


SOLICITATION, OFFER, AND AWARD (Construction, Alteration, or Repair)	1. SOLICITATION NO. 33330223RF0010010	2. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 03/03/2024	PAGE	OF	PAGES
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IMPORTANT -- The "offer" section on the reverse must be fully completed by offeror.

4. CONTRACT NO.		5. REQUISITION/PURCHASE REQUEST NO.	6. PROJECT NO. 1521108
7. ISSUED BY SMITHSONIAN INSTITUTION P.O. BOX 37012 MRC 1200 Washington DC 20013-7012	CODE OCON	8. ADDRESS OFFER TO Smithsonian Institution Office of Contracting 600 Maryland Ave. Suite 500E Washington, DC 20024 Attn: Christine Grant / Bill Powell	
9. FOR INFORMATION CALL: 	a. NAME Christine Grant	b. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) 202-633-7290	

SOLICITATION

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder."

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date)

This Solicitation is to Revitalize the Sculpture Garden at Smithsonian Institution Hirshhorn Museum and Sculpture Garden (Project # 1521108). The museum is located at the northwest corner of 7th Street and Independence Avenue, SW, Washington DC. The successful Contractor shall furnish all supervision, labor, materials and equipment needed to perform construction services to complete the work as described in drawings and specification dated 11/21/2022, Graphic package dated 2/2/2022. All work shall be done in accordance with the attached Request for proposal.

11. The Contractor shall begin performance _____ 0 _____ calendar days and complete it within _____ 0 _____ calendar days after receiving <input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. The performance period is <input type="checkbox"/> mandatory <input checked="" type="checkbox"/> negotiable. (See _____.)	
12a. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES", indicate within how many calendar days after award in Item 12b.)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
12b. CALENDAR DAYS After Award	
13. ADDITIONAL SOLICITATION REQUIREMENTS:	
a. Sealed offers in original and _____ copies to perform the work required are due at the place specified in Item 8 by _____ 1500 _____ (hour) local time _____ 05/25/2023 _____ (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.	
b. An offer guarantee <input type="checkbox"/> is, <input checked="" type="checkbox"/> is not required.	
c. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.	
d. Offers providing less than _____ 0 _____ calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.	

OFFER (Must be fully completed by offeror)

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)	15. TELEPHONE NO. (Include area code)
	16. REMITTANCE ADDRESS (Include only if different than item 14.)
CODE	FACILITY CODE

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within _____ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in item 13d. Failure to insert any number means the offeror accepts the minimum in item 13d.)

AMOUNTS

18. The offeror agrees to furnish any required performance and payment bonds.

19. ACKNOWLEDGEMENT OF AMENDMENTS

(The offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)

AMENDMENT NO.										
DATE.										

20a. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	20b. SIGNATURE	20c. OFFER DATE

AWARD (To be completed by Government)

21. ITEMS ACCEPTED:

Continued...

22. AMOUNT	23. ACCOUNTING AND APPROPRIATION DATA
24. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)	<div style="display: flex; align-items: center;"> <div style="width: 30px; height: 30px; background-color: black; margin-right: 10px;"></div> <div>ITEM</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) () </div>
26. ADMINISTERED BY CODE OCON OCON P.O. BOX 37012 MRC 1200 Washington DC 20013-7012	27. PAYMENT WILL BE MADE BY

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

<input type="checkbox"/> 28. NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations,	<input type="checkbox"/> 29. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.
30a. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)	31a. NAME OF CONTRACTING OFFICER (Type or print)
30b. SIGNATURE	Thomas Dempsey
30c. DATE	31b. UNITED STATES OF AMERICA
	BY
	31c. DATE

CONTINUATION SHEET

 REFERENCE NO. OF DOCUMENT BEING CONTINUED
 33330223RF0010010

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NAME OF OFFEROR OR CONTRACTOR

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>TOUR OF THE SITE: Offerors may tour the site on Tuesday, April 11, 2023 at 8:00AM. Meet at the Garden Entrance on Jefferson Drive. Offerors should decide to visit the site to familiarize themselves with the conditions as specified in the drawings and specifications. Offerors are encouraged to inspect the site prior to submitting a proposal, as information concerning the site may be useful in preparing offers. Failure to visit the site will not constitute a basis for a claim for change in or differing the site conditions, when visiting the site would have provided the Offeror an opportunity to compare the physical site against the drawings and specifications.</p> <p>QUESTIONS/CLARIFICATIONS It is desired that all questions/clarifications be sent in word format, sequentially numbered for example first questions 1, 2, 3, second set of questions 4, 5, 6, etc. to grantca@si.edu. It is requested that all questions be sent in by Tuesday April 18, 2023, no later than 3PM EST.</p> <p>Proposals are to be submitted to DropBox.com by Thursday, May 25, 2023 by 3:00PM using the link: https://www.dropbox.com/request/edueuyXMP53ZTyKgm_fKM and express mailed on or before the due date on separate flash drives labeled Technical and Cost.</p>				

A – Contract Form

See Pages 1-4 of SF 1442

B - Services/Prices

B.1. The Smithsonian Institution intends to award a firm fixed-price multi-year construction contract to the successful Contractor/Offeror.

B.2. The successful Contractor shall furnish all supervision, labor, materials and equipment needed for the Revitalization of the Smithsonian Institution's Hirshhorn Museum and Sculpture Garden located at Independence Avenue and 7th Street, SW, Washington DC 20560, as set forth in the attached documents in Section J.

These drawings and specification dated 11/21/2022 and Graphics Package dated 2/2/2022 are collectively referred to herein as the "Construction Documents." All work shall be performed in strict accordance with the plans and specification as shown or as may be changed by modification issued by the Contracting Officer. No deviations are permitted unless a change notice is issued and approved by an authorized official at the Smithsonian Institution.

B.3. Pricing – The successful Contractor/Offeror shall identify all costs associated with the Revitalization of HMSG project, as set forth in the Construction Documents. Offerors are required to provide the Base Cost Proposal Submission as per the Bid Form and Multi-year FY Funding Increments Form (See Attachments).

B.3.1. Base Cost Proposal Submission - Provide a comprehensive cost and Bid Schedule for the Revitalization of HMSG project. The format for the Base Cost Proposal Submission shall be the Construction Specifications Institute (CSI) divisions of work. Break down the Base Cost Proposal Submission into the CSI divisions listed (See Attachments).

B.3.2. Multi-year FY Funding Increments (See attachments) – The Smithsonian has identified up to \$9,000,000 to fund performance of the awarded contract for the first fiscal year. The Smithsonian Institution's obligation under this contract beyond that amount is contingent upon the availability of appropriated funds from which payment under this contract can be made. No legal liability on the part of the Smithsonian Institution for any payment may arise for performance under this contract beyond \$9,000,000 unless and until funds are made available to the Contracting Officer for payment for performance under the contract and the Contractor receives notice of availability of funds, which must be confirmed in writing to the Contractor by the Contracting Officer. The Contractor shall not be obligated to continue performance beyond the funds allocated under this contract. Offerors are reminded that they must include in their proposal a termination cost in the event that subsequent year funds are not appropriated. Smithsonian Institution will not be liable for any costs in excess of the termination cost (cancellation charge).

C - Description/Specifications

The successful Offeror shall provide all materials, equipment, labor and supervision necessary to complete the following work at the Smithsonian Institution, Hirshhorn Museum and Sculpture Garden, Independence Avenue and 7th Street, SW, Washington DC 20560.

The Work includes, but is not limited to, all work specified on the drawings and in Divisions One through Thirty-Three of the specifications. The objective for this project is to address the waterproofing and concrete decay problems in the sculpture garden and underground passage as well to improve stormwater management on the site. Ramps at the west end of the garden will improve accessibility to the sunken garden from the north and south. New stacked stone walls, installed under separate contract, will create more intimate spaces for the display of sculptures on the east end of the garden. A broad open area on the west side will allow the museum to exhibit larger scale contemporary works. The existing pool in the central space of the garden will be rebuilt and a new, tiered pool to its south will provide a performance space. The underground passage below Jefferson Drive will be reopened to foot traffic as will the stair leading to the plaza at the passage's south end. A site-specific artwork will be installed in the passage under separate contract.

The work will include demolition of the existing concrete retaining walls in the garden and replacing them with walls that match in historic appearance but meet current code and waterproofing/construction standards. Strict attention will need to be paid to protection of the historic elm trees on the east and west sides of the site. Site work will include the installation of new drainage and stormwater water management systems, as well as the installation of stone paving and planters and concrete foundations to support the installation of stacked stone walls by others. Electrical, plumbing and low voltage network will be installed to support the needs of site lighting, security, maintenance, and programming in the garden.

Beds throughout the garden will be planted with trees and groundcover plants to complement the display of artwork. Unique planting palettes will be installed specific to each planting bed in response to environmental conditions in each area as well as the artistic intent of the designer for the different areas of the garden. It is expected that the plantings will appear established and full upon the garden's opening to the public at the completion of the project.

The reopening of the underground passage and stair will require excavation of Jefferson Drive to repair the existing historic fabric, and to construct new spaces alongside the existing structure to provide support spaces for the garden as well as a utility connection and corridor for later connection to an expanded museum lower level. It will be required to maintain through traffic on Jefferson Drive during construction. The north sidewalk of Jefferson Drive will be rebuilt to accommodate new street trees, enhanced structure, and a stormwater management system. An enclosed area below the northern entry to the garden will house space to support the operations of the garden, with a cistern to collect stormwater below.

Separate contracts will be awarded by the Smithsonian for the construction of the stacked stone walls in the garden, the stainless steel art piece in the passage, and the installation of pedestals, sculpture, and exhibit signage in the completed project. This Contractor will be responsible for the integration of those activities into the overall project schedule as well as the coordination of those activities on the site.

Please see Attachments for additional information.

D - Packaging and Marking

Proposals are to be submitted to DropBox.com by Thursday, May 25, 2023 by 3:00PM using the link: <https://www.dropbox.com/request/edueuyXMP53ZTyKqmfKM> and express mailed on or before the due date on separate flash drives labeled **Technical and Cost**. The Electronic submittals and the mailed submittals must have the same information. If any pricing information is on the technical proposal, you will be disqualified.

Flash drives should be delivered via FedEx, UPS, or Courier to the address below:

*Smithsonian Institution Office of Contracting
Attn: Christine Grant/Bill Powell
600 Maryland Ave. SW, Suite 500E
Washington, DC 20024*

E - Inspection and Acceptance

52.246-S0038 Smithsonian Institution Inspection and Acceptance (Jun 2000)

Inspection and acceptance may be made on a daily basis on work performed at the job site, by the Contracting Officers Technical Representative. All work shall be coordinated through the COTR for acceptance of work, payrolls and invoice(s).

52.246-S0039 Final Inspection and Tests (Jun 2000)

The requirements of the Inspection of Construction clause prescribed in FAR 52.246-12, are supplemented to provide that the Contractor shall give the Contracting Officer at least 10 calendar days advance written notice of the date the work will be fully completed and ready for final inspection and tests. Final inspection and tests will be started within 10 calendar days from the date specified in the aforesaid notice unless the Contracting Officer determines that the work is not ready for final inspection and so informs the Contractor.

52.246-S0057 Inspection

- (a) Upon proper notice and during normal working hours, the Smithsonian Institution reserves the right to perform any inspections and tests as deemed necessary to assure that the Contractor is performing in accordance with the terms and specifications as set forth herein.
- (b) Inspection may be at the Contractor's place of business or at any location where work is being performed in conjunction with this contract.
- (c) Inspection by the Smithsonian Institution shall not relieve the Contractor of responsibility for any or all quality control aspects during the life of the contract. This shall include quality control for items covered by this contract that may be subcontracted.

52.246-S0058 Acceptance

- (a) The supplies and services rendered under this contract will be accepted and approved by the Contracting Officer or a designated representative thereto. Such approval, when given, will indicate acceptability to the Smithsonian Institution of performance in accordance with the terms and conditions of this contract, and will be subject to applicable warranties. The Smithsonian Institution reserves the right to reject works not conforming to prescribed contract requirements.
- (b) Neither the Smithsonian Institution's review, approval, or acceptance of services and/or supplies, nor payment for any of the services or supplies required under this contract, shall be construed to operate as a waiver of any claim or action arising out of the performance of this contract. Furthermore, the Contractor shall be and remain liable to the Smithsonian Institution in accordance with applicable law for all damages to the Smithsonian Institution caused by the Contractor's negligent performance of any of the supplies or services furnished under this contract.

(c) Acceptance by the Smithsonian Institution does not relieve the Contractor of responsibility for correction of errors or omissions that may arise after such acceptance if the errors and omissions arise out of any negligence or fault in Contractor performance.

F - Deliveries or Performance

52.211-S0025 Commencement, Prosecution, and Completion of Work (Jun 2000)

(a) Definitions.

(1) The Contract Time is the period of time allotted in the Contract Documents for Final Completion of the Work as defined in this Construction Contract Clause, including authorized extensions thereto. The Contractor shall complete Work within the Contract Time as stated in the SF 1442, or as modified.

(2) The date of commencement of the Work is the date established in the Notice To Proceed issued by the Contracting Officer (C.O.). Submission by the Contractor of its Performance and Payment Bonds, Preliminary Schedule and all Certificates of Insurance and their approval by the Smithsonian Institution are conditions precedent to the issuance of the Notice to Proceed. The Contractor shall not commence the Work or store materials or equipment on site until written Notice to Proceed is issued or until the Contractor otherwise receives the written consent of the C.O.

(3) The date of Substantial Completion of the Work or designated portion thereof is the date certified by the COTR when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so the Smithsonian Institution can fully occupy the Work or designated portion thereof for the use for which it is intended, with all of the Project's parts and systems operable as required by the Contract Documents. Only punch list work and any final cleaning beyond that needed for the SI's full use may remain for Final Completion.

(4) The date of Final Completion of the Work is the date certified by the COTR when the Work is totally complete, to include punch list work and final clean up, in accordance with the Contract Documents and the Smithsonian Institution may fully occupy and fully utilize the Work for the use for which it is intended.

(5) If a date or time of completion is included in the Contract, it shall be the Date of Final Completion as defined in this Construction Contract Clause, including authorized extensions thereto, unless otherwise provided.

(6) The term Day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated. All dates shall mean midnight of the indicated day unless otherwise stipulated.

(b) Progress and Completion.

(1) All time limits stated in the Contract Documents are of the essence of the Contract.

(2) The Contractor shall prosecute the Work diligently to Final Completion.

(c) Delays and Extensions of Time.

(1) The time during which the Contractor is delayed in the performance of the Work, by the acts or omissions of SI, the Architect, or their employees or agents, acts of God, unusually severe and abnormal climatic conditions, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotion or freight embargoes, or other conditions beyond the Contractor's control and which the Contractor could not reasonably have foreseen and provided against, shall be added to the Contract Time; provided, however, that no claim by the Contractor for an extension of time for delays will be considered unless made in compliance with the requirements of this Article and other provisions of the Contract Documents.

(2) Neither the Smithsonian Institution nor the Architect shall be obligated or liable to the Contractor for, and the Contractor hereby expressly waives any claims against the Smithsonian Institution and the Architect on account of, any indirect or direct damages, costs or expenses of any nature which the Contractor, Subcontractors, Suppliers or any other person may incur as a result of any delays, interference, changes in sequence or the like, which are reasonable, foreseeable, contemplated, or avoidable by the Contractor, arising from or out of any act or omission of the Smithsonian Institution or the Architect, or their agents, employees, consultants, separate contractors or any governmental representative, it being understood and agreed that the Contractor's sole and exclusive remedy in any

such events shall be an extension of the Contract Time, but only as determined in accordance with the provisions of the Contract Documents.

(3) The Contract Time shall be adjusted only for Change Orders pursuant to the Construction Contract Clause entitled "Changes," excusable delays pursuant to Construction Contract Clause entitled "Delays and Extensions of Time," and Construction Contract Clause entitled "Smithsonian Institution's Right to Stop or to Suspend the Work." In the event the Contractor requests an extension of the Contract Time, the Contractor shall furnish such justification and supporting evidence as the C.O. may deem necessary for a determination of whether the Contractor is entitled to an extension of time under the provisions of the Contract. The burden of proof to substantiate a claim for an extension of the Contract Time shall rest with the Contractor, including evidence that the cause was beyond his control. The C.O. shall base his findings of fact and decision on such justification and supporting evidence and shall advise the Contractor in writing thereof. If the C.O. finds that the Contractor is entitled to any extension of the Contract Time, the C.O.'s determination of the total number of days' extension shall be based upon the currently approved Progress Schedule and on all data relevant to the extension. Such data will be incorporated into the Progress Schedule in the form of a revision thereto, accomplished in a timely manner. The Contractor acknowledges and agrees that actual delays (due to said changes, suspensions of work or excusable delays) in activities which, according to the Progress Schedule, do not affect the Contract Time, do not have any effect upon the Contract Time and therefore will not be the basis for a change therein. The Contractor acknowledges and agrees that time extensions will be granted only to the extent that excusable delays exceed the available float in the Contractor's Progress Schedule.

(4) Subject to other provisions of the Contract, the Contractor may be entitled to an extension of the Contract Time (but no increase in the Contract Price) for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, his Subcontractors or Suppliers as follows:

(i) Labor disputes and strikes (including strikes affecting transportation), that do, in fact, directly and critically affect the progress of the Work; however, an extension of Contract time on account of an individual labor strike shall not exceed the number of days of said strike;

(ii) Acts of God, tornado, fire, hurricane, blizzard, earthquake, typhoon, or flood that damage completed work or stored materials.

