



Smithsonian Institution

**SMITHSONIAN INSTITUTION  
NATIONAL MUSEUM OF  
AMERICAN HISTORY**

**Exhibit Fabrication**

**2<sup>nd</sup> Floor West**

**Smithsonian Solicitation Number T16SOL10027**

**Issue Date: March 31, 2016**

**Due Date: June 6, 2016  
3:00 pm local Washington DC time**

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## Section A - Solicitation/Contract Form

### A.1 Project Background

#### A.1.1 Museum Background

The Smithsonian Institution's National Museum of American History (NMAH) dedicates its collections and scholarship to inspiring a broader understanding of our nation and its many peoples. We create learning opportunities, stimulate imaginations, and present challenging ideas about our country's past. Located on the National Mall, NMAH receives approximately 4.5 million visitors a year and the Website serves approximately 14 million visitors annually.

#### A.1.2 Exhibition Backgrounds

The West Wing of the Museum's second floor (2W) will be home to a number of displays and exhibitions exploring American history, clustered under the theme **The Nation We Build Together**. Covered in this RFP are the **Landmark Concourse Exhibits** (the public corridor and escalator lobby), **American Democracy: A Great Leap of Faith** (the South gallery), and **Many Voices, One Nation** (the North gallery); these are described in the Project Overview on the following page. **Please note that Liberty Square is an unpriced option and the Taubman Gallery is not included in this Solicitation.** (Please refer to the Second Floor West Exhibitions Floorplan on the next page of this section for orientation.)

The base and priced-options above are permanent installations (defined as a twenty-year life-cycle). The **Liberty Square** unpriced option is currently in design development as a public activity space in service to the 2W theme. The completion date for all projects in this Solicitation is no later than **June 7th, 2017**.

#### A.1.3 Exhibition Goals

NMAH is visited by people of all ages and by different social groups. The goal of the 2 West exhibitions are to improve the visitors understanding of American history and an appreciation of our shared cultural heritage. By visitor engagement with objects, imagery, and engaging, provocative, and fun physical and multimedia interactives, visitors will become involved in thinking deeply about the **Nation We Build Together**. The targeted audience for the wing is small groups, both inter-generational families and middle- and high-school groups.

## **A.2 Project Overview(s)**

**A.2.1** Current renovations to the second floor West Wing will house upcoming **American political and social history** exhibitions. Please refer to the Second Floor West Exhibitions Floorplan on the next page for orientation.

Three of the 2W Galleries are to be fabricated and installed under this solicitation: the **Landmark Concourse Exhibits** (Concourse), the **American Democracy, A Great Leap of Faith** Gallery (American Democracy), and the **Many Voices, One Nation** Gallery (MVON) are scheduled for overall and final completion in June 7th, 2017. A fourth area, **Liberty Square**, is an unpriced option in this solicitation.

**Of particular note:** Under this contract, the Contractor shall record, itemize and invoice all costs for the projects separately: **Landmark Concourse Exhibits, American Democracy, Many Voices, One Nation, and Liberty Square**. All invoices shall be delivered to the named COTR.

The Base Bid and Priced Options incorporate glass display cases, raised plinth/platforms areas, scenic backgrounds, kiosks, reader rails, wall graphics, period props, and Integral LED fiber optic lighting. All those components and any and all others are based on the detailed sets of functional specifications for the projects, set forth in Attachments to this RFP. (See Section J for the complete list of attachments.)

### **A.2.2 Base Bid:**

The West Wing's major circulation route is home to the **Landmark Concourse Exhibits**, an area of approximately 240 square meters (2,600 square feet), and is scheduled to open in **June 7th, 2017**. The exhibits serve to introduce the major theme of 2 West: **The Nation We Build Together**. Using objects and bold thematic statements to communicate simply and effectively, the elements are positioned to avoid congestion as the visitors pause to view the displays. The Landmark portion incorporates Horatio Greenough's monumental statue of George Washington and provides interpretation for those who wish to know more about its history and significance. (See Attachments A, B and C)

### **A.2.3 Priced Option:**

The South Gallery's **American Democracy: A Great Leap of Faith** is approximately 697 square meters (7,500 square feet). **American Democracy** is scheduled to open in **June 7th, 2017**. The exhibition explores the touchstone of the American experience that has long defined the nation. This gallery on American Political life will address the founding ideals, participation, and citizenship. The exhibition is divided into five sections and will use objects, graphics, and multimedia programs to explore major historical issues that followed from the original debates over the limits of popular consent and participation in government from the Declaration of Independence to today. (See Attachments D, E and F)

### **A.2.4 Priced Option:**

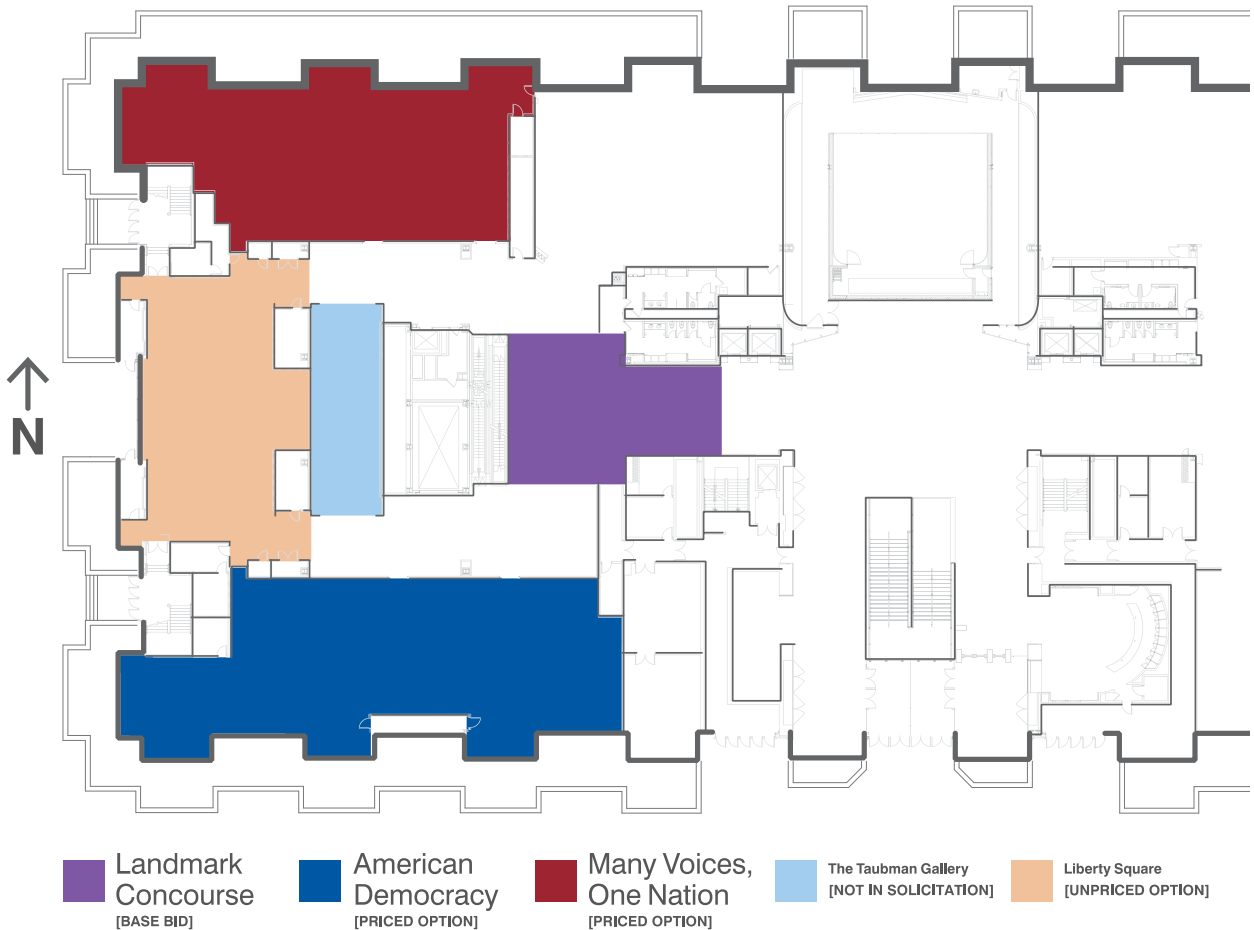
The North Gallery's **Many Voices, One Nation** is approximately 557 square meters (6,000 square feet). At the time of this Solicitation, the exhibition is in final design development, but is still scheduled to be completed **June 16, 2017**. **A 95% package of design documentation will be completed during this solicitation; before this option is exercised, the successful bidder must be prepared to submit pricing within ten (10) working days of receipt.** The exhibition

shall demonstrate that, before European contact, the people of North America came from many cultures and spoke many different languages. In founding the United States, early leaders developed a vision for the country that promised opportunity and freedom—but these benefits were not available to all. The exhibition is divided into eight sections and will use objects, graphics, and interactive multimedia programs to examine how, as the population expanded and newcomers arrived in larger numbers. The people who lived in the United States continually negotiated what it meant to be American. The exhibition elements are organized by a series of thematic areas orchestrated around the narrative: **How the many voices of people in American have contributed to and are shaping our nation.** (See Attachments G, H and J)

**A.2.5 Unpriced Option:**

The public area identified as **Liberty Square** comprises 390 square meters (4,200 square feet) at the western end of the wing. It is a space for public programs designed around the theme of the wing, **We Build Together**, as well as after-hour functions, and is scheduled to open **June 7th 2017**. Permanent features include a portion of the historic Woolworth’s lunch counter from Greensboro, South Carolina, scene of the historic anti-segregation sit-ins of the early 1960s. In addition, four large contemporary photo murals are planned for display using existing built-in mounting rails, and two internally-lit horticulture cases displaying live plants are to be constructed in the terrace access lobbies. (See Attachment O.)

