

PLAINTIFF'S EXHIBIT

DOW-2933

SERVICE CONTRACT

THIS CONTRACT, entered into this 12th day of March, 1976, by and between DOW CHEMICAL U.S.A., TEXAS DIVISION, an Operating Unit of THE DOW CHEMICAL COMPANY, a Delaware corporation with an office in Freeport, Texas (DOW), and U. S. CONTRACTORS, INC. (Contractor),

W I T N E S S E T H :

ARTICLE I - DESCRIPTION OF THE WORK

1.01 Contractor agrees to furnish supervision and labor to perform in a workmanlike manner the work assigned to it from time to time by Dow.

1.02 All work to be performed hereunder shall be authorized by Dow in writing and shall not commence until authorization is acknowledged and accepted by Contractor or his designated representative. Both Dow and Contractor shall submit to each other the name of their personal representatives for the specific work so authorized.

1.03 Should Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen or fail in any respect to prosecute the work hereunder with diligence, Dow may terminate Contractor's right to proceed with the work.

1.04 All work shall be performed in accordance with the individual departmental safety rules and the terms and conditions of Dow's Safety and Loss Prevention Manual for Contractors, a

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current copy of which has been furnished to the Contractor. Contractor shall comply with all applicable provisions of Federal, State and municipal safety laws and building codes to prevent accidents or injuries to persons or damage to property on or about or adjacent to the premises where the work is being performed.

1.05 All equipment, tools, safety equipment and special clothing will be furnished by Dow.

1.06 This contract is an individual agreement and in no way shall affect any other contract between the parties hereto.

ARTICLE II - COST OF THE WORK

2.01 Labor

(a) For performance of the work assigned to Contractor under this agreement, Dow shall pay Contractor in accordance with the terms set forth in Exhibit "A", which is attached hereto and made a part hereof.

(b) Contractor's fee shall include, but is not limited to, all salaries, wages, insurance premiums, if any, office personnel, transportation, profit and overhead.

(1) Contractor shall be reimbursed for actual statutory assessments for payroll taxes (FICA, FUT, SUT). Actual taxes assessed shall be expressed as a percent of each monthly payroll to which they apply. Each month's payroll tax percent shall be used in invoicing each succeeding month.

ARTICLE III - INVOICING AND PAYMENT

3.01 Contractor shall submit invoices in duplicate to Dow, attention General Accounting Department, as soon as practical at

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the end of each week, or at such time as may be requested by Dow. Invoices are to be supported by properly authorized time reports and such other support as Dow may require for validation of amounts billed.

3.02 All such invoices shall be paid by Dow within ten (10) Dow business days after the receipt thereof, unless any items thereon are questioned by Dow, in which event Dow shall have the right to withhold payment thereof until verification of both the amount claimed and the validity of said claim. Dow's investigation thereof shall proceed as promptly as possible, with which investigation Contractor shall provide complete cooperation. With respect to invoices so questioned and later approved by Dow, payment shall be made as promptly as possible and practical after such approval.

ARTICLE IV - LIENS

4.01 Contractor (a) shall indemnify and save harmless Dow from any and all claims, demands, causes of action or suits of whatever nature arising out of the services and labor furnished by Contractor under this contract, and from all liens upon the real property upon which the work is located arising out of the services furnished by Contractor under this contract and (b) agrees to defend any suit or action brought against Dow based on any such claims, demands, or proceedings to enforce or foreclose any such liens based on any such work performed hereunder, and to pay all costs and expenses, including attorney's fees, in connection therewith or arising therefrom in a manner that will keep said property free and

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clear of all liens, claims and encumbrances arising from the performance of this contract by Contractor.

4.02 Contractor shall notify Dow immediately of the filing of any liens upon Dow's property upon which the work is located arising out of the services furnished by Contractor under this contract. If required, Contractor shall furnish (a) a good and sufficient release or waiver of lien or (b) receipts in full, together with an affidavit that the receipts cover all the services for which a lien might be filed except as covered by the releases and waivers of liens, but if any laborer or other person refuses to furnish a waiver or release or receipt in full, Contractor may furnish a bond, in an amount and with such sureties as may be approved by Dow, conditioned to indemnify Dow against any claim or lien or otherwise. In the event Contractor fails or refuses to have such lien released or furnish such bond when so required, Dow shall have the right to pay any sums necessary to obtain the release of such lien and to deduct the amount paid therefor from any sums due Contractor hereunder.