(iii) Abnormal inclement weather; however, the Contract Time will not be extended due to normal inclement weather. The time for performance of this Contract, as stated in the Contract Documents, includes an allowance for calendar days, which may not be available for construction out-of-doors; for purposes of the Contract, the Contractor agrees that said number of calendar days per month are to be considered as normal inclement weather. Unless the Contractor can substantiate to the satisfaction of the Smithsonian Institution that there was greater than normal inclement weather considering the full term of the Contract Time using a ten-year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, for the locale of the Project, and that such alleged greater than normal inclement weather actually delayed the Work or portions thereof which had an effect upon the Contract Time, the Contractor shall not be entitled to an extension of time. If the total accumulated number of calendar days lost due to inclement weather, from the start of Work until Final Completion, exceeds the total accumulated number to be expected for the same period from the aforesaid climatological data, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost.

(iv) Acts of the public enemy, acts of the state, Federal or local government in its sovereign capacity, and acts of a separate contractor in the performance of its contract with the Smithsonian Institution relating to the Project.

(5) The Contractor shall not be entitled to and hereby expressly waives any extension of time resulting from any conditions or cause unless said claim for extensions of time is made in writing to the C.O. within seven (7) days of the first instance of delay. Circumstances and activities leading to such claim shall be indicated or referenced in a daily field inspection report for the day(s) affected; otherwise, all such claims are waived by the Contractor. In every such written claim, the Contractor shall provide the following information:

(i) Nature of the delay;

(ii) Date (or anticipated date) of commencement of delay;

(iii) Activities on the Progress Schedule affected by the delay, and/or new activities created by the delay and their relationship with existing activities;

(iv) Identification of person(s) or organizations(s) or event(s) responsible for the delay;

(v) Anticipated extent of the delay;

(vi) Recommended action to avoid or minimize the delay.

(d) Responsibility for Completion.

(1) The Contractor shall furnish such manpower, materials, facilities and equipment and shall work such hours, including night shifts, overtime operations and Sundays and holidays, as may be necessary to insure the progress and completion of the Work in accordance with the approved and currently updated Progress Schedule. If Work actually in place falls behind the currently updated and approved Progress Schedule and it becomes apparent from the current Progress Schedule that the Work will not be completed within the Contract Time, the Contractor agrees that he will, as necessary, take some or all of the following actions at no additional cost to the S.I., as required to eliminate substantially the backlog of the Work:

(i) Increase manpower in quantities and crafts as necessary;

(ii) Increase the number of work hours per shift, shifts per working day, working days per week, the amount of equipment, or any combination of the foregoing; and/or

(iii) Re-schedule activities to achieve maximum practical concurrence.

(2) The COTR may require the Contractor to submit a Recovery Schedule in accordance with the Supplementary Construction Contract Clause, demonstrating his program and proposed plan to make up the lag in scheduled progress and to ensure completion of the Work within the Contract Time. If the COTR finds the proposed plan not acceptable, he may require the Contractor to submit a new plan. If the actions taken by the Contractor or the second plan proposed are not satisfactory, the COTR may require the Contractor to take any of the actions set forth in this Construction Contract Clause without additional costs to the S.I., to make up the lag in scheduled progress.

(3) Failure of the Contractor to comply substantially with the requirements of this Construction Contract Clause may be considered grounds for a determination by the S.I., pursuant to the Construction Contract Clause entitled "Default," that the Contractor is failing to prosecute the Work with the sufficient diligence to ensure its completion with the Contract Time.

52.228-S0081 Period of Performance-Bonds & Insurance-Construction

Contractor must submit approved Certificate of Insurance and Performance/Payment Bonds within ten (10) days of contract award.

52.236-S0036 Smithsonian Institution's Right to Stop or to Suspend the Work (Jun 2000)

(a) If the Contractor fails to correct defective Work as required by the Construction Contract Clause entitled "Correction of Work," or fails to carry out the Work or supply labor and materials in accordance with the Contract Documents, the C.O. by a written order may order the Contractor to stop the Work, or any portion thereof, without monetary compensation to the Contractor until the cause for such order has been eliminated.

(b) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the Smithsonian Institution.

(c) If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted by the Smithsonian Institution or its authorized representatives in the administration of this Contract, or by failure of any one of them to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for an increase in the actual time required for performance of the Work by the Contractor, due solely to such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no claim for an extension of time shall be made under this Construction Contract Clause for any suspension, delay, or interruption pursuant to this Construction Contract Clause, or for

which claim is provided or excluded under any other provision of this Contract. No claim under this Construction Contract Clause shall be allowed for any claim for an extension of time required for performance, unless within twenty (20) days after the act or failure to act involved, the Contractor submits to the COTR a written statement setting forth, as then practicable, the extent of such claimed time extension, and unless the claim for an extension of time is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption. No claim shall be made for direct or indirect costs incurred by Contractor as a result of the events described in this Construction Contract Clause, a time extension being the Contractor's sole remedy.

(d) A claim under this clause shall not be allowed (1) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(e) In the event of a suspension of work or delay or interruption of work, the Contractor will protect carefully, and will cause his subcontractors to protect carefully, his and their materials and work against damage or injury from the weather, will and maintain completed and uncompleted portions of the work as required by the Contract Documents. If, in the opinion of the COTR, any work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of his subcontractors to so protect same, such work and materials shall be removed and replaced at the expense of the Contractor.

(f) No claim by the Contractor for an equitable adjustment under the Construction Contract Clause entitled "Equitable Adjustments" shall be allowed if asserted after Final Payment under this Contract.

52.246-S0041 Additional Warranties and Guarantees (Jun 2000)

(a) The Contractor guarantees and warrants to the Smithsonian Institution all work as follows:

(1) That all materials and equipment furnished under this Contract will be new and the best of its respective kind unless otherwise specified;

(2) That all Work will be first-class quality and free of omissions and faulty, poor quality, imperfect or defective material or workmanship;

(3) That where no standard is specified for such workmanship or materials, they shall be the best of their respective kinds;

(4) That the Work shall be entirely watertight and leakproof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement, (normal shrinkage inherent in the specified materials is acceptable);

(5) That the Work, including but not limited to, mechanical and electrical machines, devices and equipment shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;

(6) That consistent with requirements of the Contract Documents the Work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment;

(7) That the Work will be free of abnormal or unusual deterioration which occurs because of poor quality materials, workmanship or unsuitable storage.

(b) That all work not conforming to guarantees and warranties specified in the Contract Documents, including substitutions not properly approved and authorized, may be considered defective. If required by the COTR, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of the Construction Contract Clauses entitled "Uncovering of Work" and "Correction of Work."

(c) The warranties set forth in this Construction Contract Clause entitled "Additional Warranties and Guarantees" and elsewhere in the Contract Documents shall survive Final Completion of the Work under the Construction Contract Clause entitled "Payments and Completion."

(d) If, within one year after the Date of Final Completion of the Work or designated portion thereof, or within one year after acceptance by the Smithsonian Institution of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified in the Contract Documents, the Contractor shall correct it within five (5) working days, or such other period as mutually agreed, after receipt of a written notice from the COTR to do so.

(e) Any materials or other portions of the Work installed, furnished or stored on site which are not of the character or quality required by the specifications, or are otherwise not acceptable to the COTR, shall be immediately removed and replaced by the Contractor to the satisfaction of the COTR, when notified to do so by the COTR.

(f) If the Contractor fails to correct defective or nonconforming Work as required by the Construction Contract Clause entitled "Correction of Work," or if the Contractor fails to remove defective or nonconforming Work from the site as required by the Construction Contract Clause entitled "Uncovering of Work," the Smithsonian Institution may elect to either correct such work in accordance with the Construction Contract Clause entitled "Smithsonian Institution's Right to Carry Out The Work" or remove and store materials and equipment at the expense of the Contractor.

(g) The Contractor shall bear the cost of making good all work of the Smithsonian Institution, separate contractors or others, destroyed or damaged by such correction or removal required under this Construction Contract Clause or the Construction Contract Clauses entitled "Uncovering of Work" and "Correction of Work" or elsewhere in the Contract Documents.

SI-0080 Period of Performance-NTP

The contract shall become effective upon execution of the contract and upon the Smithsonian Institution Contracting Officer's Notice to Proceed.

G - Contract Administration Data

52.202-S0059 Contract Management

Notwithstanding the Contractor's responsibility for total management during the performance of this contract, the administration of the contract will require maximum coordination between the Smithsonian and the Contractor. The following individuals will be the Smithsonian points of contact during the performance of the contract.

52.202-S0060 Contracting Officer

All contract administration will be effected by the Contracting Officer. Communications pertaining to contractual administrative matters will be addressed to the Contracting Officer. No changes in or deviation from the scope of work shall be effected without a written modification to the contract executed by the Contracting Officer authorizing such changes.

52.202-S0061 Contracting Officer's Technical Representative (COTR) (Apr 1988)

(a) The Contracting Officer's Technical Representative (COTR) or her authorized representative shall act for and on behalf of the Contracting Officer in the administration of any resultant contract with respect to:

1. Resolution of issues that may arise between the Contractor and the Smithsonian Institution in connection with such matters as acceptability of workmanship and other technical requirements;
2. Evaluation on an overall basis of the acceptability of workmanship and Contractor's compliance with technical requirements; and
3. The approval and acceptance of work performed under this contract.

(a) This delegation does not authorize the modification of any of the contract's provisions, terms or conditions. All authorities not herein delegated are reserved to the Contracting Officer.

(b) The Contractor shall make available such records, reports and facilities as may be required to carry out this assignment.

(c) Contractor's performance will be evaluated using the respective contractor performance evaluation report entry system located on the website <http://www.cpars.gov/>. Prior to commencement of work the Contractor is required to provide the Government with the name, phone number and e-mail address of the "Contractor's Representative" that will be responsible for receipt and review of draft performance evaluations prepared by the Government in the appropriate system. It is the Contractor's responsibility to keep this contact information current.

52.202-S0062 Authorities

The Contractor is advised that only the Contracting Officer can change or modify the terms of this contract or take any other action which obligates the Smithsonian and any such action must be set forth in a formal modification to the Contract. The authority of the COTR is strictly limited to the specific duties set forth in her letter of appointment, a copy of which will be furnished the Contractor. Contractors who rely on direction from persons other than the Contracting Officer (or a COTR acting within the strict limits of his/her responsibilities as set forth in his/her letter of appointment) do so at their own risk and expense, as such actions do not bind the Smithsonian contractually. All questions concerning the authority of a Smithsonian employee to direct the Contractor contractually should be referred to the Contracting Officer.

52.213-S0094 Application for Payment

The Contractor shall submit Application for Payment in triplicate copies and in accordance with the Construction Contract Clauses. All Applications for Payment shall identify the Contract Number and Project Title and shall be submitted to the COTR at the address specified by the Work Order.

Note: The Prompt Payment Act (31 U.S.C. Section 3901) is not applicable to the Smithsonian Institution. The Smithsonian Institution shall take all reasonable measures to ensure that payment for invoice(s) properly documented and submitted shall be paid within thirty (30) days from receipt of an approved proper invoice.

52.215-S0002 Authorized Negotiators (Apr 1984)

The Offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations: [list names, titles, and telephone numbers of the authorized negotiators].

52.215-S0063 Key Personnel

(a) The Contractor shall include the key personnel to be assigned under this contract those persons listed below:

NAME LABOR CATEGORY

Offerors shall also provide this information in their technical proposal.

(b) The persons named above are considered key personnel. The Contractor shall give at least 14 calendar days advance notice if any of these persons are to be removed or diverted from this contract, and shall supply written justification as part of this notice, and shall name the proposed substitute or replacement; but the Contractor will not remove or divert such persons unless authorized by written consent of the Contracting Officer.

(c) General Approval. All Contractor personnel assigned to this contract are subject to Smithsonian review in accordance with the defined labor categories herein. Contractor personnel found unacceptable by the Smithsonian at any time shall be removed from performing under this contract within 14 calendar days after notification. Such notification shall be delivered in writing by the Contracting Officer to the Contractor.

SI-0064 Incorporation of Contractor's Proposal

It is understood and agreed that the Contractor shall, in meeting the requirements of the contract, perform the work in accordance with his/her proposal to the Smithsonian Institution for services, dated []; however, to the extent that any provisions of the articles set forth herein are in conflict or inconsistent with any provisions of said proposal, the provisions of the articles of this contract shall be controlling and shall supersede the provisions of said proposal.

H - Special Contract Requirements

52.202-S0010R Use of Smithsonian Name

It is recognized and acknowledged that Contractor shall have no right to use the name "Smithsonian" or "Smithsonian Institution", or the name of any Smithsonian Museum or part thereof, including the Facilities, in connection with any of its own advertising, marketing or promotion. However, any marketing or promotional programs concerning the Smithsonian or the Project shall be submitted to the Smithsonian for review and approval prior to any implementation thereof. The Smithsonian may withhold any approval required hereunder as it wishes. The provisions of this clause shall survive the termination of this Agreement.

The Prime Contractor shall be responsible for compliance by any subcontractor or supplier or lower tier subcontractor or lower tier supplier with this clause. After award of the contract and upon request of the Contracting Officer, the Prime Contractor shall deliver a written statement acknowledging that this clause has been included in contracts with all subcontractors and suppliers.

52.203-S0004 Advertising of Award Smithsonian Institution

The Contractor shall not refer to the Smithsonian or to any of its museums, organizations, or facilities in any manner or through any medium, whether written, oral or visual, for any purpose whatsoever, including advertising, marketing, and promotion.

52.215-S0009 Information, Services and Rights of the Smithsonian (Apr 1988)

(a) The S.I., through the C.O. and COTR, will provide administration of the contract as hereinafter described.

(b) The Smithsonian Institution or its authorized representatives shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.

(c) The Smithsonian Institution or its authorized representatives shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences, or procedures, or for safety precautions and program in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

(d) The COTR shall have authority to reject Work when in his/her opinion, the Work does not conform to the Contract Documents.

(e) Whenever in the COTR's reasonable opinion it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the COTR will have authority to require special inspection or testing of the

Work in accordance with the provisions of the Contract Documents whether or not such Work be then fabricated, installed or completed.

(f) The COTR shall have the authority and discretion to call, schedule, and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors, and the Architect to discuss such matters as procedures, progress, problems, payments and scheduling.

(g) The COTR will establish procedures to be followed for processing all Shop Drawings, catalogs, and other project reports and other documentation, test reports, and maintenance manuals.

(h) The COTR will review all requests for changes and shall implement the processing of Change Orders, including applications for extension of the Contract Time.

(i) The COTR will review and process all Progress Payments including the Final Payment.

(j) The Smithsonian Institution or its authorized representatives shall not be responsible or liable to the Contractor for the acts, errors or omissions of the Contractor, any separate Subcontractor, any separate contractor or any contractor's or subcontractor's agents or employees, or any other persons performing any of the Work.

(k) Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, ten copies of full size Drawings and Specifications reasonably necessary for the execution of the Work.

(l) The foregoing rights are in addition to other rights of the Smithsonian Institution enumerated herein and those provided by law.

52.223-S0070 Dissemination of Information

There shall be no dissemination or publication of information, except between the Contractor and any subcontractors, developed under this contract or any task orders awarded under the terms of this contract or contained in reports to be furnished pursuant to this contract without the prior written approval of the Contracting Officer.

52.236-S0030 Availability and Use of Utility Services (Jun 2000)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. These services shall be furnished without charge to the Contractor. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, and associated paraphernalia.

52.236-S0031 Use of Site (Jun 2000)

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, easements, right-of-way agreements and the Contract Documents. The Contractor shall not unreasonably encumber the site, in the opinion of the COTR, with any materials, equipment or trailers, nor shall the Contractor block the entrances or otherwise prevent reasonable access to the site, other working and parking areas, completed portions of the Work and/or other properties, storage areas, loading dock and other areas of the work site or areas that are adjacent to the work site. If the Contractor fails or refuses to move said materials, equipment or trailers within 24 hours of notification by the COTR to so do, the COTR shall have the right, without further notice, to remove, at the Contractor's expense, any material, equipment and/or trailers which the COTR deems are in violation of this Construction Contract Clause entitled "Use of Site."

52.242-S0020 Historic & Archeological Rights (Jun 2000)

(a) If during the excavation of the site items of historic and archeological significance are found, the Contractor shall stop work and notify the COTR immediately. Subsequent excavation work shall proceed as directed by the COTR.

(b) All items considered by the Smithsonian Institution to have historic or archaeological significance are the property of the Smithsonian Institution.

SI-0091 Internet Protocol Version 6 (IPv6) Compliance (Jan 2006)

In the event that Contractor will be developing, acquiring, and/or producing products and/or systems pursuant to this Contract that will be connected to a network or that will interface with the World Wide Web, the following provisions shall apply:

1. OMB Memo M-05-22, dated August 2, 2005, requires that all agencies' infrastructure must be using IPv6 and all agency networks must interface with this infrastructure by June 2008.
2. The Contractor hereby warrants and represents that the products and/or systems to be developed, acquired, and/or produced pursuant to this Contract will be IPv6 compliant. These products and/or systems must be able to receive, process, and transmit or forward (as appropriate) IPv6 packets and must be able to interoperate with other systems and protocols in both IPv4 and IPv6 modes of operation.
3. If the product or system will not be compliant initially, the Contractor will provide a migration path and express commitment to upgrade to IPv6 for all application and product features within 30 days of request from the COTR. Any such migration path and commitment shall be included in the Contract price. In addition, the Contractor will have available contractor/vendor IPv6 technical support for development and implementation and fielded product management.