**Second Floor West Exhibition Locations Plan**



**SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS**

**B.1 Statement of Work**

The successful Contractor shall provide all professional, technical, and non-personal services, including supervision, labor, materials, equipment and facilities necessary for final production design, fabrication and installation services for completion by **June 16, 2017**, as further specified herein and set forth in the Attachments hereto; for the Smithsonian Institution’s National Museum of American History **Landmark Concourse Exhibits, American Democracy, and Many Voices, One Nation** (collectively referred to herein as the “Services”). In addition, the **Liberty Square** public plaza is included as an unpriced option. The Exhibitions are to be located at the National Museum of American History, Smithsonian Institution, 14th Street and Constitution Avenue, Washington, DC.

**B.2 Pricing (note pricing shall also be expressed by completing the Bid Sheets referenced in Section J.)**

The Contractor shall perform the Services in accordance with the requirements of this contract for the firm-fixed price sums below. These firm-fixed prices shall include all direct labor, materials, communication, production and other direct costs as well as all indirect costs (overhead and G&A), subcontractor costs, commissions, travel and/or per diem, and any other profit and expenses for which the Contractor expects payment. No additional charge shall be made by the Contractor for the requirements of this Contract, including source and documentation, error correction, or expense for any other materials or services to be performed hereunder unless specified otherwise. The Contractor shall also guarantee said offered prices and itemized pricing, free from any change, for ninety (90) days from the date of the submission of its proposal. **Of particular note:** Under this contract, the Contractor shall record, itemize and invoice all costs for the projects separately: **Landmark Concourse Exhibits, American Democracy, Many Voices, One Nation, and Liberty Square**. All invoices shall be delivered to the named COTR.

**B.2.1 Landmark Concourse Exhibits Firm Fixed Price Sum [Base Build]:**

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.1.1 Add Alternate 1:** Provision of Object-specific Custom Mounts to all **Landmark Concourse** display cases as broken out below (Refer to Object and Mounts List and Mounts and Brackets Catalog in Attachment B, pages 56-92).

**B.2.1.1a Mount Types BC00 through BC03, BC50, and BC51**

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.1.1b Mount Types BC30 and BC 31**

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.1.1c Mount Types BC10 through BC13**

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**.2.2 American Democracy Firm Fixed Price Sum [Priced Option]:**

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.2.1 Add Alternate 2:** Provision of Object-specific Custom Mounts to all **American Democracy** display cases and open display items as broken out below (to Mounts and Brackets Catalog and Object and Mounts List in Attachment E, pages 211-241 and 263-401).

**B.2.2.1a Mount Types BC00 through BC03, BC50, and BC51**

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.2.1b Mount Types BC30 and BC 31**

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.2.1c Mount Types BC10 through BC13**

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.2.2 Add Alternate 3:** Provision of Sculpture, Recon, and Props in **American Democracy** (Refer to Attachment E, pages 146-151).

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.3 Many Voices, One Nation Firm Fixed Price Sum [Priced Option]:**

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.3.1 Add Alternate 4:** Provision of Object-specific Custom Mounts to all **Many Voices, One Nation** display cases and open display items as broken out below (Refer to Mounts and Brackets Catalog and Object and Mounts List in Attachment J, pages 199-230 and 251-319).

**B.2.3.1a Mount Types BC00 through BC03, BC50, and BC51**

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.3.1b Mount Types BC30 and BC 31**

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.2.1c Mount Types BC10 through BC13**

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.3.2 Add Alternate 5:** Provision of Sculpture, Recon, and Props in **Many Voices, One Nation** (Refer to Attachment J, Sculpture, Recon and Props List, pages 162-164).

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.3.3 Add Alternate 6:** Provision of construction of three AV interactives 2303 (Military Cluster), 2305 (Work Cluster) and 2306 (Religion Cluster) in Section 3 of the **Many Voices, One Nation** gallery (Refer to Attachment H, sheets EX-1-01, EX-1-03, EX-1-08, EX-1-11, EX-2-03, EX-8-08, EX-8-10, and to Attachment J, sheets 10, 11, 26-28, 34-35, 39-42, 61-63).

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.3.4 Add Alternate 7:** Provision of construction of Physical interactive P2301 (Education Cluster) in Section 3 of the **Many Voices, One Nation** gallery (Refer to Attachment H, sheets A-1-02, EX-1-01, EX-1-08, EX-2-03, and EX-8-08, and to Attachment J, sheets 132, 146, and 151-152).

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.3.5 Add Alternate 8:** Provision of construction of Case 2305 (Voices of Debate) in Section 3 of the **Many Voices, One Nation** gallery (Refer to Attachment H, sheets EX-1-08, EX-2-03, and EX-8-07, and to Attachment J, sheets 4 and 264).

\_\_\_\_\_ \$ \_\_\_\_\_  
(Express in Words and Figures)

**B.2.4 Liberty Square [Unpriced Option]:**

(Currently an unpriced option, this item is included so that when exercised, the items to review in the design drawings are clear)

**B.2.4.1 Add Alternate 9:** Provision of construction of platform, display rails, and associated graphics for the Greensboro Lunch Counter as iterated in the design drawings to be provided if this option is exercised (Refer to Attachment O for overview).

**B.2.4.2 Add Alternate 10:** Provision of graphic production, printing, mounting, and installation of four large-format photo murals as iterated in the graphics list to be provided if this option is exercised (Refer to Attachment O for overview).

**B.2.4.3 Add Alternate 11:** Provision of construction of two internally-lit live plant display cases as iterated in the design drawings to be provided if this option is exercised (Refer to Attachment O for overview).

**B.3 Type of Contract**

The Smithsonian Institution intends to award one Firm Fixed Price contract to the successful Contractor(s)/Offeror(s) based, in part, on the pricing contained in this section.

**B.4 Project Schedule**

It shall be the responsibility of the contractor to immediately notify the Smithsonian Institution, if the target dates and proposed packages of work described herein adversely affect the Contractor's Critical Path Schedule for the final completion date of this project. Work shall be completed in its entirety on or before June 7, 2017. Contractors may propose an alternate schedule which illustrates the completion of the project in advance of the completion date.

**B.5 Disposition of Offers**

All information submitted in response to this RFP shall become the property of the Smithsonian Institution and will not be returned (this includes late submissions).



## Section C - Description/Specifications

### C.1 Scope of Work

The Services provided by the Contractor shall include, but are not limited to: verifying site condition and dimensions; developing the production details of all exhibit elements with scaled fabrication drawings (including coordination and integration of all finishes and placement of fasteners and hardware); verifying final gallery layout prior to fabrication; installation and integration of all audio-visual hardware cabling and control; providing sample and mock up submittals; following the conceptual designs provided, finalize development through prototypes and production of the physical interactives and models; coordination and installation of exhibit-specific finishes, security, electrical, and lighting elements; coordination with the NMAH Exhibit Team and other Smithsonian Contractors; documentation; and fabrication/construction, installation and commissioning.

C.1.1 The Contractor shall perform the Services in a single and continuous phase, which shall include: Site verification, Sample and Material submittals, Development of the physical and model components, Production Fabrication Drawings, Mock-up submittals, Fabrication, Functional Testing, Delivery and Installation, Lighting Focusing and Systems Commissioning and Training. As noted above, work and costs associated with fabrication and installation of the individual projects will need to be tracked, aggregated, and billed separately.

C.1.2 During performance of the Services the Contractor shall include the following elements of fabrication and installation:

C.1.2.1 Lighting: Contractor shall procure and install all track light fittings, Smart bars and associated light fixtures, lamps, accessories and controls; fiber optic LED illuminators and cabling to display cases. All lighting to be roughed in for final lighting focusing by the contractor and subcontract control programmer under direction from the lighting designer of record for Haley Sharpe, as iterated in the design drawings (ref. Attachment A, EXL-0-01 / EXL-1-01 / EXL-1-02 / EXL-1-03 / EXL-5-01 / EXL-6-01; Attachment D, EXL-0-01, / EXL-1-01 / EXL-1-02 / EXL-2-01 / EXL-2-02 / EXL-3-01 / EXL-3-02 / EXL-5-01 / EXL-6-01 / EXL-6-02 / EXL-6-03; Attachment H, EXL-0-01 / EXL-1-01 / EXL-1-02 / EXL-1-03 / EXL-5-01 / EXL-6-01 / EXL-6-02). The successful bidder must supply a qualified lighting engineer with the proper equipment to implement the lighting plans for each of the projects.

C.1.2.2 Services and Security: Contractor shall coordinate installation of CCTV and case security system devices to interface with existing security systems. Minor amendments and extensions to the electrical and thermostat services within the “Black Box” gallery to ensure all services are properly located and coordinated with the proposed displays, as iterated in the design drawings (ref. Attachment A, SC-1-02 / SC-1-03; Attachment D, SC-1-02 / SC-1-03; Attachment H, SC-1-02 / SC-1-03). All work must be accomplished in accordance with Division 13, Section 13800 of the General Specifications document (Attachment K).

