon by the Government and the Contractor. Nothing in the procedures or actions of the Board shall limit the right of the parties to agree to any or all other alternate disputes review processes. At a minimum, the Board shall consist of one member selected by the RVO, one member selected by the Contractor, and a third mutually agreed to member. The costs for the salaries and travel for the RVO member and the Contractor member will be borne by the respective organizations; the cost of salary and travel for the third member will be shared equally by the RVO and the Contractor. The RVO will provide, at its expense, administrative and secretarial services and facilities. Failure to resolve a dispute through the alternative process does not negate the rights of the parties as described in the contract clause entitled "Disputes".

H.10 BONDING. There is no requirement for the PMC to bond its performance under this contract. However, fixed-price construction subcontracts over \$25,000 require the prime

Contractor to obtain from each of its construction subcontractors a payment bond in favor of the prime Contractor sufficient to pay labor and material costs and a performance bond in an equal amount if available at no additional cost.

H.10.1 Any rights of action under the performance bond shall only accrue to, and be for the exclusive use of, the obligee named in the bond.

H.10.2 In the event of default, the surety's liability on the performance bond is limited to the cost of completion of the contract work less the balance of unexpended funds. The liability shall not exceed the penal sum of the bond.

H.10.3 The surety shall not be liable for indemnification or compensation of the obligee for loss or liability arising from personal injury or property damage, even if the injury or damage was caused by a breach of the bonded contract.

H.10.4 Once it has taken action to meet its obligations under the bond, the surety receives any indemnification and identical standard of liability to which the Contractor was entitled under the contract or applicable laws and regulations.

H.11 INSURANCE. The following are the minimum levels of insurance required under this contract:

| | |
|---|-----------|
| Worker's compensation and employer's liability | \$100,000 |
| Automobile liability: | |
| Bodily injury | |
| per person | \$200,000 |
| per occurrence | \$500,000 |
| Property damage per occurrence | \$20,000 |

H.12 WAGE DETERMINATIONS. The preponderance of the work performed under this contract which is subject to labor wage determinations is construction, and will be subject to Davis-Bacon Prevailing Wage Determinations. For this reason, the contract is considered to be a construction type. It is likely that all of this labor will fall under subcontract. In addition, it is possible that a small amount of labor may be necessary which more properly will fall under Service Contract Act Determinations, also likely to be incurred under subcontract. Because of the expected length of this contract, a single Prevailing Wage Determination will not apply. Rather, each subcontract subject to a determination will be reviewed individually to assure that a current and proper wage determination is applied. The application of the appropriate Prevailing Wage Determination for each subcontract will be coordinated with the Contracting Officer. All

appropriate clauses applicable to construction or services shall apply as flowdown clauses. The Contractor shall maintain the weekly statements of compliance required for those subcontracts subject to the Copeland Act.

H.13 NOTIFICATION OF POTENTIAL HAZARDOUS MATERIAL. This procurement does not require the contractor to handle sensitive items or chemical surety materials. Contamination surveys in support of remediation designs may involved field sampling, packaging, shipment, and laboratory analysis of toxic and hazardous materials and their degradation products. Although the concentrations of these contaminants in water samples are expected to be very low (parts per million or less), high concentrations (percents) could be encountered in soil and sediment samples. For these reasons, due care must be exercised in handling the samples involved in this project to minimize the potential for accidents and personnel exposure to hazardous materials.

H.14 KEY PERSONNEL. Key personnel shall be dedicated to the PMC and are responsible for the following functional areas (1) project management, (2) safety and health, (3) construction management, (4) engineering management, (5) environmental compliance, (6) procurement, (7) quality, and (8) project controls.

H.15 SUBCONTRACTING PLAN. The subcontracting plan and any subsequent amendments are made a material part of the contract.