I - Contract Clauses

52.203-5 Covenant Against Contingent Fees. (MAY 2014)

52.203-7 Anti-Kickback Procedures. (June 2020)

52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights. (June 2020)

52.222-50 Combating Trafficking in Persons. (NOV 2021)

52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving. (JUNE 2020)

52.225-11 Buy American - Construction Materials Under Trade Agreements. (DEC 2022)

52.225-13 Restrictions on Certain Foreign Purchases. (FEB 2021)

52.236-2 Differing Site Conditions. (APR 1984)

52.236-3 Site Investigation and Conditions Affecting the Work. (APR 1984)

52.236-4 Physical Data. (APR 1984)

52.236-5 Material and Workmanship. (APR 1984)

52.236-7 Permits and Responsibilities. (NOV 1991)

52.236-8 Other Contracts. (APR 1984)

52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements. (APR 1984)

52.236-10 Operations and Storage Areas. (APR 1984)

52.236-11 Use and Possession Prior to Completion. (APR 1984)

52.236-13 Accident Prevention. (NOV 1991)

52.236-12 Cleaning Up. (APR 1984)

52.236-14 Availability and Use of Utility Services. (APR 1984)

52.236-15 Schedules for Construction Contracts. (APR 1984)

52.236-17 Layout of Work. (APR 1984)

52.236-21 Specifications and Drawings for Construction. (FEB 1997) - Alternate I (APR 1984)

52.236-26 Pre-Construction Conference. (FEB 1995)

52.242-13 Bankruptcy. (JUL 1995)

52.242-14 Suspension of Work. (APR 1984)

52.243-4 Changes. (JUN 2007)

52.243-5 Changes and Changed Conditions. (APR 1984)

52.244-6 Subcontracts for Commercial Items. (JUN 2016)

52.202-S0003 Definitions (Apr 1988)

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation or contract was issued, unless modified herein--

(a) "Head of the agency," means the Secretary of the Smithsonian Institution.

(b) "Contracting Officer" (C.O.) means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings and to settle all claims.

(c) "Government" means the Smithsonian Institution (S.I.). The Contracting Officer (C.O.) shall be deemed to be the authorized representative of the S.I. The Smithsonian Institution shall hereinafter be referred to by its initials, "S.I." or as "the Government."

(d) "Contractor" means the person or persons, firm or company whose proposal has been accepted by S.I. and includes the Contractor's personal representatives, successors and assigns permitted by S.I.

(e) "Contracting Officer's Technical Representative" (COTR) means the Project Manager appointed by the Contracting Officer to act as COTR for the purpose of the Contract. Written notification of the appointment or recession of such appointment shall be promptly furnished to the Contractor.

52.202-S0012 Specialist (Jun 2000)

The term "Specialist" as used in the contract specification shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the Contract or otherwise performing work required by the Contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision.

52.203-S0068R Restriction Against Disclosure

The Contractor agrees, in the performance of this contract to keep any information gathered or analyzed in the course of this contract in the strictest confidence, said information being the sole property of the S.I. The Contractor also agrees not to publish, reproduce or otherwise divulge such information in whole or in part, in any manner or form, nor to authorize or permit others to do so. The Contractor shall take such reasonable measures as are necessary to restrict access to such information to perform the work provided herein, i.e., on a "need to know" basis, and shall immediately notify, in writing, the Contracting Officer's Technical Representative named herein, in the event that he determines or has reason to suspect a breach of this requirements.

1. Confidential Information

(a) "Confidential Information" means all information and materials provided by the S.I. to the Contractor during contract performance and any information or materials which otherwise come into the Contractor's possession that are proprietary to the S.I., confidential information of the S.I., or Personally Identifiable Information (PII). Confidential Information includes: (i) all information in any physical, electronic, or other form disclosed by the S.I. to the Applicant, either directly or indirectly, in writing, electronically, orally, or by inspection of tangible objects, including photographs/images taken in any non-public areas of S.I. property; (ii) any information provided by the Contractor to S.I., if that information becomes the property of S.I. pursuant to the Contract; (iii) all information pertaining to S.I.'s computer systems, security measures and business affairs, and proprietary or trade secret information, in oral, graphic, written, electronic or machine readable form; and (iv) all PII provided to Contractor from any source in conjunction with performance of the contract. PII includes data, regardless of medium or format, that can be used to distinguish or trace an individual's identity, including but not limited to name, Social Security number, medical data, biometric records, date of birth, mother's maiden name, email address, or private telephone number, alone or in combination with other personal or identifying information that is linked or linkable to a specific individual.

(b) Confidential Information does not include that information defined as Confidential Information above which the receiving party can conclusively establish (i) is in the possession of the receiving party without an obligation of confidentiality at the time of disclosure; (ii) prior to or after the time of disclosure becomes part of the public domain without the act or omission of the receiving party to whom it was disclosed; (iii) is disclosed to the receiving party by a third party under no legal obligation to maintain the confidentiality of such information; or (iv) was independently developed by or on behalf of the Contractor . PII is always considered confidential information.

2. Restrictions

(a) The Contractor shall not at any time, other than in accordance with these Terms and Conditions, disclose the Confidential Information without prior written approval of the S.I., or use any Confidential Information, except as required to carry out the purpose of the contract into which these Terms and Conditions are integrated (the "Purpose"). However, the Contractor may disclose Confidential Information in accordance with a judicial, legislative, or other governmental order, provided that the Contractor shall give the S.I. reasonable notice prior to such disclosure and shall assist S.I. in obtaining a protective order or the equivalent to prevent or minimize disclosure of the Confidential Information; and provided further that the disclosure permitted shall be within the extent and scope of the relevant order.

(b) The Contractor shall maintain the confidential nature of the Confidential Information by exercising best efforts and diligence necessary to ensure the protection of the information from unauthorized use, access and disclosure. The Contractor may disclose Confidential Information only to its employees and consultants who shall have a need-to-know such for the Purpose. The Contractor shall execute appropriate written agreements with employees and consultants sufficient to enable it to comply with all of the confidentiality provisions of these Terms and Conditions. The Contractor shall remain responsible for preventing any violation of these Terms and Conditions by a third party to whom the Contractor disclosed Confidential Information, whether or not such disclosure was permitted by these Terms and Conditions. The Contractor shall indemnify the S.I. for any misuse or misappropriation of the Confidential Information committed by the Contractor's employees, consultants, or other third parties receiving such Confidential Information from the Contractor.

(c) The Contractor shall not record, make notes of, copy, back up, or reproduce the Confidential Information by any means except with the written permission of the S.I. or as necessary to carry out the Purpose. All complete and partial copies, records, notes, backups, or reproductions shall contain notices identifying them as containing the Confidential Information of the S.I. and shall be protected from unauthorized disclosure or access using similar steps as those used to protect the actual Confidential Information. The Contractor agrees to segregate all Confidential Information from the confidential materials of others in order to prevent commingling.

(d) The Contractor shall not reverse engineer, decompile or disassemble any software, which is Confidential Information.

3. Rights and Remedies

(a) The Contractor acknowledges and agrees that all Confidential Information and worldwide right, title, and interest whatsoever therein and thereto, both legal and equitable, shall belong to and shall remain the sole and exclusive property of the S.I. or its licensor(s). Nothing in these Terms and Conditions shall be construed as granting the Contractor any right or interest, by license or otherwise, in the Confidential Information.

(b) The Contractor agrees to return all originals, copies, reproductions, backups, and summaries of Confidential Information at the S.I.'s request, or at the sole discretion of the S.I., certify destruction of the same at the end of the contract into which these Terms and Conditions are attached and incorporated.

(c) The Contractor agrees to notify the S.I. immediately upon discovery of any unauthorized use or disclosure of Confidential Information, or breach of these Terms and Conditions.

(d) The Contractor acknowledges that any breach of these Terms and Conditions would result in significant damage to the S.I., not completely compensable monetarily, and agrees that the S.I. shall be entitled to apply for injunctive relief in a court of appropriate jurisdiction in the event of the breach or threatened breach of any of these Terms and Conditions. The Contractor shall not oppose any such application on the basis that damages would be a satisfactory or sufficient remedy.

4. Miscellaneous

(a) The Contractor acknowledges that the Confidential Information is provided "as is" without representation or warranty of any kind and that the use of the Confidential Information is entirely at the Contractor's risk. The Contractor acknowledges that neither the S.I. nor its suppliers or affiliates shall be liable for any damages whatsoever relating to the Contractor's use of Confidential Information.

(b) If any of these Terms and Conditions shall be held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the remaining terms shall remain in full force and effect.

(c) These terms and conditions supersede any and all prior arrangements whether oral or written, with respect to the Confidential Information.

52.209-S0042 Subcontractor Eligibility (Jun 2000)

a) In connection with the performance of work under this contract, the Contractor shall not subcontract with any subcontractor who, at the time of subcontract award, is listed on the current Excluded Parties List, unless otherwise authorized by the Government in accordance with Subpart 9.4 of the Federal Acquisition Regulations.

(b) Prior to award of the prime contract, the Excluded Parties List will be available for inspection at the Business Service Center in the General Services Administration's regional office. After contract award, the Contractor may obtain a copy of the current list from the Contracting Officer.

(c) In the event of the Contractor's noncompliance with the foregoing requirements, the Government may terminate this contract for default or take other appropriate action, including, but not limited to, requiring the Contractor to terminate any such subcontract and substitute and eligible subcontractor in lieu thereof, at no increase in the contract price or time for performance.

(d) The term "subcontractor," as used in this clause, shall mean the individual or firm with whom the Contractor proposes to enter into a subcontract for manufacturing, fabricating, installing, or otherwise performing work under this contract.

(e) The Contractor shall include the provisions of paragraphs (a), (b), (d), and (e) of this clause in every subcontract hereunder.

52.209-S0075 Termination-Erroneous Representation Concerning Crimes, Debarments, Suspensions and Defaults (Apr 1984)

The certification regarding previous crimes, debarments, suspensions, and defaults contained in the representation and certification provision of this solicitation is a material representation of fact upon which the Government relies when making award. If it is later determined that the certification was erroneous, in addition to other remedies available to the Government, the Government reserves the right to terminate for default any contract resulting from this solicitation.

52.215-S0001 Order of Precedence

In the event of an inconsistency between provisions of the Solicitation or the Contract, the inconsistency shall be resolved by giving precedence in the following order:

1. The Schedule.
2. Solicitation, Instructions, and Conditions.
3. Amendments to the Solicitation.
4. Contract Clauses.
5. Specifications.
6. The Drawings: large scale details, small-scale details, standard size plans, sections and elevation drawings.
7. Other Documents, Exhibits, and Attachments.
8. Other Provisions of the Solicitation, whether incorporated by reference or otherwise inferred by standard practice.
9. The Offeror's Proposal.

52.215-S0046 Right to Audit and Preservation of Records (Jun 2000)

(a) The Contractor shall maintain books, records and accounts of all costs in accordance with generally accepted accounting principles and practices. The S.I. or its authorized representatives shall have the right to audit the books, records and accounts of the Contractor under any of the following conditions:

- (1) If the Contract is terminated for any reason in accordance with the provisions of these Contract Documents in order to arrive at equitable termination costs;
- (2) In the event of a disagreement between the Contractor and the S.I. over the amount due the Contractor under the terms of this Contract;
- (3) To check or substantiate any amounts invoiced or paid which are required to reflect the costs of the Contractor, or the Contractor's efficiency or effectiveness under this Contract or in connection with extras, changes, claims, additions, back-charges, or other, as may be provided for in this Contract; and/or
- (4) If it becomes necessary to determine the S.I.'s rights and the Contractor's obligations under the Contract or to ascertain facts relative to any claim against the Contractor which may result in a charge against the S.I.,
- (5) To determine any difference in cost occasioned by a substitution permitted under the Construction Contract Clause entitled "Subcontractors".

(b) These provisions for an audit shall give the S.I. or its designated representative unlimited, reasonable access during normal working hours to the Contractor's books and records under the conditions stated above. The S.I. has the right to obtain copies of any or all records at a reasonable cost.

(c) Unless otherwise provided by applicable statute, the Contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to the S.I. for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor, but without direct charge to the S.I., all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work hereunder.

(d) The S.I. will make all payments required of it under this Contract subject to audit, under circumstances stated above, which audit may be performed at the S.I.'s option, either during the Contract time period or during the above record retention time period. Regardless of authorization, approval or acceptance, signatures or letters which were given by the S.I. and are part of the S.I.'s control systems or are requested by the Contractor, the payments made under this Contract shall not constitute a waiver of the S.I.'s right to audit, nor shall payments constitute a waiver or agreement by the S.I. that it accepts as correct the billings, invoices or other charges on which the payments are based. If the S.I.'s audit produces a claim against the Contractor, the S.I. may pursue all its legal remedies even though it has made all or part of the payments required by this Contract.

(e) If any audit by the S.I. or its representative discloses an underpayment by the S.I. pursuant to the terms of the Contract Documents, the S.I. shall have the duty to pay any amounts found by the Audit to be owed to the Contractor. If such audit discloses an overpayment, the Contractor shall have the obligation to reimburse the S.I. for the amount of the overpayment. The S.I.'s right to claim reimbursement from the Contractor of any overpayment shall not be terminated or waived until 60 days after S.I. audit or upon the termination of audit rights under this Construction Contract Clause, whichever date is later. The obligation of the Contractor to make reimbursement hereunder shall not terminate except as provided by law.

(f) The S.I.'s right to audit and the preservation of records shall terminate at the end of three (3) years as stated hereinabove. The Contractor shall include this "Right to Audit and Preservation of Records" clause in all subcontracts issued by the Contractor and he shall require same to be inserted by all lower tier Subcontractors in their subcontracts, for any portion of the Work. Such audit may be conducted by the S.I. or its authorized representatives.

52.223-S0019 Asbestos-Containing Materials (Jun 2000)

(a) The Contractor shall immediately notify the COTR upon uncovering any material likely to contain or suspected of containing asbestos fibers. Upon such notification, the Smithsonian Institution Office of Environmental Management and Safety, Industrial Hygiene Branch, will conduct preliminary tests at no cost to the Contractor. Further disturbances of the material shall cease and the continuance of the work effort shall be subject to approval by the S.I.

(b) Asbestos-free materials shall be used whenever available. The Contractor shall specifically identify asbestos-containing material for any item prior to its use or installation under this contract by submitting a Material Safety Data Sheet for approval. The S.I. reserves the right to disapprove and to disallow any item containing asbestos at no additional cost.

(c) All asbestos abatement work shall be in compliance with all applicable federal, state, and local regulations. Additionally, the Contractor shall comply with S.I.'s requirements for asbestos abatement work and handling asbestos-containing materials.

52.228-S0015 Contractor's Liability Insurance (Jun 2000)

(a) The Contractor shall purchase and maintain in companies properly licensed to do business in the location where construction is being performed under this contract and acceptable to the S.I. such insurance as will protect him and the S.I. from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by himself or by any Subcontractor, any Supplier, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

(1) Claims under worker's or workmen's compensation, disability benefit and other similar employee benefit acts (with Workmen's Compensation and Employer's Liability Insurance in amounts not less than those necessary to meet the statutory requirements of the state(s) having jurisdiction over any portion of the Work); the Contractor will require his Subcontractors to similarly provide Workmen's Compensation Insurance for all of the latter's employees;

(2) Claims for damages because of bodily injury, sickness or disease or death of his employees;

(3) Claims for damages because of bodily injury, sickness or death of any persons other than his employees;

(4) Claims for damages insured by usual personal injury liability coverage, which are sustained (1) by any person as a result of an occurrence directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;

(5) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

(6) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

(b) The insurance required by this Construction Contract Clause entitled "Contractors Liability Insurance", shall be primary and noncontributing to any insurance possessed or procured by the S.I., and limits of liability shall be not less than those set forth in this Construction Clause entitled "Contractors Liability Insurance".

(c) The insurance required by this Construction Contract Clause entitled "Contractors Liability Insurance", shall include contractual liability insurance applicable to the Contractor's obligations under the Construction Contract Clause entitled "Conditions Affecting the Work".

(d) Without limiting the above during the term of the Contract, the Contractor shall, at his own expense, purchase and maintain the following insurance with companies licensed to do business in the location where construction is being performed under the contract and satisfactory to the S.I.

(e) Workmen's compensation insurance as required by the laws of the location where construction work is being performed.

(f) Appropriate bodily injury liability insurance, with limits of not less than \$1,000,000.00 for each person and \$2,000,000.00 for each accident, including requirements for protection of elevator operations, when applicable, and servicing areas adjacent to the building.

(g) Property damage liability insurance with a limit of not less than \$1,000,000.00 for each accident.

(h) Automobile bodily injury liability insurance with limits of not less than \$200,000.00 for each person and \$500,000.00 for each accident, and property damage liability insurance, with a limit of not less than \$50,000.00 for each accident.

(i) Employers' Liability - At least \$100,000.00 for each accident.

(j) Public Liability and Property Insurance - The Contractor shall take out and maintain during the life of this Contract such Public Liability and Property Damage Insurance as shall protect him and any Subcontractor performing work under this Contract from claims for damages for personal injury including accidental death, as well as from claims for personal property damage which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by either of them. The Contractor shall procure insurance coverage for direct operations, sublet work, elevators, contractual liability and completed operations with limits not less than those stated below.