C.1.2.3 Exhibit Fabrication: Contractor shall fabricate and install all Display Platforms, Plinths, Graphic Support Blades, Railings, Rail Mounts, Lecterns, Exhibit furniture, Custom Audiovisual (A/V) Cabinetry and Benches, as iterated in the design drawings (ref. Attachment A, EX-5-05 to EX-5-17 and the Fabrication List in Attachment B, pages 3 - 7; Attachment D, EX-5-07 through EX-5-28 and the Fabrication List in Attachment E,

pages 3 - 9; Attachment H, EX-5-04 through EX-5-08 and the Fabrication List in Attachment J, pages 3 - 8).

C.1.2.4 Display Cases: Contractor shall fabricate and install secure freestanding, plinth mounted and inset wall mounted secure glass and acrylic (as specified) display cases complete with inert internal finishes, coordinated services, integral lighting systems and secure hinged locking access doors, as iterated in the design drawings (ref. Attachment A, EX-5-01 to EX-5-04 and the Display Case List in Attachment B, pages 3 - 7; Attachment D, EX-5-01 through EX-5-06 and EX-5-18 through EX-5-28 and the Display Case List in Attachment E, pages 3 - 9; Attachment H, EX-5-01 through EX-5-04 and the Display Case List in Attachment J, pages 3 - 8). NOTE that the construction of Case C2305 in Attachment H is treated as Add Alternative 8. NOTE that some cases incorporate passive environmental control as part of their construction. NOTE that non-reflective glass provision is stipulated as the default for vertical surfaces in the specification document.

C.1.2.5 Object Mounts: Contractor shall produce and provide all Non-fitted Modular Mounts as specified in the appropriate Object and Mounts Lists and Mounts and Brackets Catalogs (ref. Attachments B, E and J). NOTE that the Contractor may potentially fabricate and install Object-specific Custom Mounts as Add Alternative 1 for the **Concourse**, Add Alternative 2 for **American Democracy**, and Add Alternative 4 for **Many Voices**, under direction of the Smithsonian curatorial and conservation teams, as iterated in the appropriate design drawings. Contractor shall assist handling /installation of large objects only under SI curatorial supervision, all remaining artifacts installed by the SI client team. See also special circumstance at C.3.5: The Smithsonian Institution reserves the right to produce all Type BC20 through BC24 and BC40 through BC43 Object-specific Custom Mounts.

C.1.2.6 AV Hardware: Contractor shall procure and install all audiovisual and IT hardware to existing rack and proposed field positions, as iterated in the design drawings (ref. EX-1-03 in Attachment E and EX-1-03 in Attachment J) and AV/IT Hardware list (ref Attachments F and G). AV/IT software shall be provided and installed by others, under separate contract. Please make note of the special circumstance listed at C.3.2: The Smithsonian Institution reserves the right to supply the 3M touchscreen equipment listed (or equal) to the fabricator as Government Furnished Equipment (GFE) for installation into appropriate casework.

C.1.2.7 Physical Interactives: Contractor shall undertake the further development of the concept design proposals, test, fabricate and install to proposed field positions, as iterated in the design drawings (ref. Physical Interactives List in Attachment E, pages 140-147; Physical Interactives List in Attachment J, pages 165-171). See also special circumstance at C.3.3: the Smithsonian Institution reserves the right to produce P1401 (the John Quincy Addams cane) and P1501 (the model of Mount Vernon) as GFE (ref. Attachment D, sheet EX-5-11, EX-8-25, and EX-8-29 as well as Attachment E, page 142).

C.1.2.8 Sculptures, Recon & Props: Contractor shall undertake the further development of the concept design proposals, test, fabricate and install to proposed field positions, as iterated in the Gallery and Construction Drawings, drawings and Lists and Specifications (ref. the Sculptures, Recon & Props List in Attachment E, pages 146-151 and the Sculptures, Recon & Props List in Attachment J, pages 162-164).

C.1.2.9 Graphics Production: Contractor shall print, produce and install all signage and

graphic elements, as iterated in the graphics list. Graphic artwork shall be provided in “Adobe InDesign” with the associate files for print and “Adobe Illustrator” for vinyl and fret cut lettering, by the gallery design team, Haley Sharpe. The contractor shall supply full size sectional scale print proofs for client team approval prior to commencing production (ref. Graphics List in Attachment B, pages 8-12; Attachment E, pages 124-139; Attachment J, pages 127-144). NOTE: Do not price the following graphics in Attachment D, sheet EX-8-17 and Attachment E, page 132 for Case C1306: G.1.3.104 and G.1.3.105. These items (the case back and light attic access doors) are GFE; see C.3.6.

C.1.2.10 Flooring: Contractor shall install Carpeting (material only GFE), wall base and inserted floor finish feature to proposed field areas, following installation of large objects and exhibition elements, as iterated in the design drawings. NOTE that Contractor must supply threshold transition strips for mechanical room and other openings where carpet transitions to existing surfaces (ref. Attachment D, sheet EX-1-04 and Attachment H, sheet EX-1-04; also Section C.3.4 – Smithsonian Furnished Equipment).

C.1.2.11 Gallery Finishes: Contractor shall apply paint finishes to perimeter walls only below ceiling line as iterated in the design drawings (ref. Attachment A, sheet EX-1-05 and Attachment H, sheet EX-1-05).

C.1.2.12 Shortly before project Substantial Completion, the contractor shall provide all necessary “As-built” documentation, undertake Commissioning and SI staff Training of all operational systems including but not limited to; Lighting; AV/IT Hardware; Physical Interactives; and Display Case access, servicing, and maintenance. Format for documentation shall be AutoCAD or BIM.

C.1.2.13 At the project close out the Contractor shall return all source material and other furnished material, including final graphic production files, to NMAH. Touch-up paint for all colors is to be provided.

C.1.3 During performance of the work, the Contractor shall keep in close liaison with the Smithsonian Contracting Officer’s Technical Representative (COTR). The Contractor shall prepare and distribute written reports of all significant telephone conversations, meetings, or discussions between the Contractor, and any organization contacted concerning this project. These reports shall be dispatched within four (4) calendar days of the occurrence of any of the above stated incidents.

C.1.4 The Contractor will be expected to collaborate with the NMAH Exhibit Team as well as other SI Contractors which includes graphic output and photo booth companies. The Contractor shall also be solely responsible for quality control and quality assurance.

C.1.5 The Contractor shall maintain one complete set of project record documents, marked with the title “PROJECT RECORD DOCUMENTS—JOB SET;” Contractor shall make full and accurate entries to these documents to record and indicate any and all changes resulting from directives or change orders. Upon completion of the contract, the Contractor shall transfer the recorded changes to a set of final record documents for NMAH.

C.1.6 Contractor shall provide monthly status reports to the COTR, due by the end of each calendar month, highlighting the progress and status of fabrication and/or installation; and highlighting planned actions for the forthcoming month. The Contractor shall additionally

develop and maintain an up-to-date construction/fabrication progress schedule during the life of the project.

C.1.7 Upon the completion of the contract, Contractor will submit to NMAH: one set of the Project Record Documents, two sets of the completed production package, which must include as-built drawings with installation details and all submitted source materials.

C.1.8 Contractor must immediately notify the COTR of any problem, unexpected occurrence, or delay in the process of the work.

C.1.9 Contractor shall be responsible for all local and out-of-town travel necessary to meet the requirements of this contract.

C.1.10 Smithsonian review and approval shall not relieve the Contractor of professional liability for conformance with the Scope of Work. This liability remains solely with the Contractor until construction, fabrication, installation is completed, as-built documents are submitted, and all claims are resolved.

C.1.11 The Contractor must be responsive to NMAH schedules and to the schedules of other SI Contractors, and must be prepared to coordinate its work in connection with special events that may be taking place at NMAH. The Contractor shall work cooperatively with NMAH staff and other SI Contractors to ensure efficiency and safety.

C.1.12 The Contractor shall participate in progress meetings at NMAH at least once per month or as otherwise mutually agreed upon as necessary.

C.1.13 Second Floor West Wing Exhibitions Pre-Production Drawings review. The Contractor shall review exhibition design documents for **Many Voices** (provided prior to exercising Priced Option A.2.3) and meet with NMAH's internal and external project and design teams to ensure all scope details and arising clarifications are fully understood prior to commencing the production details. Meetings shall take place at NMAH or via video/telephone conference at NMAH discretion.

C.1.14 Production Schedule. The Contractor shall submit an updated production schedule to NMAH for its review and approval. The Contractor's production schedule shall provide a plan of execution for the work with recommended timeframes for each work task in order to provide the completed and tested exhibition ready for public opening by **June 7th, 2017**. This plan shall encompass open dialogue with a collaborative and iterative process between Contractor, client and exhibition design team. Coordination of exhibition fabricators with the software installation, exhibition design team, and NMAH shall be considered an integral part of this plan.

C.1.15 Quality Control Plan. The Contractor shall submit an updated Quality Control (QC) plan to communicate the contractor's processes for ensuring the highest quality deliverables throughout the project (production design/setting out, fabrication and installation) to NMAH for its review and approval. The plan shall include a description of Quality Control (QC) methods the contractor will use to identify and remedy defects prior to delivery and a schedule for any NMAH review/input necessary as part of that plan.