ARTICLE V - LIABILITY FOR INJURY TO PERSONS

5.01 Contractor assumes the entire responsibility and liability and will indemnify and hold harmless Dow, its agents, servants and employees from and against any and all losses, expenses, demands and claims made against Dow, its agents, servants and employees, by any employee or officer of Contractor because of injury or alleged injury (including death), whether caused by Dow's negligence or otherwise, arising from any source while said employee or officer

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is on premises owned, operated or leased by Dow or under the control of Dow, or while said employee or officer of Contractor is performing under this agreement, and agrees to defend any suit or action brought against Dow based on any such alleged injury, and to pay all costs and expenses, including attorney's fees, in connection therewith or resulting therefrom.

ARTICLE VI - INSURANCE

6.01 Insurance to be carried by Contractor shall be in accordance with Exhibit "B" which is attached hereto and made a part hereof.

ARTICLE VII - PERMITS, LICENSES AND APPLICABLE LAWS

7.01 Contractor shall procure all other necessary permits and licenses, observe and abide by all applicable laws, regulations, ordinances and other rules of the State, territory or other political subdivision thereof, wherein the work is done, or any other duly constituted public authority, and further agrees to hold Dow harmless from liability or penalty which might be imposed by reason of an asserted or established violation of such laws, regulations, ordinances or other rules.

7.02 Contractor shall comply with any and all State and Federal laws regarding age, citizenship, hours, wages and conditions of employment affecting the work covered by this agreement. The wage rate to be paid by Contractor to personnel employed directly upon the site of the work shall not exceed the prevailing construction industry wage rate in the work area.

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7.03 Unless this contract is within one of the exemptions provided for in Executive Order 11246, effective September 24, 1965, as amended by Executive Order 11374 signed October 13, 1967, Contractor shall comply with paragraphs (1) through (7) of Section 202 of Executive Order 11246 (as amended) which are incorporated herein by reference.

ARTICLE VIII - TITLE TO THE WORK

8.01 The title to all work completed and in the course of construction and of all materials which are delivered and stored at the site and which will necessarily be incorporated in the work, as between Dow and Contractor shall be in Dow. All drawings, designs and specifications prepared for the work, whether furnished by Dow or Contractor shall become the property of Dow, and upon completion of the work, or termination of this agreement, be delivered to Dow.

ARTICLE IX - INDEPENDENT CONTRACTOR

9.01 Contractor shall be an independent contractor under this agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder and any provisions in this contract which may appear to give Dow the right to direct Contractor as to the details of doing the work herein covered or to exercise a measure of control over the work shall be deemed to mean that Contractor shall follow the desires of Dow in the results of the work only.

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ARTICLE X - NOTICES

10.01 Any notice or order provided for in this agreement shall be considered as having been given to Dow if delivered personally to Dow's representative at the site of the work, or if mailed by registered mail, postage prepaid to:

Dow Chemical U.S.A.

Texas Division

Freeport, Texas 77541

Attention: Purchasing Department

10.02 Any notice or order provided for in this contract shall be considered as having been given to Contractor if delivered personally to its representative at the site of the work, or if mailed by registered mail, postage prepaid, to it at the following address:

U. S. Contractors, Inc.

P. O. Box 338

Lake Jackson, Texas 77566

ARTICLE XI - PUBLICITY

11.01 Any information relative to the services performed under this contract shall not be released or used by Contractor for publication, advertising or any other purpose without the prior written approval of Dow.

ARTICLE XII - TERM

12.01 This contract shall cancel and supersede that certain contract dated October 20, 1975, and shall continue after the effective date hereof until terminated by either party giving to

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the other party thirty (30) days' prior written notice. Contractor shall complete any and all work assigned to it by Dow prior to notice of termination, all in accordance with the terms and conditions of this agreement.

EXECUTED as of the day and year first above written.

DOW CHEMICAL U.S.A.
TEXAS DIVISION, an operating unit
of THE DOW CHEMICAL COMPANY

By

F. R. West

Title

Purchasing Department

U. S. CONTRACTORS, INC.

By

W. E. McIntyre

Title

President

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