(k) Property Damages, including Broad Form Property Damage and Explosion, Collapse, Underground property damage coverage, and blasting, where necessary.

(l) Completed Operations Liability - Continues coverage in force for one year after completion of Work.

(m) Excess/umbrella policy - raising the above limits to \$5 million.

(n) Liability insurance may be arranged by Comprehensive General Liability and Comprehensive Automobile Liability policies for the full limits required; Comprehensive General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess of umbrella liability policy.

(o) It is understood and agreed that the Contractor's Insurance Company shall notify in writing, the Director, Office of Contracting, Smithsonian Institution, Washington, D.C. 20024, thirty (30) days in advance of the effective date of any reduction in or cancellation of this policy.

(p) Contractor shall provide the S.I. Certificate(s) of Insurance evidencing the required coverage ten (10) days following the date of notice of contract award. Contractor also agrees that it will provide copies of the policies to the S.I., if requested. The insurance companies providing the above coverage shall be satisfactory to the S.I. Notice of policy changes will be furnished to the Contracting Officer.

52.228-S0016 Contractor's Property Insurance (Jun 2000)

(a) The Contractor shall purchase and at all times maintain such insurance as will protect the Contractor, the S.I., the S.I.'s representatives, Suppliers and employees, the Architect, Sub-contractors and Sub-subcontractors from loss or damage to Work or property in the course of construction, including all machinery, materials and supplies on the premises or in transit thereto and intended to become a part of the finished Work until acceptance by the S.I. This insurance shall be in the form of "Builders All-Risk," "All-Risk Installation Floater," or equivalent. The Contractor shall cause such policy or policies of insurance required under this Article to be endorsed so as to provide that the insurer or insurers waive any right of subrogation against the S.I. Any deductible provision in such insurance shall not exceed \$10,000.00 without prior written approval of the C.O. Notwithstanding any such deductible provision, the Contractor shall remain solely liable for the full amount of any item covered by such insurance.

(b) Any loss incurred under the Construction Contract Clause entitled "Contractors Property Insurance", is to be adjusted with the S.I. and made payable to the S.I. as trustee for the insured, as their interests may appear, subject to

the requirements of any applicable mortgage clause and of the Construction Contract Clause entitled "Contractors Property Insurance". The Contractor shall pay each Subcontractor a just share of any insurance moneys received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to his Suppliers in similar manner.

(c) The S.I. and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Construction Contract Clause entitled "Contractors Property Insurance", or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the S.I. as trustee. The Contractor shall require, by appropriate agreement, written where legally required for validity, similar waivers in favor of the S.I. and the Contractor by Subcontractors and Suppliers. With respect to the waiver of rights of recovery, the S.I. shall be deemed to include, to the extent covered by property insurance applicable thereto, his consultants, employees, and agents and representatives including the employees and agents and the Architect and his consultants, employees and agents. The Contractor waives as against any separate contractor described in the Construction Contract Clause entitled "Work by Smithsonian Institution or by Separate Contractors", all rights for damages caused by fire or other perils in the same manner as is provided above as against the S.I. shall require, by appropriate agreement, written where legally required for validity, similar waivers in favor of the Contractor by any separate contractor and his subcontractors and suppliers.

(d) The S.I. as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five days after the occurrence of loss to the S.I.'s exercise of this power, and if such objection be made, the matter shall be decided by a court of competent jurisdiction or as the parties in interest otherwise agree. The S.I. as trustee shall, in that case, make settlement with the insurers in accordance with the orders of the court or as otherwise agreed by the parties in interest.

(e) The property insurance shall not be canceled or lapsed on account of any partial occupancy or use by the S.I. of a portion or portions of the Work prior to Submittal Completion, but will remain in full force and effect.

52.228-S0017 Insurance (Jun 2000)

The requirements of the Insurance - Work on a Government Installation clause prescribed in FAR 52.228-5, Clause 52.247-S0015, S.I. Contractor's Liability Insurance, and Clause 52.247-S0016, S.I. Contractor's Property Insurance, are supplemented to provide that the general liability and property insurance policies shall name "the Smithsonian Institution," as additional insureds with respect to operations performed under this contract.

52.228-S0074 Specific Insurance Requirements

(a) Contractor shall maintain the insurance policies set forth below, covering the term of the contract, with carriers that are acceptable to the Smithsonian Institution. If policies are on a "claims made" basis, Contractor must continue coverage for at least three (3) years after it completes all activities related to this contract. Contractor shall provide Smithsonian Institution with a Certificate of Insurance evidencing the required coverages, at least fourteen (14) days prior to commencement of performance of this contract. Contractor agrees that it shall notify the S.I., in writing, at least thirty (30) days in advance of any material change to the scope or limits of insurance required by this provision. Contractor shall disclose to Smithsonian Institution . the full limits of all insurance policies on the required certificates of insurance, including any umbrella and/or excess liability policies.

(b) Contractor shall name the Smithsonian Institution and the United States of America as Additional Insureds to the Commercial General Liability and Automobile Liability policies.

(c) Commercial General Liability: Contractor shall maintain Commercial General Liability or comparable broad form liability coverage including standard (ISO Form) coverage for 1) bodily injury, property damage, products and completed operations and contractual liability; and 2) advertising injury and personal injury pertaining to all

activities performed by Contractor as part of this contract Minimum per occurrence limit: \$2,000,000. Professional Liability Insurance: Contractor shall maintain Professional Liability Insurance coverage to include coverage for errors and omissions of the Contractor, its subcontractor(s), agents and employees. Minimum Per Claim Limit: \$2,000,000.00.

(e) Automobile Liability: Contractor shall maintain Business Automobile liability coverage including standard (ISO Form) coverage for 1) bodily injury and 2) property damage. Minimum Per Occurrence Limit: \$1,000,000.00.

(f) Worker's Compensation: Contractor shall maintain Worker's Compensation coverage which meets statutory limits of the jurisdiction where the work will be performed.

(g) Subcontractor(s): Contractor shall require its subcontractor(s) that perform work under this contract to carry the same insurance limits Contractor must carry under this contract, and to provide a Certificate of Insurance naming the Smithsonian Institution and United States of America as Additional Insureds.

(h) Contractor shall maintain umbrella liability coverage in the amount of \$5,000,000.00. Contractor may meet the insurance requirements through separate, combination, or package policies if those policies meet the required limits and scope of coverage. Umbrella and/or excess policy limits may be accepted to meet the required limits and scope of insurance.

(i) The insurance requirements provided herein are the Contractor's minimum requirements and shall not be considered indicative of the ultimate amounts and types of insurance needed by the Contractor. Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor from the requirement to indemnify the Smithsonian Institution from other obligations under this contract.

(j) Federal Tort Claims Act: The Smithsonian Institution is covered by the Federal Tort Claims Act (28 U.S.C. §§ 1346(b) and 2671-80) which provides an exclusive remedy for claims against the United States (the S.I.) for damage to property, personal injury, or death caused by the negligent act or failure to act of a Smithsonian Institution employee during his or her employment.

52.228-S0092R Insurance Requirements – Evidence of Coverage

Contractor shall name the Smithsonian Institution as additional insured. Additional Insured by specific endorsement as Additional Insured to the Commercial General Liability for liabilities arising out of the Contractor's or the Contractor's sub-contractor's or agent's activities related to this agreement. The required liability policies shall provide for cross liability coverage. Contractor shall provide the Smithsonian with evidence of meeting this Additional Insured requirement prior to Contractor or sub-contractor's commencement of activities under this agreement.

Contractor must submit approved Certificate of Insurance within ten (10) days of contract award.

52.229-S0043 Taxes (Jun 2000)

The Contractor shall pay all applicable Federal, State and local taxes and duties for the Work or portions thereof provided by the Contractor which are legally enacted at the time the offers are received, whether or not effective, except to the extent that the Contractor obtains tax exempt certificates in Maryland, Virginia and the District of Columbia. The S.I. will cooperate with the Contractor in his application for such tax exempt certificates.

52.232-S0047 Payments and Completion (Jun 2000)

The provisions of the Clause entitled "Payment Under Fixed-Price Construction Contracts" prescribed in FAR 52.232-5 are modified as follows:

(a) SCHEDULE OF VALUES:

(1) As part of the submission of its Preliminary Schedule, the Contractor shall submit to the COTR a Schedule of Values, allocated to the various portions of the Work including mobilization and demobilization. This schedule, supported by data from the approved Progress Schedule, shall be used as a basis for the Contractor's Applications

for Payment for any increase or decrease in the Contract price. The Contractor shall not front-end load his Schedule of Values.

(b) APPLICATIONS FOR PAYMENT:

(1) The S.I. shall make progress payments monthly as the Work proceeds on Applications for Payment approved by the Contracting Officer.

(2) The S.I. shall, upon request, reimburse the Contractor for the entire amount of premiums paid for Performance and Payment bonds (including coinsurance and reinsurance agreements, when applicable) after furnishing evidence of full payment to the surety.

(3) Prior to the date for each progress payment, the Contractor, in accordance with the Supplementary Construction Contract Clause entitled "Scheduling of the Work," shall submit to the COTR an itemized Application for Payment, supported by such data substantiating the Contractor's right to payment as the COTR may require, including, but not limited to the Contractor's certification that all work for which payment is requested has been completed in full in accordance with the Contract Documents, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. The Contractor shall also certify that he has paid all due and payable amounts for which previous Certificates for Payment were issued and payments received from the S.I.

(4) The S.I. will retain ten percent of the amount of all progress payments until the Work is finally completed and accepted, whether or not the S.I. has occupied any or all of the Project before such time. After fifty percent of the Work has been completed, the Contractor may request the C.O. to retain five percent of the amount of all progress payments for the Work performed beyond the fifty percent stage of completion. The decision by the C.O. concerning reduction of retention shall be final and binding upon the Contractor.

(5) Payments may be made by the S.I. at its discretion, on account of materials or equipment not incorporated in the Work, but delivered and suitably stored at the site by the Contractor. Payments for materials or equipment stored on the site shall only be considered upon submission by the Contractor of satisfactory evidence (for example, releases or paid invoices from the Seller) that the Contractor has acquired title to such material, that it will be utilized on the Work under this Contract and that it is satisfactorily stored, protected, and insured or that other procedures satisfactory to the S.I. that will protect the S.I.'s interests have been taken. Materials once paid for by the S.I. become the property of the S.I. and may not be removed from the work site without the S.I.'s written permission.

(6) S.I. will be under no obligation to make payment to the Contractor on account of materials or equipment not incorporated in the Work, but delivered and stored at the site unless the Contractor, in his Schedule of Values, includes line items for such delivered and stored materials or equipment.

(7) It is specifically understood and agreed that an inspection and approval of the materials by the COTR or any agency retained by him shall not in any way subject the S.I. to pay for the said materials or any portion thereof, even though incorporated in the Work, if said materials shall in fact turn out to be unfit to be used in the Work, nor shall such inspection be considered as any waiver of objection to the Work on account of the unsoundness or imperfection of the material used.

(8) Unless otherwise provided for elsewhere in the Contract Documents, no payments will be made for any materials or equipment stored off or away from the Site without the prior consent of the COTR.

(9) The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the S.I. either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Construction Contract Clause as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

(10) **CONTROL OF COSTS AND PROPERTY.** The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(c) CERTIFICATES OF PAYMENT.

(1) The C.O. will within 5 days after receipt of the Contractor's Application for Payment, either approve the Application for Payment for such amount as the C.O. determines is properly due, or notify the Contractor in writing of his reasons for not approving the Application for Payment as provided in this Construction Contract Clause under "Payments Withheld."

(2) The submission and approval of the Progress Schedule and monthly updates thereof as required by the Supplementary Construction Contract Clause entitled "Scheduling of the Work" shall be an integral part and basic element of the application upon which progress payment shall be made. The Contractor shall be entitled to progress payments only as determined from the currently Approved and Updated Progress Schedule.

(d) PAYMENTS WITHHELD.

(1) The C.O. may decline to approve the Application for Payment or reduce payment or, because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Application for Payment previously approved to such extent as may be necessary in his opinion to protect the S.I. from loss, because of:

(i) Defective work not remedied,

(ii) Third party claims filed, whether in court, in arbitration or otherwise, or reasonable evidence indicating probable filing of such claims,

(iii) Failure of the Contractor to make payments properly to Subcontractors or Suppliers,

(iv) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price,

(v) Damage to the S.I. or to a separate contractor,

(vi) Reasonable evidence that the Work will not be completed within the Contract Time, or within any Contract Milestones as established in the Contract Documents,

(vii) Failure or refusal of the Contractor to carry out the Work in accordance with or to otherwise substantially or materially comply with the Contract Documents,

(viii) Liens filed or reasonable evidence that a lien may be filed for any portion of the Work, or

(ix) Failure or refusal of the Contractor to properly schedule and coordinate the Work, to provide Progress Schedules, reports and updates, or to otherwise fully comply with the Supplementary Construction Contract Clause entitled "Scheduling of the Work."

(x) Failure or refusal of the Contractor to fully comply with the provisions of the Construction Contract Clause entitled "Work by Smithsonian Institution or by Separate Contractors" requiring the Contractor to direct certain claims to separate contractors and to defend and indemnify the S.I. in the event separate contractors file claims.

(xi) Failure or refusal of the Contractor to fully comply with the provisions of the Construction Contract Clause entitled "Shop Drawings, Coordination Drawings and Schedules."

(xii) Failure or refusal of the Contractor to fully comply with the provisions of the Supplementary Construction Contract Clause entitled "Submittal Schedule."

When the above grounds in this Construction Contract Clause are removed, payment shall be made for amounts withheld because of them.

(e) SUBSTANTIAL COMPLETION.

(1) When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the S.I., is substantially complete as defined in the Construction Contract Clause entitled "Commencement, Prosecution, and Completion of Work," the Contractor shall prepare for submission to the COTR a list of items which in his opinion are to be completed or corrected and shall, request in writing that the COTR perform a Substantial Completion inspection. The COTR shall review the Contractor's list and will compile a punch list of items to be corrected and completed. The failure to include any items on such list does not alter the responsibility of the Contractor to

complete all Work in accordance with the Contract Documents. When the COTR on the basis of an inspection determines that the Work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion; shall state the responsibilities of the S.I. and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance; and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be issued to the Contractor for his written acceptance of the responsibilities assigned to him in such Certificate and returned to the COTR within five (5) days.

(2) The Contractor shall have thirty (30) days from the Date of Substantial Completion to complete all items on the punch list to the satisfaction of the COTR. The COTR shall have the option to correct or conclude any and all punch list items not completed by the Contractor within thirty (30) days from the Date of Substantial Completion by utilizing his own forces or by a separate contractor. The cost of such correction of remaining punch list items by the S.I. or others shall be deducted from the Final Payment to the Contractor. If the Contractor does not complete all punch list items within this time period specified in this Construction Contract Clause, all warranties and guarantees for such incomplete Punch List items shall become effective upon issuance of Final Payment.

(3) The issuance of the Certificate of Substantial Completion does not indicate final acceptance of the project by the S.I., and the Contractor is not relieved of any responsibility for the project except as specifically stated in the Certificate of Substantial Completion.

(4) Should the COTR determine that the Work or a designated portion thereof is not substantially complete, he shall provide the Contractor a written notice stating why the project or designated portion is not substantially complete. The Contractor shall expeditiously complete the Work and shall re-request in writing that the COTR perform a Substantial Completion inspection and the costs, if any, associated with such inspection shall be assessed to the Contractor.

(f) FINAL COMPLETION AND FINAL PAYMENT:

(1) Upon receipt of the documentation required by this Construction Contract Clause, and of written notice that the Work is ready for final inspection and acceptance, the COTR will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will issue a Certificate for Final Completion to the Contractor. Upon his receipt of the Final Completion Certificate, the Contractor may submit his Application for Final Payment to the C.O. for his approval. Final Payment shall be made in full to the Contractor within thirty (30) calendar days after the approval by the C.O. of the Application for Final Payment provided that the requirements of this Construction Contract Clause have been fulfilled, except for an amount mutually agreed upon for any work remaining uncompleted for which the S.I. is entitled a credit under the Contract Documents.

(2) Neither the Final Payment nor the remaining retained percentage shall become due until the Work is free and clear of any and all liens and the Contractor submits to the C.O.:

(i) An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the S.I. or its property might in any way be responsible, have been paid or otherwise satisfied;

(ii) Consent of surety to Final Payment;

(iii) Receipts, releases and waivers of liens arising out of the Contract and such other data establishing payment or satisfaction of all such obligations to the extent and in such form as may be required and designated by the C.O.

(iv) As-built drawings, operation and maintenance manuals and other project close-out submittals, as required by the Contract Documents;

(v) A fully executed and notarized Release of claims in such form as may be designated by the S.I.; and

(vi) A written certification that:

(A) The Contractor has reviewed the requirements of the Contract Documents,

(B) The Work has been inspected by the Contractor for compliance with all requirements of the Contract Documents,

(C) Pursuant to this inspection, the Contractor certifies and represents that the Work complies in all respects with the requirements of the Contract Documents,

(D) The Contractor further certifies and represents that all equipment and systems have been installed in accordance with the Contract Documents and have been tested in accordance with specification requirements and are operational.

