Revis 4 8/72

TO:	APPROVED BY
Purchasing	
Credit	
Legal	
Insurance	
Operating Vice President	

RETURN TO PURCHASING DEPARTMENT

EP587

PLAINTIFF'S EXHIBIT

ASA-1689

Construction or Repairs
Contract Form PD-19
Under $100,000.00

CONTRACT FOR

Converter Secondary Hood
(Insert name of job)

AMERICAN SMELTING AND REFINING COMPANY'S El Paso Plant

at El Paso Texas
(Insert town and state)

THIS AGREEMENT- made the 13th day of June, 19 73,

by and between Southwestern Industrial Contractors and Riggers Inc., whose address is

P. O. Box 1611, El Paso, Texas 79948 (hereinafter called the

"Contractor") and AMERICAN SMELTING AND REFINING COMPANY, a corporation of the

State of New Jersey, whose address is 120 Broadway, New York 5, N.Y. and

P. O. Box 1111, El Paso, Texas 79999 (hereinafter called the
(Insert address of plant or unit)

"Owner").

W I T N E S S E T H:

The Contractor and Owner agree as follows:

Article 1. Scope of the Work

The Contractor shall furnish all shop drawings, field engineering, labor, tools, equipment, transportation, materials and other facilities, except such items as are hereinafter listed as being furnished or furnished and installed by

the Owner, for Converter Secondary Hood (hereinafter called the "work")
(Insert name of job)

at the El Paso Plant of the Owner at El Paso, Texas
(Insert town & state)

in accordance with the drawings and specifications listed below, all of which are incorporated herein by reference and made a part hereof:

E 13374 - (List Specifications and Drawings)
SWICAR Quote dated June 12th, 1973
Work to be done for a lump sum price of $32,200.00
plus premium time payment at actual cost
Total Estimated Price - $37,200.00

DMART 169

Article 2. Time of Completion

The work shall be commenced June 14, 1973 and shall be substantially completed July 13, 1973.

Article 3. Payment (to be deleted if progress payments are to be made)

The Owner shall pay the Contractor for the performance of this Contract, the sum of See Bottom of Page 1 dollars, ($_____), lawful money of the United States of America within 30 days after satisfactory completion of the work and submission by the Contractor of evidence (including, if requested, complete releases of all liens arising out of or in connection with the work by all persons, firms or corporations on whose behalf such liens could be or were filed) satisfactory to the Owner that all charges for labor and material incorporated in the work and all other indebtedness connected with the work for which liens could be filed have been paid and that the work is free of all liens and encumbrances.

Article 3. Payments (to be deleted if progress payments are not to be made)

The Owner shall pay the Contractor for the performance of this contract, the sum of _____ dollars, ($_____), lawful money of the United States, as follows:

On or about the _____ day of each calendar month, commencing _____, 19____, the Owner shall pay the Contractor _____ percent (_____%) based on the contract prices, of the labor and materials incorporated in the work and of materials suitably stored at the site thereof up to the end of the next preceding calendar month, as estimated by the Owner, less the aggregate of previous payments; and upon completion of the entire work, a sum sufficient to increase the total payments to _____ percent (_____%) of the contract price. Final payment of the remaining (_____%) of the contract price shall be due _____ days after completion of the work.

Before each such payment is due, the Contractor shall submit evidence satisfactory to the Owner (including, if requested, partial waivers, or in the case of final payment, complete releases, of all liens arising out of or in connection with the work by all persons, forms or corporations on whose behalf such liens could be or were filed) that all charges for labor and material incorporated in the work and all other indebtedness (except, in the case of payments other than final payment, indebtedness not then due) connected with the work for which liens could be filed have been paid and that work is free of all liens and encumbrances.

Article 4. Payments Withheld

The Owner may withhold all or part of any payment to the extent necessary to protect the Owner from loss or damage on account of (a) damaged or defective work not remedied, (b) claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor or the Owner (c) failure of the Contractor to make payments properly to Subcontractors or for material or labor, (d) a reasonable doubt that this contract can be completed for the balance then unpaid, or (e) damage to the Owner's property or the work of another contractor.