C.1.16 Special Conditions: The Contractor's site measurements of existing conditions are critical prior to fabrication. The gallery space is available for inspection by appointment. The Second Floor West Wing public spaces were finished as part of a general renovation, including the

**Landmark Concourse** corridor and **Liberty Square**. The South and North galleries are closed with temporary walls and locked double doors. The adjacent Taubman Gallery has an exhibition that is under construction by third parties and will not open to the public until **June 7th, 2017**. In addition, the existing exhibition Within These Walls may be undergoing some upgrades (by others) during the performance period for this contract. Contractor shall provide temporary construction barrier walls and freestanding screens to separate the workspace from the adjacent areas as needed. All workmanship, materials, methods and solutions must be of a professional quality that is demanded at NMAH. All work must comply with the requirements and guidelines set forth in the ADA Accessibility Guidelines for Buildings and Facilities, along with fire, electrical, safety code compliance and security requirements per Attachments A and B (**Landmark Concourse**), D and E (**American Democracy**), H and J (**Many Voices**), and Attachment K (General Specifications). All drawings, when produced by the contractor, must be done in metric measure, and in a common scale.

C.1.17 Other Special Conditions: The Contractor provide of all work under this contract in accordance with performance standards as described in the specification, schedules and drawings and in conjunction with the manufactures recommendations.

C.1.18 Installation. The Contractor shall work in collaboration and coordination with the client teams to ensure proper sequenced installation and commissioning of all exhibit components, objects and software. Prior to the installation of the objects, all case displays shall be required to demonstrate full and satisfactory functioning for access, alarms and lighting systems. The following items are included here as requiring early installation and/or special coordination with the Smithsonian:

Franklin Printing Press	Attachment D, sheet EX-1-07, EX-8-04
Suffrage Wagon	Attachment D, sheet EX-1-08, EX-8-09
Great Historical Clock	Attachment D, sheet EX-1-11, EX-8-29 / Case C1503
Bakery Sign	Attachment H, sheet EX-1-10, EX-8-18 / Case C2504
Tomato Lady Liberty	Attachment H, sheet EX-1-11, EX-8-20 / Case C2603
Border Fence	Attachment H, sheet EX-1-11, EX-8-21

Prior to the installation of the multimedia software, all electronic equipment shall be required to demonstrate full and satisfactory functioning.

C.1.19 Supervisory Team. The Contractor shall provide supervisor(s) from their permanent team who are responsible for the on-site installations. While it is acceptable that the Contractor subcontracts out for laborers, the supervisor(s) must be regular employees of the Contractor. The supervisor(s) will be present at NMAH for the duration of the installation. SI's Office of Protection Services reserves the right to inspect Contractor's employees' suitability records at random, in order to ensure Smithsonian guidelines for security are being met at all times during the performance of the Work.

C.1.20 Coordination and Oversight. Contractor shall oversee and coordinate all tasks and activity required to perform the installation. The Contractor shall coordinate this activity with SI's COTR, and will ensure compliance with SI's rules and regulations in effect for installations on museum property. The Contractor shall obtain all necessary permits and permissions, as required, and will coordinate the same with SI.

C.1.21 Training & Manuals. Upon completion of installation and acceptance by NMAH, the Contractor shall provide one (1) training session on-site at NMAH for approximately two (2)

Museum staff members to demonstrate the proper operation and maintenance of the delivery systems. The Contractor shall also provide three (3) hard copies and a digital copy of an operations manual, which shall include, at a minimum, a detailed explanation of all systems operation, troubleshooting guidelines, owner's manuals, warranties, and other documentation

C.1.22 Provision of Assets. All assets either supplied by the SI or on behalf of the SI remain the sole property of the SI and must not be used for any other purpose without the expressed permissions in writing by the SI.

C.1.23 Testing. Testing shall be included and identified during key phases, and shall be performed by mutual agreement between the Contractor and the SI. These tests shall confirm the physical Interactives are accessible both physically and intellectually. The delivery of content shall be clear to read and understand, and the take-home messages shall be easily comprehended by the intended target audience.

- a. Initial testing of each physical Interactive shall be conducted following approval of the contractors Design/Development drawings. The SI will have a total of not less than 10 (Ten) working days to provide a coordinated response.
- b. Production testing of each physical Interactive shall be conducted following sign off of fabrication drawings and prior to the contractor's fabrication phase. The SI will have a total of not less than 10 (Ten) working days to provide a coordinated response.
- c. Field Trials and Run-In period for each Physical Interactive shall be conducted at the end of the fabrication phase prior to site installation. The SI will have a total of not less than 10 (Ten) working days to provide a coordinated response. Final acceptance is contingent upon 10 days of fault-free operation for all Physical Interactives.

All temporary instructional graphics necessary to test, present or inform approvals of the exhibits, to the client team or appointed testing body are to be provided by the Contractor on a temporary basis as part of the submission with all costs included for such (ref. Physical Interactive List in Attachment E, pages 141-145 and Physical Interactive List in Attachment J, pages 145-149).

## **C.2 Codes and Standards**

C.2.1 The project shall be fabricated and installed in accordance with the applicable codes, standards, design parameters or regulations noted in this or other sections of this RFP. In case of conflict between codes, standards, or regulations, the most stringent requirement shall apply.

C.2.2 Reference to standard specifications of any technical society, organization, or association, or to codes, manuals, or regulations of Federal or local authorities shall mean the latest standard, code manual, regulation, specification, or tentative specification adopted and published at least thirty (30) days prior to submittal of proposals, unless specifically stated otherwise.

C.2.3 Any code, standard, regulation, or specification listed below that references the "authority having jurisdiction", "local authority", or "governmental authority" shall be interpreted to refer to the Contracting Officer as being this authority for purposes of interpreting/clarifying codes, standards, regulations, and specifications.

C.2.4 Contractor's performance shall conform to the following codes, standards, regulations, etc: American Disabilities Act (ADA) and all governing local, state, and national codes.

C.2.5 The term construction used herein shall refer to all elements of fabrication and all terms and conditions required for construction work shall also apply to all fabrication services.

### **C.3 Smithsonian Furnished Equipment**

C.3.1 Smithsonian is responsible for providing, at no cost to the Contractor, a renovated gallery and general finishes (excluding carpet installation and wall finishes as noted in exhibit design drawings). This includes upgrading of building systems (HVAC, sprinkler, public safety devices), electrical service and outlets, security CCTV cameras and connection points and related infrastructure, lighting j-boxes and suspended grid ceiling and cable trays for the gallery lighting cable and pathways, and emergency luminaires. Any relocation of the above as noted in the Gallery and Construction Drawings are specific to the individual gallery spaces and are the responsibility of the Contractor, with coordination with the COTR as necessary (ref. Attachment A, sheets A-1-01 and E-1-01; Attachment D, sheets A-1-02, E-1-01, E-1-04, M-1-01, and Sc-1-01; Attachment H, sheets A-1-02, E-1-01, M-1-01, and SC-1-01).

C.3.2 As noted at C.1.2.6, Smithsonian reserves the right to supply the 3M touchscreen equipment listed (or equal) to the fabricator as Government Furnished Equipment (GFE) for installation into appropriate casework (Refer to AV hardware schedule and specifications (ref. the AV-IT List in Attachment E, pages 20, 26-29, 33, and 51 and the AV-IT List in Attachment J, pages 10, 11, 57, 63, 65, 69, 70, and 74).

C.3.3 As noted at C.1.2.7, Smithsonian reserves the right to produce P1401 (the John Quincy Addams cane) and P1501 (the model of Mount Vernon) as GFE (ref. Attachment D, sheet EX-5-11, EX-8-25, and EX-8-29 as well as Attachment E, page 142).

C.3.4 Carpet Tile and Wall Base for **American Democracy** and **Many Voices** are provided as Government Furnished Equipment, as noted on Attachment D drawing EX-1-04 and Attachment G drawing EX-1-04. Carpet tile and wall base are NOT required for either the Base Bid **Landmark Concourse** or the Unpriced Option **Liberty Square**. The Contractor shall provide all carpet tile and base installation services.

C.3.5 Due to the specific nature and conservation requirements of the objects involved, the Smithsonian Institution reserves the right to produce all Type BC20 through BC24 (textile and costume) and BC40 through BC43 Object-specific Custom Mounts (paper and original art).

C.3.6 As noted at C.1.2.9, the case back (formerly G.1.3.104) and covering for the light attic access doors (G.1.3.105) for **American Democracy** case C1306 will be produced under separate contract and installed by the Smithsonian institution; timing to be coordinated with Contractor's schedule.

### **C.4. General Descriptions and Specifications**

The Smithsonian Institution is seeking offers for this project as described herein and fully detailed in the Documents and Specifications attached as detailed in Section J. All of the requirements which the successful Contractor must meet concerning this project are set forth in detail in the solicitation documents included with this RFP. Upon the receipt and evaluation of Technical Proposals, Cost Proposals, and Subcontracting Plans---and the subsequent selection of a successful Contractor---the Smithsonian will execute a fixed price contract.

The Work includes, but is not limited to, all work specified in on the drawings and all Divisions of the specifications:

This RFP is intended to provide all Contractors with sufficient information to enable them to prepare and submit offers for technical and cost review and consideration by the Smithsonian Institution.

This solicitation neither commits the Smithsonian Institution to pay any proposal preparation costs nor obligates the Smithsonian to procure or contract for general construction or any other services. Likewise, this solicitation shall not be construed as authorization to proceed with or be reimbursed for any of the costs for any of the work specified herein.