(vii) The making of Final Payment shall constitute a waiver of all claims by the S.I. against the Contractor except those arising from:

(A) Unsettled liens and claims against the S.I. or the Architect, or their employees, agents, or representatives,

(B) Faulty, defective or non-conforming Work discovered or appearing after Substantial or Final Completion,

(C) Failure of Work to comply with the requirements of the Contract Documents,

(D) Terms of any warranties contained in or required by the Contract Documents, or

(E) Damages incurred by the S.I. resulting from lawsuits brought against the S.I., the Architect, or their agents, employees or representatives because of failures or actions on the part of the Contractor, his Subcontractors, suppliers, or any of their employees, agents or representatives.

(F) Fraud or bad faith committed by the Contractor or Subcontractor or Supplier during performance of Work, but discovered by the S.I. after Final Payment.

52.232-S0053 Examination of Records by Smithsonian Institution (Oct 1987)

The Contractor agrees that the Contracting Officer of the Smithsonian Institution or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Part 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Contracting Office, Smithsonian Institution or any of their duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Part 4.7 of the Federal Acquisition Regulation (48 CFR 4.7), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract for compliance with any clauses thereunder. The term "subcontract" as used in this clause excludes (a) purchase orders for public utility services at rates established for uniform applicability to the general public.

52.232-S0065 Progress Payments

The Contractor may submit invoice(s) to the Contracting Officer's Technical Representative, Smithsonian Institution, not more frequently than monthly for work performed and accepted. Progress payments, when applicable, shall be based on a percentage of completion less 10% retainage. The Contractor shall submit a separate monthly invoice when requesting payment. The ten percent retainage will be held until the final acceptance of all effort within each Phase.

52.233-S0006 Disputes

(a) S.I. is Not Subject to the Contract Disputes Act. The Contract Disputes Act of 1978 (41 U.S.C. 601-613) is not applicable to the S.I. All disputes arising under or relating to this contract shall be resolved under this clause.

(b) Claims: "Claims", as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of

money exceeding \$50,000 is not a claim until certified as required by subparagraph (c)(ii) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. If the submission is disputed, either as to liability or amount, or if it is not acted upon in a reasonable time, it may be converted to a claim by complying with the submission and certification requirements of this clause.

(c) Claims Procedure

(1) Submitting Claims: A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the S.I. against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) Certification of Claims: For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the S.I. is liable.

(3) Who Shall Certify: If the Contractor is an individual, the certification shall be executed by that individual. If the Contractor is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Contractor's plant or location involved; or

(ii) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(d) Time Limits for Claims Decisions: For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(e) Final Decision. The decision of the Contracting Officer constitutes the final and conclusive decision of the S.I. It is effective on the date the Contractor receives the decision. The Contractor retains all rights to subsequent judicial review to which it is entitled under federal law. The Contractor shall comply with any decision of the Contracting Officer and otherwise proceed diligently with performance of this contract pending final resolution of any request for relief, claim, or action arising under the contract.

(f) Interest on Claims: The S.I. shall pay interest on the amount found due and unpaid from:

(1) the date the Contracting Officer receives the claim (properly certified if required), or

(2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Secretary of the Treasury during the pendency of the claim.

52.236-S0018 Calculation of Equitable Adjustment for Differing Site Conditions (Jun 2000)

(a) Any increase or decrease in the Contract price and/or Contract time resulting from differing site conditions shall be made in the manner provided by Construction Contract Clause entitled "Equitable Adjustments".

(b) The S.I. shall not be liable or responsible for additional work, costs or changes to the work due to material differences between actual conditions and any geo-technical, soils and other reports, surveys and analyses made available for the Contractor's review and not specifically incorporated into the Contract Documents.

52.236-S0021 Execution, Correlation and Intent (Jun 2000)

The requirements of the clause entitled "Specifications and Drawings" at FAR 52.236-21, are supplemented as follows:

- (a) The Contract documents shall be signed in not less than quadruplicate, by the S.I. and Contractor and each of which shall be deemed an original, but all sets shall constitute one and the same instrument.
- (b) By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.
- (c) The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Should any work or material be required which is not denoted in the drawings and specification either directly or indirectly, but which is nevertheless, necessary for the proper carrying out of the intent thereof, it is understood and agreed that the same is implied and required and that the Contractor shall perform such work and furnish such materials as fully as if they were completely delineated and prescribed. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings unless otherwise specifically defined herein. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light upon the interpretation of the provisions to which they refer.
- (d) The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings is for clarity only, and shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor may subcontract the Work in such divisions as he sees fit and he is ultimately responsible for furnishing all work shown on the Drawings or in the Specifications or both.
- (e) Anything shown on the Drawings and not mentioned in the Specification or mentioned in the Specifications and not shown on the Drawings shall have the same effect as if shown or mentioned respectively in both. Technical specifications take priority over general specifications and detail drawings take precedence over general drawings. Any work shown on one drawing shall be construed to be shown on all drawings and the Contractor will coordinate the work and the drawings. If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order or precedence: solicitation, offer, award (construction, alteration or repair); Modifications; Addenda; the Supplementary Contract Clauses; the Construction Contract Clauses; the Specifications; the Drawings; the Contract Proposal Date: [] unless the standards of quality of the Contractor under his Technical Proposal surpass those set forth in the Contract Documents, in which case the applicable section of the Technical Proposal will prevail. As between schedules and information given on Drawings and the scaled measurements, the figures shall govern; as between large-scale Drawings and small-scale Drawings, the larger scale shall govern. Any such conflict or inconsistency between or in the drawings shall be submitted in writing to the S.I. whose decision thereon shall be final and conclusive.
- (f) The Contractor acknowledges and agrees that this Contract is not intended to create, nor shall any provision be interpreted as creating, any contractual relationship between the S.I. or Contractor and any third parties.
- (g) The provisions of this Contract cannot be changed, varied or waived in any respect except by a Modification. The Contractor is hereby given notice that no person has authority to orally waive, or to release the Contractor from any of the Contractor's duties or obligations under or arising out of this Contract. Any waiver, approval or consent granted by Modification to the Contractor shall be limited to those matters specifically and expressly stated thereby to be waived, approved or consented to and shall not relieve the Contractor of the obligation to obtain any future waiver, approval or consent.

52.236-S0022 Ownership and Use of Documents (Jun 2000)

All Drawings, Specifications and copies thereof, furnished by the S.I. are and shall remain the property of the S.I. They are to be used only with respect to this Project and are not to be used on any other project.

52.236-S0023 Shop Drawings, Coordination Drawings and Schedules (Jun 2000)

The requirements, of the Construction Contract Clause entitled "Specifications and Drawings for Construction" (FAR 52.236-21), are supplemented as follows:

(a) The Contractor shall submit shop drawings, coordination drawings, product data, samples, schedules and other submittals for approval as required by the specifications, Supplementary Construction Contract Clause entitled "Submittals", or as requested by the Contracting Officer.

52.236-S0024 Project Schedules (Jun 2000)

The Contractor shall prepare and submit to the COTR for the S.I.'s review and approval, Preliminary and Complete Schedules for the Work pursuant to the Supplementary Construction Contract Clause entitled "Scheduling of the Work."

52.236-S0026 Supervision and Construction Procedures (Jun 2000)

(a) The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for and have control over all construction means, methods, techniques, sequences, procedures, safety precautions and programs, and for coordinating all portions of the Work under the Contract.

(b) The Contractor shall be responsible to S.I. for the acts and omissions of his employees, Subcontractors and Sub-subcontractors, Suppliers, their agents and employees, and other persons performing any of the Work and for their compliance with each and every requirement of the Contract Documents, in the same manner as if they were directly employed by the Contractor.

(c) The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the acts, failures to act or duties of the S.I. or the Architect in their administration of the Contract, or by inspections, tests or approvals (or the lack thereof) required or performed under the Construction Contract Clauses entitled "Uncovering of Work" and "Correction of Work," by persons other than the Contractor.

(d) Before starting a section of work, the Contractor shall carefully examine all preparatory work that has been executed to receive his Work to see that it has been completed in accordance with the Contract Documents. He shall check carefully, by whatever means are required, to ensure that his Work and adjacent, related work will finish to proper and required standards for quality, contours, planes, and levels.

(e) The Contractor shall employ no plant, equipment, materials, methods or persons to which the COTR objects. The Contractor shall not remove any portion of the Work or stored materials from the site of the Work.

52.236-S0027 Superintendent (Jun 2000)

(a) The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall be an authorized representative of the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. If requested by the COTR, the Contractor shall provide a management chart and a list of personnel in a manner stipulated by the COTR which shall comprise the superintending staff. The Superintendent Staff shall include but not be limited to: General Superintendent, Assistant Superintendent, Scheduling/Cost Engineers and Working Foremen. In such event, all references to the Superintendent elsewhere in the Contract Documents shall mean the superintending staff.

(b) The Superintendent shall be in attendance at the Project site not less than eight hours per day, five days per week, unless the job is closed down due to a general strike or conditions beyond the control of the Contractor or until termination of the Contract in accordance with the Contract Documents. It is understood that such Superintendent shall be approved in writing by the C.O. and shall be the one who will be continued in that capacity for the duration of the project, unless he ceases to be on the Contractor's payroll or his withdrawal is requested or approved by the C.O. The Superintendent shall not be employed on any other project for or by Contractor or any other entity during the course of the Work.

(c) In the event the following conditions shall exist, the Contractor shall require that his Superintendent be at the Project site not less than ten hours per day, six days per week:

(1) should Substantial Completion not be accomplished on schedule.

(2) should Final Completion not be accomplished on schedule.

(3) should the Progress Schedule indicate in the opinion of the COTR that the Contractor is fourteen or more days behind schedule at any time during construction up until thirty days prior to scheduled Substantial Completion.

(4) should the Progress Schedule indicate in the opinion of the COTR that the Contractor is seven or more days behind schedule at any time during the last thirty days prior to scheduled Substantial Completion.

52.236-S0028 Coordination of the Work (Jun 2000)

By entering into this contract, the Contractor acknowledges that there may be separate contractors on the Site whose work will be coordinated with that of his own. The Contractor expressly warrants and guarantees that he will cooperate with separate contractors and will do nothing to delay, hinder or interfere with the Work of other separate contractors, the S.I. or the Architect. The Contractor also expressly agrees that, in the event his work is hindered, delayed, interfered with or otherwise affected by a separate contractor, his sole remedy will be a direct action against the separate contractor as described in the Construction Contract Clause entitled "Work by the Smithsonian Institution or by Separate Contractors." The Contractor will have no remedy, and hereby expressly waives any remedy, against the S.I. on account of delay, hindrance, interference or other event caused by a separate contractor.

52.236-S0029 Construction Procedures (Jun 2000)

(a) The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the acts, failures to act or duties of the S.I. or the Architect in their administration of the Contract, or by inspections, tests or approvals (or the lack thereof) required or performed under the Construction Contract Clauses entitled "Uncovering of Work" and "Correction of Work" by persons other than the Contractor.

(b) Before starting a section of work, the Contractor shall carefully examine all preparatory work that has been executed to receive his Work to see that it has been completed in accordance with the Contract Documents. He shall check carefully, by whatever means are required, to ensure that his Work and adjacent, related work will finish to proper and required standards for quality, contours, planes and levels.

(c) The Contractor shall employ no plant, equipment, materials, methods or persons to which the COTR objects. The Contractor shall not remove any completed Work or stored materials from the site.

52.236-S0032 Protection of Existing Vegetation, Structures, Equipment, Utilities and Improvements (Jun 2000)

(a) The Contractor shall protect from damage all existing improvements and utilities that are:

(1) At or near the work site, and

(2) On adjacent property of a third party, the locations of which are made known to or should be known by the Contractor.

(b) The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Construction Contract Clause or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

52.236-S0033 Smithsonian Institution's Right to Clean Up (Jun 2000)

If the Contractor fails to clean up during or at the completion of the Work, the COTR may do so as provided in the Construction Contract Clause entitled "Work By The Smithsonian Institution or By Separate Contractors" and the cost thereof shall be charged to the Contractor.

52.236-S0034 Conditions Affecting the Work (Jun 2000)

The Contractor shall be responsible for taking all steps necessary to ascertain the nature and location of the Work and the general and local conditions that may affect the Work or the cost thereof. Failure by the Contractor to fully acquaint himself with conditions which may affect the Work, including, but not limited to conditions relating to transportation, handling, storage of materials, availability of labor, water, roads, weather, topographic and subsurface conditions, applicable provisions of law, and the character and availability of equipment and facilities needed prior to and during the execution of the Work, shall not relieve the Contractor of his responsibilities under

the Contract Documents and shall not constitute a basis for any adjustment in the Contract Price or the Contract Time under any circumstances. The S.I. assumes no responsibility or representation about conditions affecting the Work made by any of his officers, employees, representatives, or agents prior to the execution of the Contract, unless such understandings or representations are expressly stated in the Contract Documents.

52.236-S0035 Work by the Smithsonian Institution or by Separate Contractors (Jun 2000)

(a) Smithsonian Institution Right To Perform Work And To Award Separate Contracts:

(1) The S.I. reserves the right to perform work related to the Project with its own forces, and to award separate contracts in connection with other portions of the Project or other work on the site.

(2) When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate S.I.-Contractor Agreement.

(b) Mutual Responsibility:

(1) The Contractor shall afford other contractors and the S.I. reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall properly connect and coordinate the Work with that of the S.I. and other contractors to store his tools, materials, and equipment in such orderly fashion at the site of the Work as will not unduly or unreasonably interfere with the progress of the Work or the work of any other contractors.

(i) If the execution or result of any part of the Work depends upon any work of the S.I. or of any separate contractor, the Contractor shall, prior to proceeding with the Work, inspect and promptly report to the COTR in writing any apparent discrepancies or defects in such work of the S.I. or of any separate contractor that render it unsuitable for such proper execution or result of any part of the Work.

(ii) Failure of the Contractor to so inspect and report shall constitute an acceptance of the S.I.'s or separate contractor's work as fit and proper to receive the Work, except as to defects which may develop in the S.I.'s or separate Contractor's work after completion of the Work and which the Contractor could not have discovered by its inspection prior to completion of the Work.

(2) Should the Contractor cause damage to the Work or property of the S.I. or of any separate contractor on the Project, or to other work on the site, or delay or interfere with the S.I.'s work on ongoing operations or facilities or adjacent facilities or said separate contractor's work, the Contractor shall be liable for the same; and, in the case of a separate contractor, the Contractor shall attempt to settle said claim with the separate contractor prior to such other contractor's institution of litigation or other proceeding against the Contractor.

(i) If such separate contractor sues the S.I. on account of any damages, delay or interference caused or alleged to have been so caused by the Contractor, the S.I. shall notify the Contractor, who shall defend and hold harmless the S.I. in such proceedings at the Contractor's expense. If any judgment or award is entered against the S.I., the Contractor shall satisfy the same and shall reimburse the S.I. for all damages, expenses, attorneys' fees and other costs which the S.I. incurs as a result thereof.

(3) Should a separate contractor cause damage to the Work or to the property of the Contractor or cause delay or interference with the Contractor's performance of the Work, the Contractor shall present directly to said separate contractor any claims it may have as a result of such damage, delay or interference (with an information copy to the C.O.) and shall attempt to settle its claim against said separate contractor prior to the institution of litigation or other proceedings against said separate contractor.

(i) In no event shall the Contractor seek to recover from the S.I., and the Contractor hereby warrants to S.I. that it will not seek to recover from the S.I., any costs, expenses (including, but not limited to, attorneys' fees) or damages or other losses incurred by the Contractor as a result of any damage to the Work or property of the Contractor or any delay or interference caused by any separate contractor.

ii) In order to carry out the intent of this Construction Contract Clause, the Contractor agrees that privity of contract exist between Contractor and any separate contractor, as defined herein, for the purpose of disposing of the liabilities or obligations which are imposed upon said parties to each other hereunder; and Contractor agrees to accept service

of process and to sue and be sued in the Contractor's own name in any litigation which may arise hereunder between the Contractor and any separate contractor. S.I. agrees to include the provisions of this Construction Contract Clause in all separate Contractor Agreements.

(c) S.I.'s Right To Perform Disputed Work:

If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by the Construction Contract Clause entitled "Cleaning Up," or for accomplishing coordination as required by the Construction Contract Clause entitled "Coordination of the Work," the S.I. may carry out such work and charge the cost thereof to the contractors responsible therefore as the C.O. shall determine.

(d) Coordination Of The Work:

By entering into this contract, the Contractor acknowledges that there may be separate contractors on the Site whose work will be coordinated with that of his own. The Contractor expressly warrants and guarantees that he will cooperate with separate contractors and will do nothing to delay, hinder, or interfere with the Work of other separate contractors, the S.I. or the Architect. The Contractor also expressly agrees that, in the event his work is hindered, delayed, interfered with or otherwise affected by a separate contractor, his sole remedy will be a direct action against the separate contractor as described in this Construction Contract Clause. Contractor will have no remedy, and hereby expressly waives any remedy, against the S.I. on account of delay, hindrance, interference or other event caused by a separate contractor.

52.236-S0037 Smithsonian Institution's Right to Carry Out the Work (Jun 2000)

(a) If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, S.I. or its designated representative may, after seven (7) days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies and may further elect to complete all Work thereafter through such means as the S.I. may select, including the use of a new contractor. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's and any other additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the S.I.

(b) The S.I. will not be liable or accountable to the Contractor or his surety for the method by which the work or any portion thereof, performed by S.I. or by separate contractors pursuant to this Construction Contract Clause, is accomplished or for the price paid therefore. Notwithstanding, the S.I.'s right to carry out a portion of the work, maintenance and protection of the work remains the Contractor's and Surety's responsibility as provided for in the Performance Bond.