Article 5. Liens

If any lien remains unsatisfied after payment of the full contract price has been made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and a reasonable attorney's fee. If the Owner has so requested prior to the signing of this Contract, the Contractor, at the option of the Owner, agrees to furnish or permit the owner to secure bonds in the full amount of the contract written by a surety company designated by, or otherwise satisfactory to, the owner, guaranteeing and conditioned for the full, complete and faithful performance of this contract by the contractor and for the payment of claims for labor performed or materials furnished in connection herewith, all in accordance with the terms of the bonds. The premium for the bonds will be paid by the Owner and must not be included by the Contractor in the contract price. In the event the owner elects to secure such bonds, the contractor agrees to sign the required application, to furnish necessary financial statements and financial guarantees, and to otherwise cooperate with the owner, in securing the bonds.

Article 6. Title to the Work

Title to all work completed or in the course of construction shall be in the Owner and title to all machinery, equipment and materials to be incorporated in the work shall be in the Owner as soon as they are delivered on the site of the job.

Article 7. Inspection and Repair

The Contractor shall provide safe and proper facilities at all times for the inspection of the work by the Owner, and shall as soon as practicable after written notice from the Owner, at the Contractor's expense, replace and repair any materials or portions of the work which the Owner shall deem defective and make good all work damaged or destroyed thereby, whether or not there shall be a dispute with respect to any of the foregoing. Any such dispute shall be settled by arbitration.

Article 8. Protection by Contractor

The Contractor at all times shall maintain adequate protection of the work from damage and shall protect the Owner's property and all persons thereon from injury, damage or loss by reason of any act or omission of the Contractor or any Subcontractor. The Contractor shall be responsible, and reimburse the Owner, for any loss or expense to the Owner arising from damage to the work or other property of the Owner caused by the wrongful act or neglect of the Contractor, any Subcontractor or the employees of the Contractor or any Subcontractor. Where such damage includes damage to the work it shall be repaired at the expense of the Contractor.

The Contractor shall use its best judgement and skill in dealing with labor matters, and take all reasonable steps to avoid labor dispute. In the event of any strike or threat of strike, slowdowns, featherbedding, or other like practices, the Contractor shall apprise the Owner of all relevant facts and implications of the particular labor problem involved, and shall consult in good faith with the Owner in an endeavor to reach a mutually satisfactory solution to such labor problem and, so far as reasonably possible, to protect the Owner against delays affecting the work or damage or losses to its other operations.

Article 9. Contractor's Liability Insurance

The Contractor shall maintain such insurance as will indemnify it against claims under Workmen's Compensation Acts and against any other claims for damages for personal injury, including death, which may arise from operations under this contract, whether such operations be by the Contractor or any Subcontractor or anyone directly or indirectly employed by either of them.

Prior to commencement of this work the Contractor shall file with the Owner completed certificates of insurance in form of "Insurance Certificate" attached and shall provide insurance coverage in amounts not less than those stated therein.

Article 10. Indemnity by Contractor

The Contractor shall save harmless and indemnify the Owner from and against any expense, loss or damage on account of any claim, demand or suit made by any person whomsoever, including any employee of the Owner, which is in any way caused by or connected with, or grows out of the execution and performance of this Contract by the Contractor or any Subcontractor; provided, however, that the Contractor shall not be required to indemnify the Owner against any loss caused solely by the negligence of willful fault of the Owner or its employees. The Contractor accepts all risk of injury or damage and all responsibility for any claims for damages whatsoever resulting from the use, misuse, or failure of any hoist, rigging, blocking, scaffolding, or otherlike or unlike equipment used by the Contractor or any Subcontractor, even though such equipment be furnished or loaned to the Contractor or any such Subcontractor by the Owner, and shall indemnify the Owner against all such claims

Article 11. Owner's Responsibility for Certain Casualties

The Owner shall be responsible for all damage to the work, and to material, temporary structures, and equipment (excluding construction equipment not owned by the Owner) at the site of the job, which is caused by fire, windstorm, smoke, hail aircraft, explosion, vehicles, riot or civil commotion.

Article 12. Compliance with Laws and Ordinances

The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations, bearing on the conduct of the work as drawn and specified. If the Contractor performs any work contrary to any such law, ordinance, rule or regulations, he shall bear all costs arising therefrom, in particular, but without limiting the scope of the foregoing, the Contractor shall, and shall cause any Subcontractor to, comply with the terms and provisions of the Occupational Safety and Health Act of 1970 and all appliable rules, regulations, orders and occupational Safety and health standards promulgated under and issued pursuant to such Act in the discharge of its duties and obligations hereunder.