The Smithsonian may cancel this RFP without prior notice.

### **C.5 Correlation and Intent**

Any omissions in the RFP of such words and phrases as “the Contractor shall”, “the Contractor shall”, “shall be”, “shall consist of”, “in accordance with”, “shall”, “and”, “the”, etc., are intentional. Such words and phrases shall be supplied by implication.

Whenever the words “necessary”, “proper”, or words of like effect are used in the RFP with respect to the extent, conduct, or character of work required, they shall mean that the said work shall be carried to the extent, must be conducted in a manner, or be of a character that is “necessary” or “proper” under the circumstances, in the opinion of the Contracting Officer. The Contracting Officer’s judgment in such matters shall be considered final.



## **Section D - Packaging and Marking**

### **SI-0088 Packaging and Marking**

D. Reserved

## **Section E - Inspection and Acceptance**

### **E.1.1 52.246-4 Inspection of Services. (APR 1996)**

### **E.1.2 52.246-12 Inspection of Construction. (APR 1996)**

### **E.2 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).

### **E.3 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.

### **E.4 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.

### **E.5 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 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 reviews, 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 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 are clearly a fault in Contractor performance.

## **Section F - Deliveries or Performance**

### **F.1 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 his 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 C.O. Submission by the Contractor of its Performance and Payment Bonds, Preliminary Schedule and all Certificates of Insurance and their approval by the S.I. 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 S.I. 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 S.I.'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 S.I. 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 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 Article and other provisions of the Contract Documents.

(2) 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, of 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. of 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, 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, 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 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 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 S.I. 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 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.

#### **F.2 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.

#### **F.3 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 S.I.

(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 S.I. 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 and will cause his subcontractors to protect carefully his, and their materials and work against damage or injury from the weather 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.

#### **F.4 52.246-S0041 Additional Warranties and Guarantees (Jun 2000)**

(a) The Contractor guarantees and warrants to the S.I. 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) 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 S.I. 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 S.I. 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 S.I., 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.

## **F.5 Period of Performance**

All work under an awarded contract, to include correction of deficiencies submission of as built drawings (if required) and contract close out, shall be completed in 150 calendar days from NTP.

### **F.5.1 SI-0082 Optional Services**

Any optional services are subject to (1) acceptance and approval by the Smithsonian Institution of the Contractor's performance during the respective contract periods, (2) Smithsonian Institution's continued requirement for these services, and (3) availability of appropriated funds from which payment for contract purposes can be made. In the event the Smithsonian Institution exercises any option under this contract all other terms and conditions hereunder shall remain the same.

## **F.6 52.247-S0083 Delivery Point**

All deliverables required under this contract shall be delivered to:

Smithsonian Cooper Hewitt National Design Museum

2 East 91<sup>st</sup> Street New York, New York 10128.

F.O.B. Destination within Consignee's Premises Delivery Terms:

The term F.O.B. Destination within Consignee's Premises means delivery, free of expenses to the Smithsonian Institution, to within the doors of consignee's premises specified in the contract or delivery instructions.

## **Section G - Contract Administration Data**

### **G.1 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.

### **G.2 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.

### **G.3 52.202-S0061 Contracting Officer's Technical Representative (COTR) (Apr 1988)**

(a) The Contracting Officer's Technical Representative (COTR) (to be provided upon Contract), 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.

(b) 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.

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

### **G.4 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 then 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.

### **G.5. SI-0064 Incorporation of Contractor's Proposal**

**5.1.** 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 (To be added at time of contract) \_\_\_\_\_; 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.

**G.6. SI-0065 Progress Payments**

**G.6.1.** 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.

**G.7 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.

**G.8 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].

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**G.9 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.

## **Section H - Special Contract Requirements**

### **H.1 Total Charges**

The prices contained in Section B are the only charges to be made under this contract and no additional charges shall be claimed by the Contractor for the requirements under this contract, including source and documentation, training, copies of materials, implementation, error correction, upgrades, maintenance, or expenses for any other materials or service to be performed hereunder unless specified otherwise.

### **H.2 Quiet Enjoyment**

The Smithsonian shall be entitled to see the material without disturbance, subject only to its obligation to make the required payments hereunder. The Contractor represents that this contract is not, nor will be, subject or subordinate to any right of the Contractor's creditors, or if such subordination exists, that the agreement or instrument creating the same provides for non-disturbance of Smithsonian use.

### **H.3 Delivery Failure**

Failure to deliver any of the requirements under this contract shall be deemed to be a total failure to deliver, and the supplies and services shall not be deemed delivered until all of its elements are delivered. If such delivery failure persists for more than thirty (30) days after the scheduled delivery date, the Smithsonian shall have the right to terminate the contract for default.

### **H.4 Security on Smithsonian Institution Premises**

In order to be compliance with Smithsonian Institution security regulations, the Contractor shall make arrangements for access to Smithsonian premises through the Smithsonian Institution Representative (Contracting Officer's Technical Representative).

### **H.5 Responsibility for Smithsonian Property**

The Contractor assumes full responsibility for and shall indemnify the Smithsonian for any and all loss or damage of whatsoever kind and nature to any and all Smithsonian 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.

### **H.6 Return of Smithsonian Property**

All materials provided by the Smithsonian Institution shall be returned by the Contractor within thirty (30) calendar days to place of origin or other location as designated by Smithsonian.

### **H.7 Federal Tort Claims Act**

Contractor is hereby on notice that the Smithsonian Institution falls within the purview of the Federal Tort Claims Act (28 U.S.C. §2671-2680). As such, the exclusive remedy for claims against Smithsonian for bodily injury, death and property damage due to negligence of

Smithsonian or its employees is the Federal Tort Claims Act; the General Counsel of Smithsonian is authorized to settle all claims against the United States (Smithsonian Institution) for damage to property, personal injury, or death caused by the negligent act or failure to act of a Smithsonian employee in the course of his/her employment cognizable under the Federal Tort Claims Act, as amended, and in some instances, this may be the exclusive remedy.

#### **H.8 52.202-S0010 Use of Smithsonian Name (Jun 2000)**

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 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.

#### **H.9 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.

#### **H.10 52.215-S0008 Contracting Officer's Technical Representative (Apr 1988)**

Contracting Officer's Technical Representative (herein referred to as the COTR) will be the Contracting Officer's (CO) exclusive representative to the Contractor with respect to the Project during construction and until Final Payment and Release of Claims. The term COTR is referred to throughout the Contract Documents as if singular in number and masculine in gender. The Smithsonian Institution's communications with the Contractor shall be exclusively through the COTR, who will have full authority to act on behalf of the C.O. with regard to all aspects of the Project except that the C.O. must approve all Modifications and payments to the Contractor and is the final authority for all disputes under any Clause of this Contract. All of the Contractor's communications to the S.I. shall be exclusively through the COTR. All of the COTR's actions with regard to this Project will be as the representative of the C.O.

#### **H.11 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 S.I. 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 S.I. 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 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.

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

(2) 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 S.I. enumerated herein and those provided by law.

#### **H.12 52.223-S0070 Dissemination of Information**

There shall be no dissemination or publication of information, except between the Contractor and any subcontractors, of information 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.

#### **H.13 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.

#### **H.14 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 he 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".

#### **H.15. SI-0068 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 Smithsonian Institution. 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.

#### **H.16 SI-0071 Responsibility for Smithsonian Property**

The Contractor assumes full responsibility for and shall indemnify the Smithsonian for any and all loss of damage of whatsoever kind and nature to any and all Smithsonian 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.

#### **H.17 SI-0072 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.

#### **H.18 SI-0073 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 and hold harmless

the Smithsonian Institution, 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 Smithsonian Institution in the construction of the Project(s) including, but not limited to, damages, costs and expenses resulting from claims brought against the Smithsonian Institution 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 Smithsonian shall not waive any of the rights of the Smithsonian or release the Contractor from any liability, responsibility or duty contained herein.

#### **H.19 Right to Reproduce Documentation**

The Smithsonian shall have the right to reproduce all documentation furnished under this contract, provided that such reproduction shall be solely for the use of the Smithsonian and that such reproduction shall be subject to the same restrictions on use and disclosure as are contained in this contract with respect to the original documentation.

#### **H.20 Guarantee of Ownership**

The Contractor warrants that it has full power and authority to grant the rights herein granted without the consent of any other person and will indemnify and hold the Smithsonian harmless from and against any loss, cost liability and expense (including reasonable counsel fees) arising out of the breach or claimed breach of this warranty. Pending the resolution of any claim against the Contractor or the Smithsonian, with respect to the Contractor's ownership and/or authority, the Smithsonian may withhold payment of any sums otherwise required to be paid hereunder.

#### **H.21 Infringement**

The Contractor warrants that none of the deliverables under this contract nor the use thereof does or will violate or infringe upon any patent copy right, trade secret or other property right of any other person, and the Contractor shall indemnify and hold the Smithsonian harmless from and against any loss, cost, liability and expenses (including reasonable counsel arising out of any claim against the Contractor or the Smithsonian with respect to infringement, Smithsonian may withhold payment of any sums otherwise required to be paid hereunder.

#### **H.22 52.204-7 System for Award Management. (JUL 2013)**

Contractor shall be registered in the SAM database and shall maintain active registration in SAM throughout the Term of this Contract.