52.236-S0052 Correction of Work (Jun 2000)

(a) The Contractor shall promptly reconstruct, replace or correct all Work rejected by the S.I. as defective or as failing to conform to the Contract Documents or as not in accordance with the guarantees and warranties specified in the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs correcting such rejected Work, including compensation for the Architect's and any other additional services made necessary thereby.

(b) The Contractor, unless removal is waived by the S.I., shall remove from the site all portions of the Work which are defective or non-conforming, or if permitted or required, he shall correct such Work in place at his own expense promptly after receipt of notice, and such rejected Work shall not thereafter be tendered for acceptance unless the former rejection or requirement for correction is disclosed.

(c) If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the S.I., the S.I. may either-

(1) by separate contract or otherwise replace or correct such Work and charge the Contractor the cost occasioned the S.I. thereby and remove and store the materials or equipment at the expense of the Contractor, or

(2) terminate this Contract for default as provided in the Construction Contract Clause entitled "Default".

(d) The Contractor shall bear the cost of making good all work of the S.I. or separate contractors destroyed or damaged by such correction or removal.

(e) Nothing contained in this Construction Contract Clause shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including the Construction Contract Clause entitled "Additional Warranties and Guarantees." The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

(f) If the S.I. prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable, or the S.I. may elect to accept payment in materials or services, in lieu of a reduction in the Contract Sum. If the amount of a reduction is determined after final payment, it shall be paid to the S.I. by the Contractor.

52.236-S0067 Responsibility of the Contractor

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications and other services.

(b) Neither the S.I.'s review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract and the Contractor shall be and remain liable to the S.I. caused by the Contractor's performance of any of the services furnished under this contract.

(c) The rights and remedies of the S.I. provided for under this contract are in addition to any other rights and remedies provided by law.

(d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable here under.

52.236-S0072 Nonpayment for Additional Work

Any additional services or a change to work specified which may be performed by the Contractor, either at his own volition or at the request of an individual other than a duly appointed Contracting Officer except as may be explicitly authorized in this contract, are not authorized and will not be paid for. Only a duly appointed Contracting Officer is authorized to change the specifications, terms, and conditions in this contract.

52.236-S0078 Responsibility for Supplies--Rejected Supplies

As provided in FAR 52.246-16, the Contractor shall bear all risks as to rejected supplies after notice of rejection. The Contractor shall be liable for all costs, including by the Government in taking such measures as are expedient to save unnecessary loss to the Contractor. Should the Contractor upon due notice fail to remove or provide instructions for the removal of the rejected supplies within the period specified by the Government, or within a reasonable period of time if no period is specified, the supplies may be stored for the Contractor's account, or reshipped to the Contractor at the Contractor's expense, or sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including costs of the sale. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

52.243-S0044 Equitable Adjustments (Jun 2000)

(a) The provisions of the Changes clause prescribed by FAR 52.243-4 are supplemented as follows:

(1) The COTR may request an itemized proposal for the work. The Contractor shall submit an itemized proposal within ten (10) days of its receipt of the COTR's request. The Contractor's proposal shall be accompanied by signed itemized proposals of any Subcontractors who will perform any portion of the Change and of any persons who will furnish materials or equipment for incorporation therein. The proposal shall also include the Contractor's estimate of the time required to perform the change. The Contractor's and each involved subcontractor's proposals shall be itemized with unit quantity and unit costs segregated by labor and materials for the various components by the Change and shall include information required by the Supplementary Construction Contract Clause entitled "Scheduling of the Work."

(2) The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include reasonably anticipated wages of Job Site labor, including foreman, who will be directly involved in the Change, plus payroll costs (including premium costs of overtime labor, if overtime is anticipated, Social Security, Federal or State Unemployment insurance taxes, workers compensation insurance, general liability insurance, and fringe benefits required by collective bargaining agreements entered in connection with such labor) and up to twenty-one percent (21%) of said anticipated wages and payroll costs, as overhead and profit on anticipated wages and payroll costs, for the Contractor or any Subcontractor. Said overhead and profit to include all mobilization and supervision costs except foreman as applicable. Job Site labor for changes customarily is on site labor to include foreman. Project management or supervision cost, unless specified otherwise by Smithsonian project management, is considered to be included in the Contractor's and each involved Subcontractor's overhead costs.

(3) The portion of the proposal, with unit quantities and unit costs, relating to materials may include the reasonably anticipated costs, whether procured by the Contractor or its Subcontractors, of materials to be purchased for the Change plus transportation and applicable sales or use taxes and up to twenty-one percent (21%) of the said direct material costs, but not applicable sales or use taxes, as overhead and profit for the Contractor or any such Subcontractor, such overhead and profit to include all small tools and miscellaneous material expenses. The proposal may further include the Contractor's and Subcontractor's reasonably anticipated rental costs in connection with the Change in the Work, plus up to six percent (6%) thereof as overhead and profit for the Contractor or any such Subcontractor as applicable.

(4) The itemized proposal may include up to ten percent (10%) of the amount which the Contractor will pay to any of its Subcontractors for the Changes as a commission to the Contractor. The following sample formats for proposals is provided as general guidance to be used with all appropriate back-up data.

(See attachments 1 and 2)

(5) The allowable overhead shall be determined in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31) in effect on the date of this contract. The percentages for overhead, profit, and commission shall in no case exceed the following:

Composite

Overhead &

Profit Commission

To contractor on work

performed by another

than his own forces --- 10%

To contractor and/or the

subcontractors for that

portion of the work

performed with their
respective forces 21% ---

(6) In the event that the Contractor fails to submit his proposal within the designated period, the S.I. may order the Contractor to proceed with the Change and the Contractor shall so proceed. The C.O. will unilaterally determine the reasonable cost and time to perform the Change in question, which determination shall be final and binding upon the Contractor.

(7) If the Contractor timely submits a proposal and the parties are unable to agree as to the reasonable cost and time to perform the Change the C.O. may make a unilateral determination of the reasonable cost and time to perform the Change in the Work, based upon his own estimates, the Contractor's submission or a combination thereof. A Change Order shall be issued for the amounts of cost and time determined by the C.O. and shall become binding upon the Contractor. The C.O. has the right to direct in writing the Contractor to perform the Change. Failure of the parties to reach agreement regarding the cost and time of performing the Change shall not relieve the Contractor from performing the Change promptly and expeditiously.

(8) If the C.O. elects to have the Change performed on a time and material basis, the Change shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors at actual cost to the entity performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendence of any nature whatsoever, including foremen, or the cost, use or rental of tools or plant), plus up to twenty-one percent (21%) of these actual costs as the total overhead and profit. The Contractor shall submit to the COTR daily time and material tickets, to include the identification number assigned to the Change, the location and description of the Change, the classification of labor employed (names and social security numbers), the materials used, the equipment rented (not tools) and such other evidence of cost as the S.I. may require. The S.I. may require authentication of all time and material tickets and invoices by persons designated by the S.I. for such purposes; provided, however, that the authentication of any such ticket or invoice by the S.I. will not constitute an acknowledgement by the S.I. that the items thereon were reasonably required by the Change in the Work. The failure of the Contractor to secure any required authentication shall, if the S.I. elects to treat it as such, constitute a waiver by the Contractor in the Work covered by a non-authenticated ticket or invoice.

(9) No overhead and profit will be paid by the S.I. on account of a Change in the Work except as specifically provided in this Construction Contract Clause. Overhead and Profit, as allowed under this Construction Contract shall be deemed to include all costs and expenses which the Contractor or any of its Subcontractors may incur in the performance of a Change in the Work and which are not otherwise specifically recoverable by them pursuant to this Construction Contract Clause. Overhead, profit and Contractor's or Subcontractor's commission percentages shall be considered to include, unless specified by S.I. project management; insurance except workers compensation and general liability, field and office supervisors, engineers and their assistants, watchman, use of small tools, incidental job burdens and general home office expenses, and no separate allowance will be made therefore. The term "Assistants" includes all clerical, stenographic and general office help. Incidental job burdens include, but are not necessarily limited to, office equipment and supplies, temporary toilets, telephone and conformance to OSHA requirement. Items such as, but not necessarily limited to, review and coordination, estimating and expediting relative to contract changes are associated with field and office supervision and, are therefore, considered to be included in the Contractor's or Subcontractor Overhead, Profit and/or Commission percentage.

(10) Where the Contractor's or Subcontractor's portions of a Change involve credit items, such items must be deducted prior to adding overhead and profit for the party performing the work.

(11) The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called impact costs, labor inefficiency, wage material or other escalations beyond the prices upon which the proposal is based and which are identified pursuant to this Clause, and which the Contractor, its Subcontractors or Suppliers may incur as a result of delays, interference, suspensions, changes in sequence or the like, from whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all changes in the Work performed pursuant to this Clause. It is understood and agreed that the Contractor's sole and exclusive remedy in such event shall be

recovery of his costs and specified markups for overhead, profit and/or commission as set forth in this Clause and an extension of the Contract Time, but only in accordance with the provisions of the Contract Documents.

(12) If the Change in the Work will result in a decrease in the Contract Price, the COTR may request a quotation by the Contractor of the amount of such decrease for use in preparing a Change Order. The Contractor's quotation shall be forwarded to the COTR within (10) days of the COTR's request and, if acceptable to the C.O., shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a properly itemized proposal as specified by this Construction Contract Clause, or on such other basis as the parties may mutually determine. If the parties are unable to agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the Work, as determined by the C.O.'s judgment, plus up to twenty-one percent (21%) thereof for Overhead and Profit.

(13) No claim relating to or flowing from a particular change shall be allowed after the Contractor's execution of the change order relating to the change.

(14) If any dispute should arise between the parties with respect to an increase or decrease in the Contract Price or an extension or reduction in the Contract Time or as a result of a Change in the Work, the Contractor shall not suspend performance of a Change in the Work or the Work itself unless otherwise so ordered by the C.O. in writing. The S.I. will, however, pay the Contractor up to the S.I.'s estimated value of the Change in the Work, regardless of the dispute, if said Change in the Work results in an increase in the Contract Price; and the S.I. will have the right to decrease the Contract Price up to the S.I.'s estimated value of the Change in the Work, regardless of the dispute, if said Change in the Work results in a decrease in the Contract Price.

52.243-S0045 Pricing of Adjustments (Jun 2000)

When costs are a factor in any determination of a contract price adjustment pursuant to the "Changes" clause or any other clause of this contract, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31).

52.243-S0054 Technical Directives

(a) Performance of work under this contract is subject to the review and direction of the Contracting Officer or his duly authorized representative. Pursuant to this authority, the Contracting Officer, Project Manager, or Resident Project Manager, may issue technical directives within the scope of the contract statement of work without notice to sureties, if any, for the purpose of:

- (1) Filling in previously unspecified details of the technical requirement;
- (2) Shifting emphasis between work areas or tasks, or requiring the pursuit or cessation of certain approaches or lines of inquiry;
- (3) Approving technical reports, drawings, specifications, and other technical data;
- (4) Providing guidance, advice definitions, and other information which assists in the interpretation of drawings, specifications, or other technical aspects of the work description.

(b) Directives which have an impact on the total contract costs, or which have the effect of relieving the Contractor of responsibilities for which he has contracted, will not be issued under this contract clause. Such directives will be issued by the Contracting Officer under other provisions of this contract. Technical directives will be issued in writing by the Contracting Officer, Project Manager, or Resident Project Manager.

(c) The Contractor will promptly acknowledge in writing to the Contracting Officer the receipt of all technical directives and will comply with all such technical directives in accordance with their terms. However, if the Contractor deems that acceptance of a particular technical directive would change any contract provision, including stated technical, schedule, cost, incentive or other contract provisions, or effects any other change which would, if directed by the Contracting Officer under any other provision of this contract, create a right to an equitable adjustment on the part of either of the contracting parties, or if the Contractor takes technical exception to a technical directive or questions its contractual authority, he will so notify the Contracting officer in writing within five (5) working days after receipt of the technical directive. If the Contracting Officer agrees with the Contractor's finding, he will, within ten (10) working days, either ratify the technical directive by issuance of an appropriate

contract modification, or rescind the Technical Directive. If the Contracting Officer determines that the technical directive is valid and appropriate as originally issued, he will so notify the Contractor in writing within ten (10) working days, and the Contractor will proceed with the work thereunder.

(d) Failure of the contracting parties to agree hereunder shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

52-244-S0013 Subcontractors (Jun 2000)

(a) Definitions.

(1) A Subcontractor is a person or entity that has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor includes any persons or entity that has a direct or indirect contract with the Contractor to perform any the work.

(2) A Supplier is a person or entity that has a direct or indirect contract with the Contractor to furnish any material or equipment included in the Work. The term Supplier is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Supplier or its authorized representative.

(3) Nothing contained in the Contract documents is neither intended to, nor shall it create, any contractual relationship between the S.I., the Architect, or any of their agents, consultants, employees, independent contractors, or representatives and any Subcontractor or Supplier, but the S.I. shall be entitled to performance of all obligations intended for its benefit, and to enforcement thereof.

(4) The COTR will not deal directly with any Subcontractor or Supplier. Communication will be made only through the Contractor. Subcontractors and Suppliers shall route requests for information or clarification through the Contractor to the COTR.

(b) Award of Subcontracts and Other Contracts for Portions of the Work.

(1) The Contractor, in compliance with the requirements of the Contract Documents, shall furnish to the C.O. in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Contractor shall provide this list to the C.O. within ten (10) days after execution of the Contract. The C.O. will promptly reply to the Contractor in writing stating whether the C.O. has objection to any such proposed person or entity. The Contractor understands and agrees that no contractual agreement exists for any part of the Work under this Contract between the S.I. or Architect and any of the Subcontractors or Suppliers. Further, the Contractor understands and agrees that he alone is responsible to the S.I. for all of the Work under this contract and that any review of Subcontractors or Suppliers by the COTR, will not in any way make the S.I. responsible to any Subcontractor or Supplier nor responsible for the actions or failures of any Subcontractor or Supplier.

(2) The Contractor shall not contract with any such proposed Subcontractor or Supplier to whom the C.O. has made objection under the provisions of the Construction Contract Clause entitled "Subcontractors." The Contractor shall not be required to contract with anyone to whom he has an objection.

(3) If the C.O. objects to any proposed Subcontractor or Supplier under the Clause entitled "Subcontractors," the Contractor shall name a substitute to whom the C.O. has no objection within 15 days.

(4) If the C.O. requires a change of any Subcontractor or Supplier previously proposed by the Contractor and not objected to by the C.O., the Contractor shall have the right to subject a Request for Change Order under the Construction Contract Clause entitled "Changes."

(5) The Contractor shall make no substitution for any Subcontractor or Supplier previously proposed by the Contractor and not objected to by the C.O. if the S.I. makes objection to such substitution.

(c) Sub-contractual Relations.

(1) By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the

terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the S.I. Said agreement shall preserve and protect the rights of the S.I. under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor or Contractor-Supplier Agreements, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the S.I. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Subcontractors or Suppliers. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Construction Contract Clause entitled "Subcontractors," and identify to the subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Contract Documents available to his Subcontractor or Suppliers.

(2) The provisions herein regarding proposal of Subcontractors or Suppliers shall in no way affect the liability of the Contractor to the S.I. regarding performance of all obligations by or payment of Subcontractors or Suppliers. Lack of objection by the C.O. to any Subcontractor or Supplier shall not to any degree relieve the Contractor of his obligation to perform or have performed to the full satisfaction of the S.I. the Work required by this Contract.

(3) The Contractor shall be liable to and indemnify and hold the S.I. harmless from all costs, expenses, fees, attorneys' fees, accountant's fees, damages and claims arising because of the Contractor's failure to comply with the provisions of this Construction Contract Clause entitled "Subcontractors."

(d) Qualification Submittals.

(1) Specific qualification submittals may be required of Subcontractors and Suppliers for certain critical items of the Work. Required qualification submittals are set forth in detail in the Contract Documents and shall be collected and submitted by the Contractor for review and approval by the COTR. All information required of a single Subcontractor or Supplier shall be contained in a single, complete submittal. The Contractor shall submit the required qualification information within ten (10) days after receipt of the COTR's request.

(2) The C.O. may reject any proposed Subcontractor or Supplier, or any qualification submittals related thereto, for the following reasons:

(i) The Contractor's failure to submit requested information within the specified time; or

(ii) The Contractor's failure to provide all of the requested information; or

(iii) The Contractor's submission of a Subcontractor or Supplier, or qualifications thereof, which are unacceptable to the C.O.

(3) Should the C.O. have objection to any proposed Subcontractor or Supplier, the Contractor shall submit another firm for approval by the C.O. within fifteen (15) days from notification of objection by the C.O.

52.245-S0071 Responsibility for Smithsonian Property

The Contractor assumes full responsibility for and shall indemnify the S.I. for any and all loss of damage of whatsoever kind and nature to any and all S.I. property, including any equipment, supplies, accessories, or parts furnished, while in his custody and care for storage, repairs, or services to be performed under the terms of this contract, resulting in whole or in part from the negligent acts or omissions of the Contractor, any subcontractor, or any employee, agent, or representative of the Contractor or subcontractor.

52.246-S0040 Warranty Definitions

(a) The warranty and guarantee provisions of the General Clauses apply to all work of the contract, including but not limited to, the following specific categories related to individual units of work specified in sections of Divisions 2 through 16 of these specifications:

(1) Special Project Warranty (Guarantee): A warranty specifically written and signed by the Contractor for a defined portion of the work; and, where required, countersigned by subcontractor, installer, manufacturer or other entity engaged by the Contractor.