If for any reason the Contractor's or any Subcontractor's employees or agents acquire a status imposing liability on the Owner for employer's contributions or taxes under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, any State Unemployment Tax Act, or any other Act, the Contractor shall be exclusively liable for, and shall indemnify the Owner against, the same and agrees to comply with all such laws and regulations so as to relieve the Owner from any and all liability therefor and from the responsibility of making reports or keeping records with respect thereto.

Article 13. Patents

The Contractor shall indemnify and save harmless the Owner against and from any and all claims, losses, costs, damages, expenses, actions or other proceedings, growing out of or resulting from infrigement of any patent by the Contractor or any Subcontractor in the performance of this contract, except that this provision shall not apply to patented articles or processes specified in drawing or specifications furnished by the Owner.

Article 14. Changes in the Work

The Owner, without invalidating this contract, may at any time order extra work or make changes by altering, adding to or deducting from the work. Such order may be made by the Owner on its own behalf or at the request of the Contractor, upon discovery by the Contractor of any discrepancy between the plans and the physical conditions encountered. If such extra work or changes involve a change in cost, the contract price shall be increased or decreased by the fair value thereof. The Owner will itemize the changes to be made and upon receipt of written notice of same, the Contractor will submit promptly to the Owner, in triplicate, an itemized statement of his calculations of the adjustment in the contract price resulting from the changes or extra work. This must be done before work on the change is begun unless the Owner gives written order to proceed immediately. No work or change shall be made, except by written order of the Owner and no claim for an addition to the contract price shall be valid unless the additional work was so ordered. Any dispute under this Article shall be subject to arbitration.

Article 15. Owner's Right to Terminate Contract

If the Contractor should be adjudged a bankrupt, or make an assignment for the benefit of creditors, or if a receiver of the Contractor's property should be appointed or if the Contractor files a petition or if a trustee of the Contractor's property should be appointed under the reorganization or readjustment provisions of the Bankruptcy Act, or if the Contractor at any time should refuse or neglect to supply enough properly skilled workmen or proper materials, or if he should fail or make prompt payments to Subcontractors or for material or labor, or disregard laws, ordinances or the instructions of the Owner, or otherwise be guilty of a substantial violation of any provision of the contract which he shall have failed to correct promptly after service or written notice thereof by the Owner, then the Owner may, without prejudice to any other right or remedy, terminate the employment of the Contract for the Contractor's default and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method the Owner may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price shall exceed all the general damages of the Owner caused by the Contractor's default, including the expense of finishing the work and compensation of the Owner for the Owner's managerial and administrative service, such excess shall be paid to the Contractor.

If such damages shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. In the event the Contractor and the Owner are unable to agree upon the amount to be paid or reimbursed the dispute shall be settled by arbitration.

Article 16. Correction of Work after Payment

Neither payment nor any provision in this contract shall relieve the Contractor of responsibility for faulty materials or workmanship and the Contractor shall remedy any defects due thereto and pay for any damage to other work resulting therefrom which shall appear within one year from the date of completion of the Contractor's work hereunder. The Owner shall give notice of observed defects with reasonable promptness. Any dispute under this Article shall be subject to arbitration.

Article 17. Arbitration.

All disputes which are herein stated to be subject to arbitration shall be submitted to and determined by arbitration. Except as and to the extent otherwise provided by the controlling state law, no party may have recourse to legal proceedings (other than to enforce this arbitration Article) unless and until an arbitration award has been made. There shall be one arbitrator who shall be chosen by the American Arbitration Association, whose arbitration rules shall be followed.

Article 18. Subcontracts

The Contractor will not employ any Subcontractor without the prior written approval of the Owner and the Contrator shall require each Subcontractor to execute a contract in writing containing provisions similiar to all provisions of this contract which are in any way applicable to such Subcontractor and which will obligate such Subcontractor to comply with and perform all such provisions herein. Nothing herein shall create a contractual relationship between any Subcontractor and the Owner.

Article 19. Assignment

The Contractor shall not assign nor subcontract this contract in whole or in part nor shall the Contractor assign any moneys due or to become due Contractor hereunder without the prior written consent of the Owner.

Article 20. Coordination of Work

The Contractor shall conduct the work hereunder so as to cause a minimum of interference with the Owner's operation. Where interference with the Owner's operations become absolutely necessary, permission shall be requested by the Contractor not less than seventy-two (72) hours in advance.