The Contractor is responsible, during performance and through final payment, for the accuracy

and completeness of the data within the SAM database, and for any liability resulting from the Smithsonian's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate, and complete. Updating information in SAM does not alter the terms and conditions of this Contract and is not a substitute for a properly executed contractual document.

The Contractor shall not change the name or address for electronic funds transfer (EFT) payments or manual payments as appropriate in the SAM record to reflect an assignee for the purpose of assignment of claims. Assignees shall be separately registered in the SAM database. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor shall be considered to be incorrect information.

### **H.23 Accessibility of Electronic and Information Technology Warranty**

If applicable, Contractor shall make reasonable efforts so that each Electronic and Information Technology (EIT) product or service furnished under this Contract that is SI constituent-facing shall conform to the Electronic and Information Technology Accessibility Standards (36 CFR 1194), as specified in the Contract, as a minimum. If the Contracting Officer determines any SI constituent-facing furnished product or service is not in compliance with the Contract relative to 36 CFR 1194, the Contracting Officer will promptly inform the Contractor in writing. The Contractor shall, without charge to the Smithsonian Institution, repair or replace the non-compliant products or services within a reasonable period of time. If such repair or replacement is not completed within a reasonable period of time, the Smithsonian Institution shall have the following recourses:

- a) Termination of the Contract, delivery or task order, purchase, or line item without termination liabilities;
- b) Negative equitable adjustment; or,
- c) In the case of custom Electronic and Information Technology (EIT) being developed for the Smithsonian Institution, the Smithsonian shall have the right to have any necessary changes made or repairs performed by itself or by another firm and the Contractor shall reimburse the Smithsonian for any expenses incurred thereby

## **Section I - Contract Clauses**

**1 52.203-3 Gratuities. (APR 1984)**

**2 52.203-5 Covenant Against Contingent Fees. (APR 1984)**

**2.1 52.203-6 Restrictions on Subcontractor Sales to the Government. (SEP 2006)**

**3 52.203-7 Anti-Kickback Procedures. (OCT 2010)**

**4 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity. (JAN 1997)**

**5 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity. (JAN 1997)**

**6 52.203-12 Limitation on Payments to Influence Certain Federal Transactions. (OCT 2010)**

**7 52.203-13 Contractor Code of Business Ethics and Conduct. (APR 2010)**

**8 52.203-14 Display of Hotline Poster(s). (DEC 2007)**

(a) Definition.

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Display of fraud hotline poster(s). Except as provided in paragraph (c)--

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites--

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

Poster(s) Obtain from

Smithsonian Office of Contracting

(c) If the Contractor has implemented a business ethics and conduct awareness program,

including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract--

- (1) Is for the acquisition of a commercial item; or
- (2) Is performed entirely outside the United States.

(End of clause)

**10.2 52.204-2 Security Requirements. (AUG 1996)**

**9 52.204-4 Printed or Copied Double-Sided on Recycled Paper. (AUG 2000)**

**10 52.204-9 Personal Identity Verification of Contractor Personnel. (JAN 2011)**

**10.1 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards. (JUL 2013)**

**10.2 52.207-5 to Purchase Equipment. (FEB 1995)**

**11 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (DEC 2010)**

**12 52.215-2 Audit and Records - Negotiation. (OCT 2010)**

**13 52.215-8 Order of Precedence - Uniform Contract Format. (OCT 1997)**

**14 52.215-11 Price Reduction for Defective Certified Cost or Pricing Data - Modifications. (OCT 2010)**

**15 52.215-13 Subcontractor Certified Cost or Pricing Data - Modifications. (OCT 2010)**

**16 52.215-21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data - Modifications. (OCT 2010)**

**17 52.216-4 Economic Price Adjustment - Labor and Material. (JAN 1997)**

**18 52.219-8 Utilization of Small Business Concerns. (May 2014)**

**19 52.219-9 Small business subcontracting plan. (JUL 2013) - Alternate II (OCT 2001)**

**Offeror must submit a subcontracting plan consistent with PL 95-507, PL 99-661 and PL 100-656 with the proposal. Contractor must demonstrate a good-faith effort to comply with the following minimum subcontracting goals which are: 40% of the total planned subcontracting dollars shall be placed with small business concerns; 10% of the total**

**planned subcontracting dollars shall be placed with Small disadvantaged businesses (“SDB”); 10% of the total planned subcontracting dollars shall be placed with Women-owned small businesses (“WOSB”); (iv) 7% of the total planned subcontracting dollars shall be placed with Hub-zone Small Businesses (“HubSB”); and (v) 7% of the total planned subcontracting dollars shall be placed with Service Disabled Veteran-owned small businesses (“SDVOSB”).**

**20 52.219-9 Small Business Subcontracting Plan. (OCT 2010) - Alternate II (OCT 2001)**

**21 52.219-25 Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting. (DEC 2010)**

**22 52.219-28 Post-Award Small Business Program Representation. (JUL 2013)**

(a) *Definitions.* As used in this clause-

*Long-term contract* means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

*Small business concern* means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts-

(i) Within 60 to 120 days prior to the end of the fifth year of the contract;  
and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (712110) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/content/table-small-business-size-standards>.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it \_\_\_ is, \_\_\_ is not a small business concern under NAICS Code [712110] assigned to contract number [*insert contract number*]. (*Contractor to sign and date and insert authorized signer's name and title*).

(End of clause)

**23 52.222-1 Notice to the Government of Labor Disputes. (FEB 1997)**

**24 52.222-3 Convict Labor. (JUN 2003)**

**25 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation. (May 2014)**

**26 52.222-6 Construction Wage Rate Requirements (May 2014)**

**27 52.222-7 Withholding of Funds. (MAY 2014)**

**28 52.222-8 Payrolls and Basic Records. (MAY 2014)**

- 29 52.222-9 Apprentices and Trainees. (JUL 2005)**
- 30 52.222-10 Compliance with Copeland Act Requirements. (FEB 1988)**
- 31 52.222-11 Subcontracts (Labor Standards). (MAY 2014)**
- 32 52.222-12 Contract Termination - Debarment. (MAY 2014)**
- 33 52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations. (MAY 2014)**
- 34 52.222-14 Disputes Concerning Labor Standards. (FEB 1988)**
- 35 52.222-15 Certification of Eligibility. (MAY 2014)**
- 35.1 52.222-20 Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000. (MAY 2014)**
- 36 52.222-21 Prohibition of Segregated Facilities. (FEB 1999)**
- 37 52.222-26 Equal Opportunity. (MAR 2007)**
- 38 52.222-27 Affirmative Action Compliance Requirements for Construction. (FEB 1999)**
- 39 52.222-35 Equal Opportunity for Veterans. (SEP 2010)**
- 40 52.222-36 Affirmative Action for Workers with Disabilities. (OCT 2010)**
- 41 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans. (SEP 2006)**
- 42 52.222-39 Reserved.**
- 435 52.222-41 Service Contract Labor Standards. (MAY 2014)**
- 44 52.222-42 Statement of Equivalent Rates for Federal Hires. (MAY 2014)**

In compliance with the Service Contract Labor Standards statute and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

*This Statement is for Information Only: It is not a Wage Determination*

**Employee Class[]**

**Monetary Wage - Fringe Benefits[]**

(End of clause)



**45 52.222-43 Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts). (SEP 2009)**

**46 52.222-49 Service Contract Labor Standards-Place of Performance Unknown. (MAY 2014)**

(a) This contract is subject to the Service Contract Labor Standards statute, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following: Washington, DC. The Contracting Officer will request wage determinations for additional places or areas of performance if asked to do so in writing after award.

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit bids or proposals. However, a wage determination shall be requested and incorporated in the resultant contract retroactive to the date of contract award, and there shall be no adjustment in the contract price.

(End of clause)

**47 52.222-50 Combating Trafficking in Persons. (FEB 2009)**

**48 52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services--Certification. (NOV 2007)**

**49 52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services--Requirements. (FEB 2009)**

**50 52.223-3 Hazardous Material Identification and Material Safety Data. (JAN 1997) - Alternate I (JUL 1995)**

**51 52.223-5 Pollution Prevention and Right-to-Know Information. (AUG 2003)**

**52 52.223-6 Drug-Free Workplace. (MAY 2001)**

**53 52.223-12 Refrigeration Equipment and Air Conditioners. (MAY 1995)**

**54 52.223-14 Toxic Chemical Release Reporting. (AUG 2003)**

**55 52.225-1 Buy American - Supplies. (MAY 2014)**

**55.1 52.225-9 Buy American - Construction Materials. (MAY 2014)**

(a) *Definitions.* As used in this clause-

*Commercially available off-the-shelf (COTS) item-* (1) Means any item of supply (including construction material) that is-

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

*Construction material* means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

*Cost of components* means-

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

*Domestic construction material* means-

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if-

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

*Foreign construction material* means a construction material other than a domestic

construction material.