(2) Specified Product Warranty: A warranty which is required by contract documents, to be provided for a manufactured product incorporated in to the work; regardless of whether manufacturer has published a similar warranty without regard for specific incorporation of a product into the work, or has written and executed a special project warranty as a direct result of contract document requirements.

(3) Coincidental Product Warranty: A warranty which is not specifically required by contract documents (other than as specified in this Section), but which is available on a product incorporated into the work, by virtue of the fact that manufacturer or product has published warranty in connection with purchases and uses of product without regard for specific application except as otherwise limited by terms of warranty.

52.249-S0048 Delays and Extensions of Time (Jun 2000)

(a) The time during which the Contractor is delayed in the performance of the Work, by the acts or omissions of the S.I., the Architect or their employees or agents, acts of God, unusually severe and abnormal climatic conditions, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotion or freight embargoes, or other conditions beyond the Contractor's control and which the Contractor could not reasonably have foreseen and provided against, shall be added to the Contract Time; provided, however, that no claim by the Contractor for an extension of time for delays will be considered unless made in compliance with the requirements of this Construction Contract Clause and other provisions of the Contract Documents.

(b) Neither the S.I., nor the Architect shall be obligated or liable to the Contractor for, and the Contractor hereby expressly waives any claims against the S.I. and the Architect on account of any indirect or direct damages, costs or expenses of any nature which the Contractor, Subcontractors, or Suppliers or any other person may incur as a result of any delays, interference, changes in sequence or the like, which are reasonable, foreseeable, contemplated, or avoidable by the Contractor, arising from or out of any act or omission of the S.I. or the Architect, or their agents, employees, consultants, separate contractors or any governmental representative, it being understood and agreed that the Contractor's sole and exclusive remedy in any such events shall be an extension of the Contract Time, but only as determined in accordance with the provisions of the Contract Documents.

(c) The Contract Time shall be adjusted only for Change Orders pursuant to the Construction Contract Clause entitled "Changes", Suspension of Work pursuant to the Construction Contract Clause entitled "Smithsonian Institution's Right to Stop or Suspend the Work", and the Construction Contract Clause entitled "Smithsonian Institution's Right to Carry Out the Work." In the event the Contractor requests an extension of the Contract Time, he shall furnish such justification and supporting evidence as the C.O. may deem necessary for a determination of whether the Contractor is entitled to an extension of time under the provisions of the Contract. The burden of proof to substantiate a claim for an extension of the Contract Time shall rest with the Contractor, including evidence that the cause was beyond his control. The C.O. shall base his findings of fact and decision on such justification and supporting evidence and shall advise the Contractor in writing thereof. If the C.O. finds that the Contractor is entitled to any extension of the Contract Time, the C.O.'s determination of the total number of days extension shall be based upon the currently approved Progress Schedule and on all data relevant to the extension. Such data will be incorporated into the Progress Schedule in the form of a revision thereto, accomplished in a timely manner. The Contractor acknowledges and agrees that actual delays (due to said changes, suspension of Work or excusable delays) in activities which, according to the Progress Schedule, do not affect the Contract Time, do not have any effect upon the Contract Time and therefore will not be the basis for a change therein. The Contractor acknowledges and agrees that time extensions will be granted only to the extent that excusable delays exceed the available float in the Contractor's Progress Schedule.

(d) Subject to other provisions of the Contract, the Contractor may be entitled to an extension of the Contract Time (but no increase in the Contract Price) for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, his Subcontractors or Suppliers as follows:

(1) Labor disputes and strikes (including strikes affecting transportation), that do, in fact, directly and critically affect the progress of the Work; however, an extension of Contract Time on account of an individual labor strike shall not exceed the number of days of said strike;

(2) Acts of God, tornado, fire, hurricane, blizzard, earthquake, typhoon, or flood that damage completed work or stored materials.

(3) Abnormal inclement weather; however, the Contract Time will not be extended due to normal inclement weather. The time for performance of this Contract, as stated in the Contract Documents, includes an allowance for calendar days, which may not be available for construction out-of-doors; for the purposes of the Contract, the Contractor agrees that said number of calendar days per month are to be considered as normal inclement weather. Unless the Contractor can substantiate to the satisfaction of the S.I. that there were greater than normal inclement weather considering the full term of the Contract Time using a ten year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the locale of the Project and that such alleged greater than normal inclement weather actually delayed the Work or portions thereof which had an effect upon the Contract Time, the Contractor shall not be entitled to an extension of time. If the total accumulated number of calendar days lost due to inclement weather, from the start of Work until Final Completion exceeds the total accumulated number to be expected for the same period from the aforesaid climatological data, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost.

(4) Acts of the public enemy, acts of the state, Federal or local government in its sovereign capacity, and acts of a separate contractor in the performance of its contract with the S.I. relating to the Project.

(e) The Contractor shall not be entitled to and hereby expressly waives any extension of time resulting from any condition or cause unless said claim for extensions of time is made in writing to the C.O. within seven (7) days of the first instance of delay. Circumstances and activities leading to such claim shall be indicated or referenced in a daily field inspection report for the day(s) affected; otherwise, all such claims are waived by the Contractor. In every such written claim, the Contractor shall provide the following information:

(1) Nature of the delay;

(2) Date (or anticipated date) of commencement of delay;

(3) Activities on the Progress Schedule affected by the delay, and/or new activities created by the delay and their relationship with existing activities;

(4) Identification of person(s) or organization(s) or event(s) responsible for the delay;

(5) Anticipated extent of the delay;

(6) Recommended action to avoid or minimize the delay.

52.249-S0049 Non-Compliance with Contract Requirements (Jun 2000)

In the event the Contractor, after receiving written notice from the Contracting Officer of non-compliance with any requirements of this Contract, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, the Contracting Officer shall have the right to order the Contractor to stop any and all work under the contract until the Contractor has complied or has initiated such action as may be appropriate to comply within a reasonable period of time. The Contractor will not be entitled to any extension of Contract time or payment for costs incurred as a result of being ordered to stop work for such cause.

52.249-S0050 Termination for Convenience of the Smithsonian Institution (Jun 2000)

The provisions of the Termination for Convenience Clause prescribed by FAR 52.249-2 are supplemented as follows:

(a) The S.I. may, at any time upon ten days' written notice to the Contractor terminate (without prejudice to any right or remedy of the S.I.) the whole or any portion of the Work for the convenience of the S.I. This Notice of Termination shall specify that portion of the Work to be terminated and the effective date of termination. The Contractor's sole remedy, in the event of such termination, will be the allowable termination costs permitted by the Construction Contract Clauses entitled "Termination for Convenience of the Government" and "Termination for Convenience of the S.I."

(b) Contractor shall include termination clauses identical to the Construction Contract Clauses entitled "Termination for Convenience of the Government" and "Termination for Convenience of the S.I." in all contracts and purchase orders related to the Work in each of his Subcontracts. Failure to include these termination clauses in any

subcontracts or purchase orders shall preclude recovery of any termination costs related to that subcontract or purchase order.

(c) If the S.I. terminates the whole or any portion of the Work for convenience pursuant to this Construction Contract Clause, then the S.I. shall only be liable to the Contractor for those costs reimbursable to the Contractor in accordance with this Construction Contract Clause, plus a markup of ten percent for profit and overhead on the actual fully accounted costs recovered under this Construction Contract Clause; provided, however, that if there is evidence that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

52.250-S0073 Indemnification

(a) Contractor shall be responsible for all damage and expense to person(s) or property caused by its negligent acts and those of its subcontractors, agents or employees, in connection with the work and services performed under this contract. Contractor shall indemnify, hold harmless and defend the S.I., its museums, bureaus, its Regents, officers, agents, employees and the U.S. Government from and against all claims, and liability (including judgments, settlements, statutory liability under Workers Compensation laws), and expenses (including attorneys' fees) for any damages, expenses, acts and/or omissions of the Contractor, its agents, subcontractors or employees, related directly or indirectly to any aspect of this contract or performance of work hereunder, including claims and liability for injury to or death of any third party or of Contractor's, agents, subcontractors or employees.

(b) Contractor shall be liable for all damages, costs and expense incurred by the S.I. in the construction of the Project(s) including, but not limited to, damages, costs and expenses resulting from claims brought against the S.I. by the construction contractor(s) caused by the failure of Contractor to perform the work and services under this contract with the same degree of standard of care and skill normally expected of and provided by consultants in the performance of the same or similar work and services to be provided under this contract.

(c) Acceptance of the work and services by the S.I. shall not waive any of the rights of the S.I. or release the Contractor from any liability, responsibility or duty contained herein.

52.252-S0011 Notice of Deviation in Clauses (Jun 2000)

TAKE NOTICE, that these Construction Contract Clauses (Fixed Price) may contain language and clauses and/or paragraph headings or names which appear similar to, or the same as the "Federal Acquisition Regulation - Construction Contract Clauses", "General Services Administration Regulation Construction Contract Clauses (Fixed Price)", and provisions of the "General Conditions of the Contract for Construction", published by the American Institute of Architects, AIA Document A-201, 1976 Edition.

TAKE NOTICE, however, that these Construction Contract Clauses (Fixed Price) are substantially and materially different in many respects from the FAR, GSAR and AIA Document A-201 and that certain additions, deletions or other modifications have been made to provisions similar to those contained in the FAR, GSAR and the AIA Document A-201. This document, further, contains provisions which do not appear in the FAR, GSAR and the AIA Document A-201.

SI-0051 Uncovering of Work (Jun 2000)

(a) If any portion of the Work should be covered contrary to the request of the S.I. or to requirements specifically expressed in the Contract Documents or to requirements of applicable Construction Permits, it must, if required in writing by the S.I., be uncovered for its observation and shall be replaced at the Contractor's expense.

(b) If any other portion of the Work has been covered which the S.I. has not specifically requested to observe prior to being covered, the S.I. may request to see such Work and it shall be uncovered by the Contractor. If such Work accords with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the S.I. If such Work does not accord with the Contract Documents, the Contractor shall pay such costs unless the S.I. caused this condition in which event the S.I. shall pay such costs. If such condition was caused by a separate contractor, Contractor may proceed against and only against, said separate contractor as provided in Article 6.

SI-0077 Furnishing Information and Records

(a) If the Contractor or any subcontractor under this contract or the officers or agents of the Contractor or any other subcontractor refuses, except as provided by the terms of this contract, to furnish to any Government agency or any establishment in the legislative or judicial branch of the Government information or records reasonably pertinent to this contract, the following action may be taken:

(1) In the case of a refusal by the Contractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, terminate the Contractor's right to proceed with the work. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract;

(2) In the case of a refusal by a subcontractor, its officers or agents, the Government may, after affording an opportunity to explain or justify such refusal, require the Contractor to terminate the subcontract without cost to the Government, or if the Contractor fails or refuses to effect such termination, the Government may terminate the Contractor's right to proceed with the work under this contract and thereupon the Government may avail itself of the rights and remedies referred to in subparagraph (1) above.

(b) The term "subcontract" as used in this clause means any contract entered into, or any purchase order issued by, a prime Contractor under a contract with the Government in connection with the performance of the prime Contractor's obligations under this contract.

(c) The term "subcontractor" as used in this clause means a party to a subcontract other than the prime Contractor under this contract.

52.227-1 Authorization and Consent. (DEC 2007)

52.227-23 Rights to Proposal Data (Technical). (JUN 1987)

52.228-2 Additional Bond Security. (OCT 1997)

52.228-5 Insurance - Work on a Government Installation. (JAN 1997)

52.228-11 Pledges of Assets. (JAN 2012)

52.228-12 Prospective Subcontractor Requests for Bonds. (MAY 2014)

In accordance with section 806(a)(3) of Pub. L. 102-190, as amended by sections 2091 and 8105 of Pub. L. 103-355 (10 U.S.C. 2302 note), upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to 40 U.S.C. chapter 31, subchapter III, Bonds, the Contractor shall promptly provide a copy of such payment bond to the requester.

52.229-3 Federal, State, and Local Taxes. (FEB 2013)

52.230-2 Cost Accounting Standards. (OCT 2015)

52.232-5 Payments Under Fixed-Price Construction Contracts. (MAY 2014)

52.230-6 Administration of Cost Accounting Standards. (JUN 2010)

J - List of Documents, Exhibits and Other Attachments

The successful Contractor shall furnish all supervision, labor, materials and equipment needed for the Revitalization of HMSG, as set forth in the following documents. All attachments will be located on

<https://sam.gov/content/opportunities> in the attachment section of the Solicitation. If you have any issues downloading the attachments contact the Contract Officer.

- J1. Multi Year Funding/Bid Sheet
- J2. Drawings and Specification dated 11/21/2022 (see dropbox link)
- J3. Graphic package dated 2/2/2022 (see dropbox link)
- J4. Request for Proposal, Solicitation No. 33330223RF0010010
- J5. Davis-Bacon Act WD #: DC20230002 (Building) and DC20230001(Heavy)
- J6. COVID-19 Safety Protocols on Site (Low) updated March 30, 2022

K - Representations, Certifications, and Other Statements of Bidders

52.204-19 Incorporation by Reference of Representations and Certifications. (DEC 2014)

52.225-25 Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications. (OCT 2015)

52.236-28 Preparation of Proposals - Construction. (OCT 1997)

52.215-S0069 Contractor's Authorized Representative

The following person shall be contacted in the event of award for prompt contract notification and administration concerning specifications, schedules and other necessary contract matters:

(Name) _____

(Title) _____

(Street Address) _____

(City, State & Zip) _____

(Telephone & Facsimile No.) _____

(E-mail address) _____

L - Instructions, Conditions, and Notices to Bidders

52.204-6 Unique Entity Identifier. (OCT 2016)

(a) Definitions. As used in this provision Electronic Funds Transfer (EFT) indicator means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative

EFT accounts (see subpart 32.11) for the same entity.

Unique entity identifier means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address exactly as stated in the offer. The Offeror also shall enter its EFT

indicator, if applicable.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

- (1) Company legal business name.
 - (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.
 - (3) Company physical street address, city, state and Zip Code.
 - (4) Company mailing address, city, state and Zip Code (if separate from physical).
 - (5) Company telephone number.
 - (6) Date the company was started.
 - (7) Number of employees at your location.
 - (8) Chief executive officer/key manager.
 - (9) Line of business (industry).
 - (10) Company headquarters name and address (reporting relationship within your entity).
- (End of provision)

52.215-1 Instructions to Offerors - Competitive Acquisition. (NOV 2021)

(a) Definitions. As used in this provision-

Discussions are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the Offeror being allowed to revise its proposal.

In writing, "writing," or "written" means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

Proposal modification is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Proposal revision is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

Time, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals. (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the Offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show—

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the Offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the Offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Submission, modification, revision, and withdrawal of proposals. (i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii) (A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and-

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an Offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the Offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) Offer expiration date. Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the Offeror).

(e) Restriction on disclosure and use of data. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall-

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this Offeror as a result of-or in connection with-the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) Contract award. (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible Offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with Offerors (except clarifications as described in FAR 15.306(a)). Therefore, the Offeror's initial proposal should contain the Offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the Offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with Offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful Offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) If a post-award debriefing is given to requesting Offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed Offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed Offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all Offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial products, the make and model of the product to be delivered by the successful Offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed Offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

**52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment
Opportunity for Construction. (FEB 1999)**

(a) The Offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade

28%

Goals for female participation for each trade

6.9%

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled Affirmative Action Compliance Requirements for Construction, and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the-

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the covered area is Washington, DC.

(End of provision)

PROPOSAL PROCESS

TECHNICAL PROPOSAL

The Technical Proposal shall be directly responsive to the Statement of Work and as described in the drawings and specifications. The following specific material shall be included in the Technical Proposal (adherence to this organization will facilitate review, evaluation, and consideration):

1. Firm's Experience and Past Performance

Complete the attached "Company Experience" form for each relevant project. Include no greater than five projects of similar size and diversity where the Offeror was the prime contractor. Referenced projects should be less than five years old. Include projects where the project contained substantial work on occupied sites with restricted access and where the Offeror has been the prime contractor. The S.I. will verify past performance. Projects that list Persons-to-Contact who are unavailable at the address or telephone number provided may be considered less relevant than other projects.

Offeror's Technical, Financial, and Corporate Resources: Provide a completed Contractor's Qualifications Statement (AIA Document A-305) and the latest certified audit report.

Provide a narrative of your company's safety experience over the past five (5) years.

2. Key Personnel and Subcontractors

Describe the proposed organization that will work on this project. Provide an organization chart identifying lines of authority and supervisory responsibilities. Identify items of work to be performed by the prime contractor and their percentage of the total project. Identify major subcontractors who will be asked to furnish bids for the project and indicate how they would fit into the organizational structure. List prior projects where the Offeror and subcontractors have worked together.

a. Provide resumes of key personnel listing their specialized qualifications, special training and experience over the past five years particularly as the qualifications relate to work to architectural cast-in-place concrete. Note particularly experience on similarly sized projects accomplished in the Washington, DC area or a similar metropolitan setting. Key personnel include: Project executive, project manager, general superintendent, quality control assistants, scheduling engineers, cost engineers, and subcontractors' personnel performing critical elements of the Work. The individual resumes shall be prepared in a consistent format for each of the key positions and contain the following:

1) Name, title, address, and telephone number

- 2) Educational background, including technical education

- 3) Work experience covering the last five years or last five project assignments (of at least 12 months per assignment) to include the following:
 - a) Project name, location and dates of assignments,
 - b) Description of primary project features,
 - c) Name and address of project owner,
 - d) Name and address of employer on each project,
 - e) Name and address of superintendent,
 - f) Positions(s) occupied on each assignment and the time assigned to each position, and
 - g) Description of duties and responsibilities of each position.

