

MEMO (9 Mar 54) 1st Memo Ind  
SUBJECT: Shell Oil Contract for Military Pipeline Study (no. DA-30-075-  
eng-5689)

Materials & Contracts Division, Military Construction 15 March 1954

TO: Legal Division, Contracts Branch

The proposal and recommendation contained in par. 4 of the basic letter from the New York District, has been reviewed and the following comments are offered:

a. Shell Oil Company apparently is assuming that the provisions of Article 7 in the referenced contract will place them in an untenable position regarding any proposed changes which might be required by the Contracting Officer, and that under those provisions, the Contracting Officer is permitted "unfettered discretion" to change Shell's commitment at any time he so desires, dependent upon his interpretation of whether or not, the proposed changes are within the general scope of the contract.

b. Overlooked is the fact that provisions exist to compensate the contractor by an equitable adjustment of the contract cost, arrived at by negotiation, for any increase resulting from such proposed changes. If, in the event that no agreement can be reached on an equitable compensation, the right to appeal still exists under the disputes article.

c. In view of the above, it is not understood exactly what is to be gained by the contractor, or how the Government will be placed at any great disadvantage in this particular contract, if the disputed Article 7 is deleted from the contract. Any proposed changes, in that event, will be subjected to negotiation and Shell has the right to refuse to do them. The possibility of funding difficulties is inherent however. If no provisions for issuing Change Orders exists under the proposed contract, each change will necessarily be a supplemental contract and in the event fiscal year funds are involved, the time limitations for obligation of funds may prove to be embarrassing to the Government in event the proposed action occurs at the end of the obligation period.

d. Since Article 7 is a standard article prescribed for Department of the Army contracts, the question of its deletion by action of COC is a matter for decision by the Legal Division.

e. It is suggested that the facts be ascertained from the NAD regarding the possibility of difficulties with funds utilization and obligation and if this question is satisfactorily resolved, the question of the authority of COC to eliminate Article 7 from the contract be explored. If it is found that authority exists in COC to accomplish this deletion, it is recommended that the proposal submitted by the New York District and concurred in by the NAD, be approved.

Klein

Sebb

BARNETT