Article 21. Undertakings by the Owner

The Owner agrees to obtain and pay for any permits, licenses and easements required for permanent structures or changes, and, to the extent practicable without interference with operations, to furnish the Contractor, free of charge, for its use during the construction, electricity, water, steam and compressed air required for construction purposes, at the voltage and pressure currently available at Owner's said plant, to a point adjacent to or within 50 feet of the site, but the Contractor will be required to make the necessary connections, provide approved shut-off and safety devices and furnish and install all temporary lines required to bring them to the point of use.

Article 22. Applicable Law

This contract shall be construed and enforced in accordance with the laws of the state where the work hereunder is to be performed.

Article 23. Entirety Clause

This contract constitutes the entire agreement between the parties, and except as may be specifically set forth herein no changes can be made herein except by an agreement in writing duly executed by the parties or their duly authorized agents.

Article 24. Technical Information

The Term "technical information" as used in this agreement includes but is not limited to technical data, reports, models, drawings, specifications, operating manuals, designs, computations, formulas, apparatus, processes, patentable or unpatentable inventions and other engineering data. You agree to accept ASARCO's decisions as to whether any particular information is technical information or is technical information which has been made or conceived under this agreement.

It is understood that in the course of your performance hereunder you may learn or have access to technical information of ASARCO. You agree that you and your personnel will keep in confidence all such technical information of ASARCO and that you and your personnel will not use or disclose the same without ASARCO's written consent, either during the term of this agreement or at any time thereafter.

You agree to disclose to ASARCO all technical information made or conceived by you or your personnel in performance, or resulting from performance, under this agreement. You agree that all such technical information made or conceived by you or your personnel shall become and remain the free and unrestricted property of ASARCO and that you shall assign or cause the same to be assigned to ASARCO. You agree that you and your personnel will keep in confidence all such technical information made or conceived by you or your personnel and that you and your personnel will not use or disclose the same without ASARCO's written consent, either during the term of this agreement or at any time thereafter.

You agree, upon the request and at the expense of ASARCO, to make or cause your personnel to make applications for Letters Patent in such countries as ASARCO may designate on those of the aforesaid assigned inventions which ASARCO believes to be patenable; and to assign all such applications to ASARCO or its order; and to give ASARCO, its attorneys and solicitors all reasonable assistance in preparing such applications, and in prosecuting such applications in the patent office or offices involved and in defending and enforcing any patent that may be issued upon any such applications; and to execute all papers that may be reasonably required in the prosecution of such applications or to vest in ASARCO or its assigns said inventions, applications and Letters Patent.

Article 25. Additional Provisions

(add such additional provisions, if any, as the particular job requires).

IN WITNESS WHEREOF- the parties have executed this contract the day and year first above written.

Southwestern Industrial
Contractors and Riggers, Inc.
Contractor

By W Clay Fiske

Title President

AMERICAN SMELTING & REFINING COMPANY
Owner

By F. Wittine

EP 581

VIA AIRMAIL

June 21, 1973

MR. P. A. DE SANTIS
EL PASO PLANT

SUBJECT: ORDER 13H-1271, REQN. EP-38
CONVERTER SECONDARY HOOD

Herewith four (4) copies of contract properly signed and executed with Southwestern Industrial Contractors & Riggers Inc. to cover the Converter Secondary Hood in accordance with specifications referred to therein.

It will be in order for you to hand the signed copy of the Agreement to the contractor, giving him whatever instructions are required to proceed with this work; the remaining three (3) copies are for the plant file.

You will note New York Purchasing Department Order 13H-1271 has been assigned to this contract for reference purposes. As soon as the work is completed to the satisfaction of all concerned, the invoices should be paid locally without reference to this office. However, a copy should be sent to New York for recording.

Also, you are to note the expiration date of the insurance. Should the work continue beyond the date shown, be sure to obtain an extension to protect the company until the work is completed.