- 4) Length of time employed with current firm
- 5) Percent of time available
- 6) Membership in professional societies
- 7) Professional registrations, licenses or certifications
- 8) Publications, awards or special achievements of a technical nature

Failure to include each item above in the individual resumes will result in a less favorable evaluation of the proposal.

b. Provide the names of subcontractors who will be asked to submit pricing for the following portions of the work and indicate how they would fit into the organization structure for the job (or indicate that the work will be performed by the prime for each element of work listed below). Offerors will be expected to use one of the subcontractors listed for each element of work unless written approval for change is received from the Contracting Officer in accordance with the contract clause entitled SUBCONTRACTORS. Failure to indicate who will perform the work for each item below will result in a less favorable evaluation of the proposal. Special consideration will be given to subcontractors who are identified as having experience working with National Historic Landmarks.

Quality Control

Coordination Drawings

Architectural Cast-in-place Concrete

Ornamental metalwork

Landscape and Planting installation including hardscape

Historic Preservation/Conservation Consulting

Fountain

Stormwater Management Systems

Security

Waterproofing

For each subcontractor listed above, list three references with customer contact, address and telephone number. If the contact cannot be reached by the S.I. during the reference evaluation process, the proposal may receive less favorable consideration than other proposals.

3. Critical Subcontractors

a. Additional information is requested regarding subcontractors who are critical to the success of this project. These include those responsible for the following:

Live plant and landscape installation

Exposed Aggregate Cast-in-place Concrete

Historic Preservation/Conservation support

For each of these, describe the proposed organizations that will be bidding on this portion of the project. Provide an organizational chart identifying lines of authority and supervisory responsibilities. List prior projects where the Offeror and subcontractors have worked together.

b. Provide resumes of key personnel listing their specialized qualifications, special training and experience over the past five years. Note particular experience on similar sized projects accomplished in Washington, DC area or a similar metropolitan setting. Key personnel include: Project executive, project manager, general superintendent, quality control assistants, scheduling engineers, cost engineers, and subcontractors' personnel performing critical elements of the Work. Each resume should include, at minimum, the following:

1) Name, title, address, and telephone number

2) Educational background, including technical education

3) Work experience covering the last five years or last five project assignments (of at least 12 months per assignment) to include the following

a) Project name, location and dates of assignments,

b) Description of primary project features,

c) Name and address of project owner,

- d) Name and address of employer on each project,
- e) Name and address of superintendent,
- f) Position(s) occupied on each assignment and the time assigned to each position, and
- g) Description of duties and responsibilities of each position.

4) Length of time employed with current firm

5) Percent of time available

6) Membership in professional societies

7) Professional registration, licenses or certifications

8) Publications, awards or special achievements of a technical nature.

c. For each subcontractor, provide no less than five projects similar in scope and scale to this project. Special consideration will be given to subcontractors who are identified as having experience working with National Historic Landmarks. For each project provide:

- 1) Owner's name, address, telephone numbers, contact person, and administrator of contract.
- 2) Description of project
- 3) Scope of work and extent of project involvement.
- 4) Original and actual completion dates and explanation of any time extensions.
- 5) Original and actual Cost and explanation of cost over-runs

If the owner's contact cannot be reached by the S.I. during the reference evaluation process, the proposal may receive less favorable consideration than other proposals.

COST PROPOSAL

1. Schedule of Values and Contract Price

Provide a comprehensive Schedule of Values which includes all base offer work and option items. The format for the Schedule of Values shall be broken into the thirty-three Construction Specifications Institute (CSI) divisions of

work. These divisions shall include, as a minimum: General Requirements, Existing Conditions, Concrete, Masonry, Metals, Wood, Plastics and Composites, Thermal and Moisture Protection, Openings, Finishes, Specialties, Special Construction, Fire Suppression, Plumbing, HVAC, Electrical, Communications, Electronic Safety and Security, Earthwork, Exterior Improvements, and Utilities. For each division separate Prime and Subcontractor bids. Within Prime and Subcontractor, identify material and labor costs. Markups for subcontractors and sales tax shall be indicated as appropriate. The sums of these divisions shall be shown along with the Prime's markup for overhead and profit.

Provide as separate pricing for the following items:

Submission and Smithsonian Approval of Coordination Drawings as defined in Section 01000.

Submission and Smithsonian Approval of Record Submittals as defined in Section 01000.

Submission and Smithsonian Approval of the Operation and Maintenance Manuals as defined in Section 01000.

Aggregate the total proposed Contract Price in the Schedule of Values. Identify the items of cost in the Schedule of Values which will be performed with the Offeror's own force.

2. Plan of Accomplishment and Contract Time

The Plan of Accomplishment shall include the following information:

a. Summary CPM Project Schedule and Coordination Plan

(See also Specification Section 01320)

1) Provide a time scaled CPM summary schedule identifying construction logic; activities to be accomplished on a multi-shift basis, weekends or holidays; installation of long lead / key equipment or material; and activities which will interrupt adjacent building operations. The CPM should highlight all scope activities included in Specification Section 01000. The summary should contain approximately 250 activities that show sequence, duration, and interdependency. Identify all critical elements of the work, including submittal review, each trade, important construction as well as designated milestones, long-lead items, early Substantial Completion and/or Beneficial Occupancy of certain areas, special events, and other items associated with time impacts including scaffolding and winch system. Clearly show the critical path.

Contract Time for all Work, including additive alternates, shall not be greater than 927 calendar days from Notice-to-Proceed.

2) Provide a narrative addressing coordination with issues, special events, and early Beneficial Occupancy / Shared Occupancy. Discuss how management will assure completion of the milestones.

3) Provide a preliminary Site Coordination Work Plan. As part of the discussion provide a written narrative of how coordination with other contractors would be accomplished including stacked stone wall contractor, stainless steel wall contractor, and installer for pedestals, sculpture, and exhibit signage.

Provide a written narrative addressing the following:

Preparatory actions, including staging and access to site,

Protection of existing features to prevent mechanical and weather-related damage,

Major equipment to be utilized,

Sequence of work, including disruptions to Jefferson Drive,

Procurement, installation, and finishing of architectural cast-in-place walls,

Other pertinent information required describing exactly how work will be accomplished.

b. Implementation Plan

Describe in detail the particular procedures, site strategy, and work methodology planned for this project that will deliver a superior quality product in the following areas of work for the proposal:

Quality Control

Protection of adjacent areas, including natural environment, during construction

Coordination of work done by others

Coordination Drawings

Cast-in-place exposed aggregate concrete walls to match existing historic in place

Waterproofing

Fountain Construction

Landscape installation, including hardscape and live plantings

Stormwater Management Systems

Electrical Systems

Plumbing Systems

Security

Site Work

Protective Design Elements

Cleaning of Historic Materials

c. Project Control and Coordination

Provide a procedural and administrative plan for progress reporting, cost accounting, shop drawing and product submittals controls, security, visitor and worker access/egress, equipment/materials storage, and staging.

Also provide a plan for coordination of work done by others as part of the overall project. This includes the following items

Stacked Stone walls

Stainless Steel Art installation

Pedestal, Sculpture, and Exhibit Signage installation

d. Project Completion and Warranty Transfer/Turnover Plan

Provide a preliminary plan for the training and instruction of S.I. personnel in the maintenance of new systems. The plan should include the manner and method for the turnover of all operation and training manuals and specific warranties and guarantees for equipment and materials to be provided under the contract. (See Specification Division 1)

e. Safety

Provide the current workman compensation rates, insurance certificates and insurance modifiers assigned for your company. Provide a preliminary job site safety plan. Describe corporate policy on safety, and frequency of safety training. (See Specification Division 1)

f. Quality Assurance

Provide a project-specific Contractor Quality Control (CQC) Plan as described in Specification Division 1, that discusses in detail the methodology for assuring construction quality. Furnish resumes of all proposed CQC and Alternate CQC Representatives. In the event that a separate, subcontract CQC firm is proposed, provided the same information required above of the prime contractor. The S.I. does not desire alternative proposals, and as such, Offerors should not propose more than one individual for any one position or, if applicable, more than one CQC firm for the project. This may result in the proposal being scored lower during evaluation.

The Offeror's CQC Plan shall discuss in detail the methodology that will be employed to provide assurance of a quality constructed project and should include the following information:

1) Management and coordination of job-site activities and support functions for quality assurance of workmanship and materials for the Contractor, subcontractors, and suppliers.

2) Description of systems of inspections, tests, corrective actions, follow-up, and documentation processes. Provide names of the independent testing laboratories to be used.

3) Control for minimized variations from and changes to the Specifications and Drawings, including methodology of how changes will be required, evaluated for impact on the project, and incorporated into the work and recorded on as-built documents.

4) Process for monitoring the effectiveness of the Project Schedule, Implementation Plan, and Project Control Plan. Describe means of measurement and methods for corrective action.

5) Describe procedures and methods for maintenance of shop drawings, change orders, correspondence documents and as-built drawings.

Provide your Unique Entity Identification Number (UEI #): _____ . **You must be actively registered at System for Award Management (SAM)** <http://www.sam.gov>

52.233-2 Service of Protest. (SEP 2006)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from [Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

52-211-S0076 Brand Name or Equal

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this request for proposal have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Offers offering "equal" products (including products of the brand name manufacturer or other than the one described by brand name) will be considered for award if such products are clearly identified in the offers and are determined by the S.I. to meet fully the salient characteristics requirement listed in the solicitation.

(b) Unless the offeror clearly indicates in his offer that he is offering an "equal" product, his offer shall be considered as offering a brand name product referenced in the solicitation.

(c)

(1) If the Offeror proposed to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the request for proposal, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the S.I. and will be based on information furnished by the Offeror or identified in his offer as well as other information reasonably available to the purchasing activity.

Caution to Offerors. The purchasing activity is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the Offeror must furnish as a part of his offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to:

- (i) determine whether the product offered meets salient characteristics requirement of the solicitation, and
- (ii) establish exactly what the bidder proposes to furnish and what the Offeror proposes to furnish and what the S.I. would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the Offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, he/she shall

- (i) include in their offer a clear description of such proposed modifications and;
- (ii) clearly mark any descriptive material to show the proposed modifications.

52.215-S0055 Bidder/Offeror Information

Solicitation Reference No.: _____

Date of Bid/Offer: _____

Name and Address of Bidder/Offeror:

Company DUNS Number: _____

Tax Identification No.: _____

52.215-S0056 Bidder/Offeror Certification

I hereby Certify that the responses above Representations, Certifications and Other Statements are accurate, complete and current.

Signature: _____

Title: _____

Date: _____

52.219-S0097 Small Business Subcontracting Plan

a. This provision does not apply to Small Business concerns.

b. Offerors shall submit with their proposal a Small Business and Small Disadvantaged Business Subcontracting Plan which will be evaluated for compliance with FAR 19.7, statutory requirements of Public Laws 95-507, 99-661, 100-656, and Executive Order 13360. The plans shall provide comprehensive responses to the requirements of the clause entitled, "Small Business Subcontracting Plan" (FAR 52.219-9). The plan, as a minimum, shall include a detailed discussion of the elements set forth in FAR Clause 52.219-9(d)(1) through (11).

c. Additionally, the proposed subcontract plan must demonstrate clear and concise knowledge and understanding of statutory requirements and regulations as it relates to Small Business, Veteran-owned Small Business, Service-disabled Small Business, HUBZone Small Business, Small Disadvantaged Businesses (SDB), Historically Black Colleges and Universities/Minority Institutions (HBCU/MI), and Woman Owned Businesses (WOB).

d. The proposed plan shall address efforts to broaden SDB/HBCU/MI vendor base, outreach efforts, description of supplies and services to be subcontracted, identification of proposed firms who will be utilized, intended value to be subcontracted and percentage goals for the basic contract and each option year, (if any), which are realistic yet which are realistic yet challenging. Past performance and goal achievement for past performance shall be addressed.

e. For the purposes of this procurement, the following goals are considered reasonable and achievable during the term of the contract:

_40% a minimum of the planned subcontracting dollars to be placed with small business concerns. (The following are subsets of the small business goal):

10% a minimum of the planned subcontracting dollars to be placed with small disadvantaged small business concerns to include: HBCU/MI's, and

7% a minimum of the planned subcontracting dollars to be placed with veteran owned, service-disabled small business concerns:

7% a minimum of the planned subcontracting dollars to be placed with HUBZone small business concerns:

10% a minimum of the planned subcontracting dollars to be placed with women-owned small business concerns.

M - Evaluation Factors for Award

52.215-S0095 Basis of Award (Jun 2009)

The S.I. intends to make one award. The S.I. will determine which Offeror can best accomplish the requirements set forth in this solicitation. In making this determination, the S.I. will conduct an integrated assessment to determine the best value in accordance with the criteria outlined in this section. Award will be made to the Offeror whose proposal represents the best value to the S.I., considering the evaluation criteria and the requirements of the solicitation. Consequently, award could be made to an Offeror other than that with the lowest price/estimated cost.

52.247-S0090 Evaluation Factors

M.1 General.

a. An Offeror's proposal may be accepted in whole or in part.

b. The S.I. reserves the right, but not the obligation, to review information submitted as part of Part 1 of this solicitation for the purposes of evaluating Offeror's Key Personnel, Past Performance, Construction Schedule and Management Plan.

c. SI may reject any or all proposals and may waive informalities and minor irregularities in proposals received.

M.2 Acceptance of Offer.

SI may accept an offer (or part of an offer), whether or not there are clarifications or discussions after its receipt, before an offer's specified expiration time, unless a written notice of withdrawal is received before award. A written

notice of award or acceptance of an offer mailed or otherwise furnished to the successful Offeror within the time for acceptance specified in the offer, will result in a binding contract without further action by either party.

M.3 Proposal Evaluation

- a. Plans of Accomplishment shall be evaluated for completeness and demonstration of understanding of all required activities described herein. The S.I. reserves the right to give greater consideration to Plans of Accomplishment that accurately show interdependency and elimination of possible conflicts between and among the project activities set forth in the Plan.
- b. Past Performance shall be evaluated on the basis of the criteria set forth in Section L. The S.I. reserves the right to give greater consideration to Past Performance that are comparable in size and complexity to the subject project and the degree to which such projects were completed on time and within budget.
- c. Key Personnel shall be evaluated on the basis of specialized qualifications, relevant training and demonstrated experience with projects of comparable size and complexity to the subject project, including experience with projects in Washington, DC area or a similar metropolitan setting, projects where the Offeror and subcontractors have worked together, and experience working with National Historic Landmarks. The S.I. reserves the right to assess the relevance of the experience and comparability of experience. Failure to include items required in Section L will result in a less favorable evaluation of the proposal.
- d. Critical Subcontractors shall be evaluated on the basis of specialized qualifications, relevant training and demonstrated experience with projects of comparable size and complexity to the subject project. Subcontractors who are identified as having experience working with National Historic Landmarks will be evaluated more favorably.

M.4 Basis for Award.

- a. All evaluation factors other than cost, when combined, are granted more weight than cost. The technical factors are listed below in order of importance, (1) being the most important and (3) being the least important:
 1. Firm's Experience and Past Performance
 2. Plan of Accomplishment
 3. Key Personnel and Subcontractors
 4. Critical Subcontractors
- b. Award of a contract shall be made to the responsive, responsible Offeror, whose combined cost and technical proposal is, in the opinion of the Contracting Officer, determined to be the most advantageous and in the best interest of the S.I.
- c. Since the evaluation of cost will represent a portion of the total evaluation, it is possible that an Offeror might not be selected for award because of unreasonable, unsupportable, incomplete, inaccurate, or outdated cost proposal information.

d. Each Offeror's cost information will be evaluated for completeness and reasonableness to determine the Offeror's understanding of the work and ability to perform the contract. Reasonableness is evaluated by assessing the compatibility of proposed costs with the technical approach proposed. Completeness is evaluated by assessing the level of detail the Offeror provides in cost information for all requirements. The existence of adequate cost competition may support a determination of reasonableness. This includes both original submissions and final proposal revisions (if requested).

e. The S.I. intends to evaluate proposals and award a contract without discussions with Offerors. Therefore, the Offeror's initial proposal should contain the Offeror's best terms from a cost or price and technical standpoint. The S.I. reserves the right to conduct discussions if the Contracting Officer or his designee later determines them to be necessary for any reason.

f. If the Contracting Officer or his designee determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Discussions may be conducted with all Offerors determined to be in the competitive range. However, Offerors are advised that award may be made without discussion or any contact concerning the proposals received. Contractors should not assume that they will be contacted or afforded an opportunity to clarify, discuss, or revise their proposal.

g. The Smithsonian's Contracting Officer may contact individuals listed as Offeror's points of contact to obtain clarifications to the proposal. Clarifications may include, but are not limited to, communications to confirm information in the case of obvious typographical or scrivener's errors. Offerors are responsible for submitting complete and accurate information in their proposals and should not assume they will be contacted or afforded an opportunity to clarify, discuss, or revise their proposal. Offerors are solely responsible for the content of their proposals.

h. Complete Information. Failure to furnish complete information requested in the RFP may cause Offeror to be judged nonresponsive and immediately be removed from further consideration.