*United States* means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.* (1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American statute.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute or Balance of Payments Program.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

<b>Foreign and Domestic Construction Materials Price Comparison</b>			
<b>Construction material description</b>	<b>Unit of</b>	<b>Quantity</b>	<b>Price</b>
<b>measure</b>		<b>(dollars)*</b>	
<i>Item 1:</i>			
	Foreign construction material		
_____	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of

*response; if oral, attach summary.*

*Include other applicable supporting information.*

(End of clause)

**56 52.225-13 Restrictions on Certain Foreign Purchases. (JUN 2008)**

**57 52.227-1 Authorization and Consent. (DEC 2007)**

**58 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement. (DEC 2007)**

**59 52.227-4 Patent Indemnity--Construction Contracts. (DEC 2007)**

**59.1 52.227-14 Rights in Data-General. (MAY 2014)**

**59.2 52.227-17 Rights in Data--Special Works. (DEC 2007)**

**59.3 52.227-18 Rights in Data - Existing Works. (DEC 2007)**

**59.4 52.227-19 Commercial Computer Software License. (DEC 2007)**

**60 52.228-2 Additional Bond Security. (OCT 1997)**

**61 52.228-5 Insurance - Work on a Government Installation. (JAN 1997)**

**62 52.228-11 Pledges of Assets. (SEP 2009)**

**62.1 52.228-12 Prospective Subcontractor Requests for Bonds. (OCT 1995)**

**62.2 52.228-15 Performance and Payment Bonds - Construction. (NOV 2006)**

**63 52.229-3 Federal, State, and Local Taxes. (FEB 2013)**

**64 52.230-3 Disclosure and Consistency of Cost Accounting Practices. (MAY 2014)**

**65 52.230-5 Cost Accounting Standards - Educational Institution. (MAY 2014)**

**66 52.230-6 Administration of Cost Accounting Standards. (JUL 2010)**

**66.1 52.232-11 Extras. (APR 1984)**

**66.2 52.232-16 Progress Payments. (APR 2012)**

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts of \$2,500 or more approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, the

Government will compute each progress payment as 80 percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. The Contracting Officer will consider cost of money that would be allowable under FAR 31.205-10 as an incurred cost for progress payment purposes.

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to subcontractors-

(i) In accordance with the terms and conditions of a subcontract or invoice; and

(ii) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(3) The Government will exclude accrued costs of Contractor contributions under employee pension plans until actually paid unless-

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(4) The Contractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) of this clause:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for -

(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(5) The amount of unliquidated progress payments may exceed neither (i) the

progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(6) The total amount of progress payments shall not exceed 80 percent of the total contract price.

(7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Contractor shall repay the amount of such excess to the Government on demand.

(8) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than \$2,500. The Contracting Officer may make exceptions.

(9) The costs applicable to items delivered, invoiced, and accepted shall not include costs in excess of the contract price of the items.

(b) *Liquidation.* Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or 80 percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).

(2) Performance of this contract is endangered by the Contractor's-

(i) Failure to make progress; or

(ii) Unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The fair value of the undelivered work is less than the amount of unliquidated progress payments for that work.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) *Title.* (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title;

(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract; *e.g.*, the termination clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not-

(i) Delivered to, and accepted by, the Government under this contract; or



(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is lost (see 45.101).

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports, forms, and access to records.* (1) The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information (including estimates to complete) reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(2) The Contractor shall furnish estimates to complete that have been developed or updated within six months of the date of the progress payment request. The estimates to complete shall represent the Contractor's best estimate of total costs to complete all remaining contract work required under the contract. The estimates shall include sufficient detail to permit Government verification.

(3) Each Contractor request for progress payment shall:

(i) Be submitted on Standard Form 1443, Contractor's Request for Progress Payment, or the electronic equivalent as required by agency regulations, in accordance with the form instructions and the contract terms; and

(ii) Include any additional supporting documentation requested by the Contracting Officer.

(h) *Special terms regarding default.* If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) *Reservations of rights.* (1) No payment or vesting of title under this clause shall-

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause-

(i) Shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) *Financing payments to subcontractors.* The financing payments to subcontractors mentioned in paragraphs (a)(1) and (a)(2) of this clause shall be all financing payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to-

(i) The unliquidated remainder of financing payments made; plus

(ii) Any unpaid subcontractor requests for financing payments.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, 4 months.

(3) If the financing payments are in the form of progress payments, the terms of the subcontract or interdivisional order concerning progress payments-

(i) Are substantially similar to the terms of this clause for any subcontractor that is a large business concern, or this clause with its Alternate I for any subcontractor that is a small business concern;

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of FAR 32.504(e); and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if-

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments-

(i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232-32 and meet the criteria for, and definition of, performance-based payments in FAR Part 32;

(ii) Are in conformance with the requirements of FAR 32.504(f); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if-

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments -

(i) Are constructed in accordance with FAR 32.206(c) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR Parts 2 and 12;

(ii) Are in conformance with the requirements of FAR 32.504(g); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if-

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.

(7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.

(8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in FAR 32.113. The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.

(k) *Limitations on undefinitized contract actions.* Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(l) *Due date.* The designated payment office will make progress payments on the [Contracting Officer insert date as prescribed by agency head; if not prescribed, insert "30th"] day after the designated billing office receives a proper progress payment request. In the event that the Government requires an audit or other review of a specific progress payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. Progress payments are considered contract financing and are not subject to the interest penalty provisions of the Prompt Payment Act.

(m) *Progress payments under indefinite-delivery contracts.* The Contractor shall account for and submit progress payment requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.

(End of clause)

**67 52.232-18 Availability of Funds. (APR 1984)**

**68 52.232-23 Assignment of Claims. (MAY 2014)**

**69 52.232-33 Payment by Electronic Funds Transfer - System for Award Management. (JUL 2013)**

**70 52.233-4 Applicable Law for Breach of Contract Claim. (OCT 2004)**

**71 52.236-1 Performance of Work by the Contractor. (SEP 2006)**

The Contractor shall perform on the site, and with its own organization, work equivalent to at least twelve percent (12%) of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

(End of clause)

**71 52.236-2 Differing Site Conditions. (APR 1984)**

**72 52.236-3 Site Investigation and Conditions Affecting the Work. (APR 1984)**

**73 52.236-4 Physical Data. (APR 1984)**

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(End of clause)

**74 52.236-5 Material and Workmanship. (APR 1984)**

**75 52.236-7 Permits and Responsibilities. (NOV 1991)**

**76 52.236-8 Other Contracts. (APR 1984)**

**77 52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements. (APR 1984)**

**78 52.236-10 Operations and Storage Areas. (APR 1984)**

**79 52.236-11 Use and Possession Prior to Completion. (APR 1984)**

**80 52.236-12 Cleaning Up. (APR 1984)**

**81 52.236-13 Accident Prevention. (NOV 1991)**

**82 52.236-14 Availability and Use of Utility Services. (APR 1984)**

**83 52.236-15 Schedules for Construction Contracts. (APR 1984)**

**84 52.236-17 Layout of Work. (APR 1984)**

**85 52.236-21 Specifications and Drawings for Construction. (FEB 1997) - Alternate I (APR 1984)**

**86 52.236-26 Preconstruction Conference. (FEB 1995)**

**86.1 52.237-2 Protection of Government Buildings, Equipment, and Vegetation. (APR 1984)**

**87 52.242-13 Bankruptcy. (JUL 1995)**

**88 52.242-14 Suspension of Work. (APR 1984)**

**89 52.243-1 Changes - Fixed-Price. (AUG 1987)**

**89.1 52.243-4 Changes. (JUN 2007)**

**90 52.243-5 Changes and Changed Conditions. (APR 1984)**

**91 52.244-6 Subcontracts for Commercial Items. (AUG 2009)**

(a) Definitions. As used in this clause--

"Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5), if the

subcontract is funded under the Recovery Act.(iii) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iv) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).

(v) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212(a)).

(vi) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(vii) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201), if flow down is required in accordance with paragraph (g) of FAR clause 52.222-39).

(viii) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

(ix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

**92 52.245-1 Government Property. (APR 2012)**

**93 52.245-9 Use and Charges. (APR 2012)**

**94 52.246-13 Inspection - Dismantling, Demolition, or Removal of Improvements. (AUG 1996)**

**95 52.246-20 Warranty of Services. (MAY 2001)**

(a) *Definition.*

"Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

(b) Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor [*Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., "within 30 days from the date of acceptance by the Government,"; within 1000 hours of use by the Government;" or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or period of time*]. This notice shall state either-

(1) That the Contractor shall correct or reperform any defective or nonconforming services; or

(2) That the Government does not require correction or reperformance.

(c) If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby, or make an equitable adjustment in the contract price.

(d) If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

(End of clause)

**95.1 52.246-25 Limitation of Liability - Services. (FEB 1997)**

**95.2 52.247-1 Commercial Bill of Lading Notations. (FEB 2006)**

When the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be:

Transportation is for the [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.



(b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

Transportation is for the [*name the specific agency*] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No.[]. This may be confirmed by contacting [*Name and address of the contract administration office listed in the contract*].

(End of clause)

**96 52.248-3 Value Engineering - Construction. (OCT 2010)**

**97 52.249-2 Termination for Convenience of the Government (Fixed-Price). (APR 2012) - Alternate I (SEP 1996)**

**98 52.249-8 Default (Fixed-Price Supply and Service). (APR 1984)**

**98.1 52.249-10 Default (Fixed-Price Construction). (APR 1984) - Alternate I (APR 1984)**

**99 52.252-2 Clauses Incorporated by Reference. (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): <https://www.acquisition.gov/far/>

(End of clause)

**100 52.253-1 Computer Generated Forms. (JAN 1991)**

**101 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.

#### **102 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.

#### **103 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 GSA 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.

#### **104 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.

**105 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 his 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 or 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 him 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.