F. O. WITTWER

FOW:eth
Enc.
cc: R. O. Covington - a/m

JUN 25 1973
W. R. [illegible]
P. A. De [illegible]

SPECIFICATIONS FOR
CONVERTER VENTILATION FAN
EL PASO PLANT

CONVERTER VENTILATION

DUTY:

55,000 CFM
10.5" STATIC PRESSURE
200°F TEMPERATURE (MOTOR SIZED FOR 100°F)
3800 FT. ELEVATION
FAN SPEED NOT TO EXCEED 1000 RPM

USE: FAN WILL BE LOCATED ON DIRTY SIDE OF A CLOTH TYPE DUST COLLECTOR HANDLING Pb O & ZnO

FEATURES:

a. INDUSTRIAL RADIAL BLADE TYPE FAN
b. DOUBLE INLET WITH INLET BOXES
c. OPEN OR RIM TYPE IMPELLER
d. FLANGED INLET AND OUTLET
e. BOLTED TYPE CLEANOUT DOOR
f. HEAVY DUTY SHAFT AND ANTIFRICTION BEARINGS
g. ARRANGEMENT NO. 1,
h. FURNISH DRIVE COMPLETE, INCLUDING SHEAVES, SUPER-DUTY TYPE "V" BELTS, DRIVE GUARD.
i. FURNISH MOTOR, 460 V., 3 ph., [illegible] HP., TEFC, NEMA DESIGN B, CLASS F INSULATION, 50° AMBIENT, CONTINUOUS SERVICE. INCLUDE ADJUSTABLE MOTOR MOUNT. EXCLUDE STARTER. MOTOR SHALL MEET ASME SPECIFICATION CE-MOT.

PROPOSAL INFORMATION:

A. FULL DESCRIPTION AND OUTLINE DIMENSIONS
b. PERFORMANCE CURVE OR CHART
c. FAN RPM, bhp, AND MOTOR hp & rpm
d. IMPELLER DIAMETER AND WR^2 VALUE
e. FAN HOUSING AND BLADE THICKNESS

g. MAXIMUM SAFE FAN OPERATING SPEED
h. DELIVERY TIME

BY [illegible] DATE 10-9-69 SUBJECT CONSTRUCTION PROGRESS REPORT SHEET NO. ..... OF ....

CHKD. BY ..... DATE ..... JOB NO. .....

CONSTRUCTION JOB Nº NY 2934 EP 587
CONVERTER SECONDARY HOOD

		1	2	3	4	5
Nº	DESCRIPTION	APPROPRIATED	SPENT THRU MAY	EST. TO COMPLETE	TOTAL 2+3	BALANCE
	Nº3 CONV. HOOD	50000	—	50000	50000	—

EP587 6-20-73

Engineering

Conv. Sec. Wood 587

ROW #2

Drawing #2

QUOTATION

SOUTHWESTERN
INDUSTRIAL CONTRACTORS AND RIGGERS, INC.

1730 Bassett Ave.
P. O. Box 1611
El Paso, Texas 79948
(915) 532-3491

American Smelting and Refining Company

P. O. Box 1111

El Paso, Texas

DATE 12 June 1973

PROJECT Secondary Hood for Copper Converters

LOCATION El Paso, Texas

We propose to furnish labor, equipment and materials for fabrication and installation of the Hood System on Converter No. 3 as shown on your drawings E 13384 thru E 13397 for $32,200.00.

This proposal is based on the following conditions:

1. Hoist installation and reaving of hoist cables is excluded.

2. Bridge crane to be made available for our use as needed.

3. Furnishing of sheaves is excluded.

4. This proposal presumes working only straight time hours. Should overtime hours be required, ASARCO will be charged, in addition to the contract amount, only the premium cost of overtime.

Respectfully submitted,

G. R. Hatch

GRH:iz

NORMAL CONDITIONS OF ACCEPTANCE, SALE AND PAYMENT ARE STATED ON REVERSE SIDE OF THIS QUOTATION.

QUOTATION

SOUTHWESTERN
INDUSTRIAL CONTRACTORS AND RIGGERS, INC.

1730 Bassett Ave.
P. O. Box 1611
El Paso, Texas 79948
(915) 532-3491

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Respectfully submitted,

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GRH:iz

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AL

OFFICE OF THE SECRETARY

New York, N.Y., June 6, 1973

EP 587

Mr. W. R. Kelly

The following appropriation was approved at a meeting of the Advisory Committee held today:

El Paso New York No. 2934 Plant No. 587	Experimental Secondary Hood on Converters. This experimental hood is necessary in order to ascertain the feasibility of installing hoods on all of the converters so the sulfur dioxide and particulate matter going out of the top of the converter building into the atmosphere can be removed.	$ 50,000

J. F. Hornbostel, Jr.
Assistant Secretary

JFH:lm
Enc.
KDLoughridge w/enc.
WABennis w/enc.
HQStringham w/enc.
LCTravis
EHHaug
AOMarsh, Jr.