#### **106 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 Smithsonian Institution.

(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 Smithsonian Institution 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 Smithsonian Institution's requirements for asbestos abatement work and handling asbestos-containing materials.

#### **106.1 52.227-S0007 Rights-in-Data**

As used herein, the term "Subject Data" includes, but is not limited to, literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works, as each of those terms are used and defined by the Copyright Act of the United States (17 U.S.C. 101, et. seq.) (the "Copyright Act") and works of any similar nature (whether or not copyrighted) which are

included in the material to be delivered under this contract.

(a) **Work for Hire.** All Subject Data first produced, composed, or created in the performance of this contract, where such Subject Data consists of a work (i) specially ordered or commissioned for use as a contribution to a collective work; (ii) as part of a motion picture or other audiovisual work; (iii) as a translation; (iv) as a supplementary work; (v) as a compilation; (vi) as an instructional text; (vii) as a test; (viii) as answer material for a test; or (ix) as an atlas, as each of the those terms are used and defined by the Copyright Act, shall be considered a "work made-for-hire," as that term is defined under the Copyright Act. The copyright to such Subject Data shall be the exclusive property of Smithsonian and may be registered by the Smithsonian Institution in its own name.

(b) **Other Copyrightable Works.** All Subject Data first produced in the performance of this contract, where such Subject Data consists of copyrightable materials that do not fall within the enumerated categories for work for hire, shall become the property of Smithsonian. Contractor hereby transfers to Smithsonian full legal title and all right, title and interest in the copyright to all such Subject Data including, without limitation, all preliminary renditions of the Subject Data whether or not such renditions are actually delivered to Smithsonian. The copyright to such Subject Data shall be the exclusive property of Smithsonian and may be registered by the Smithsonian Institution in its own name.

(c) Except as expressly specified herein, no Subject Data first produced in the performance of this Agreement may be published or reproduced by Contractor in whole or in part, in any manner or form, without Smithsonian's prior written consent. Contractor agrees that no right at common law or in equity shall be asserted, and no claim to copyright by statute shall be established by Contractor in any Subject Data without Smithsonian's prior written consent. Contractor shall secure Smithsonian's legal title and interests in and to all Subject Data this is produced for Contractor by third parties pursuant to this Agreement.

(d) **License for Other Subject Data.** Excluding the Subject Data which Smithsonian owns or has already obtained a license for, Contractor hereby grants to Smithsonian a royalty-free, non-exclusive, perpetual and irrevocable license in all copyrighted or copyrightable Subject Data not first produced, composed, or created in the performance of this Agreement, but which is incorporated in the material furnished under this Agreement. Such license includes, without limitation, the rights to reproduce, publish, translate, broadcast, transmit, distribute, exploit, display, use, sell, and/or dispose of such Subject Data in any manner, and to authorize others to do so. In the event that Contractor does not have the right to grant such a license with respect to any such Subject Data, Contractor shall immediately notify the Smithsonian of this fact and obtain Smithsonian's prior, written permission to incorporate such Subject Data in the Work. Without this notification, Smithsonian will be acting in reliance on this contract and will presume that it possesses all necessary rights and is free to make whatever use of the Subject Data that Smithsonian determines is in its best interests.

(e) The Contractor hereby warrants that the Subject Data delivered to Smithsonian pursuant to this contract does not infringe statutory copyrights or common law literary rights of Contractor or others and contains no matter that is libelous or otherwise unlawful. Contractor agrees to indemnify the Smithsonian Institution, its Board of Regents, officers, agents, and employees against any liability, including costs and expenses (i) for violations of copyright or any other property rights arising out of the use, reproduction, or disposition of any Subject Data furnished under this contract; or (ii) based upon any libelous or other unlawful matter contained in said Subject Data.

(f) Contractor agrees to report in writing to the Smithsonian Office of General Counsel, promptly and in reasonable detail, any notice of claims of copyright infringement received by Contractor with respect to any Subject Data or other material delivered under this contract.

**107 52.228-S0014 Bid Guarantee and Bonds (Jun 2000)**

A bid guarantee is required in the amount of twenty (20) percent of the bid/offer price or \$3,000,000.00, whichever is less, as provided in Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair).

(a) The bidder shall furnish a performance bond in an amount equivalent to 100 percent of the contract price, and payment bond in an amount equivalent to 100 percent of the contract price.

(b) If bids on one or more alternate and/or unit price bids were accepted in awarding the contract, contract price as used above shall mean the aggregate of the lump sum amount plus the product of each unit price accepted multiplied by the applicable number of units specified in the bid form, plus or minus such alternate bids as were accepted.

(c) Performance and payment bonds shall be submitted within the time specified on the Standard Form 1442, Solicitation, Offer, and Award, for this contract.

(d) The bidder shall not lose the right to receive any payment due or to become due under the contract unless and until the surety has made payment in settlement of claims by suppliers of labor or material in accordance with the requirements of the surety's undertaking under the payment or performance bond and has notified the Contracting Officer of the claims and amount so paid.

**109 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 \$2 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 Smithsonian 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 Smithsonian, if requested. The insurance companies providing the above coverage shall be satisfactory to the Smithsonian Institution. Notice of policy changes will be furnished to the Contracting Officer.

#### **111 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 Smithsonian Institution, the Smithsonian Institution'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.

### **112 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, SI Contractor's Liability Insurance, and Clause 52.247-S0016, SI Contractor's Property Insurance, are supplemented to provide that the general liability and property insurance policies shall name "the Smithsonian Institution," as an additional insured with respect to operations performed under this contract.

### **112.1 52.228-S0101 Specific Insurance Requirements - SERVICES**

(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 Smithsonian Institution, 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 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 to the Commercial General Liability.

(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: \$1,000,000.00 (One Million Dollars).

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

(f) 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.

(g) 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 nor from other obligations under this contract.

(h) 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 Smithsonian) for damage to property, personal injury, or death caused by the negligent act or failure to act of a Smithsonian Institution employee in the course of his or her employment.

#### **113 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 Smithsonian Institution will cooperate with the Contractor in his application for such tax exempt certificates.

#### **114 52.232-S0005 Interest on Payments**

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 30 days from receipt of an approved proper invoice(s) by the COTR.

#### **115 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 he 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.

**116 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 this 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.

**117 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.

**118 52.233-S0006 Disputes**

(a) Smithsonian Institution 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 Smithsonian Institution. 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 Smithsonian Institution 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 Smithsonian Institution 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 Smithsonian Institution. 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 Smithsonian Institution 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.

**119 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.

**120 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 Smithsonian Institution 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 in 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: To be inserted at time of contract. 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 Smithsonian Institution 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 Smithsonian Institution 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.

#### **121 52.236-S0022 Ownership and Use of Documents (Jun 2000)**

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

#### **122 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.

#### **123 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.

**124 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.

#### **125 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.

#### **126 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.

#### **127 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.

#### **128 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, which 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.

**129 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 his 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) In 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 interfere caused or alleged to have been so caused by the Contractor, the S.I. shall notify the Contractor, who shall defend 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.

### **130 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 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 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.

### **131 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.

### **132 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.

### **133 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 Smithsonian 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.

#### **134 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).

#### **135 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.

### **136 52.245-S0071 Responsibility for Smithsonian Property**

The Contractor assumes full responsibility for and shall indemnify the Smithsonian for any and all loss of damage of whatsoever kind and nature to any and all Smithsonian 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.

### **137 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.

### **138 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.

**139 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.

**140 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.

**141 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 Smithsonian Institution, 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 Smithsonian Institution in the construction of the Project(s) including, but not limited to, damages, costs and expenses resulting from claims brought against the Smithsonian Institution 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 Smithsonian shall not waive any of the rights of the Smithsonian or release the Contractor from any liability, responsibility or duty contained herein.

**142 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.

## Section J - List of Documents, Exhibits and Other Attachments

### J. SI-0089 List of Attachments

The following attachments are incorporated herein as an original part of this Solicitation and resulting contract:

**(Attachments A through K and O are available electronically in pdf format. Attachments L, M, and N (the Bid Schedules) are available as Excel spreadsheets. For access to these files, please email dempseyt@si.edu using “SI RFP T16SOL10027, Attachments A through O” in the subject line.)**

J.1. Attachment A (Package 1 – Landmark Concourse 100% Gallery and Construction Drawings/OFEQ Project No. 1403110 dated 3/4/15; 34 sheets)

J.2. Attachment B (Package 2 – Landmark Concourse 100% Lists and Specifications/OFEQ Project No. 1403110 dated 2/5/15; 129 pages)

J.3. Attachment C (Landmark Concourse Exhibit 95% Design Submission/OFEQ Project No. 1403110 dated September 2015; 31 pages)

J.4. Attachment D (Package 1 – American Democracy 100% Gallery and Construction Drawings/OFEQ Project No. 1403108 dated 3/4/13; 110 sheets)

J.5. Attachment E (Package 2 – American Democracy 100% Lists and Specifications/OFEQ Project No. 1403108 dated 2/10/13; 470 pages)

J.6. Attachment F (American Democracy 95% Design Submission/OFEQ Project No. 1403108 dated 12/1/13; 81 pages)

J.7. Attachment G (Package 1 - Many Voices, One Nation Gallery 65% Design Submission/OFEQ Project No. 1403109 dated December 2015; 96 sheets)

J.8. Attachment H (Package 2 – Many Voices, One Nation Case 65% Gallery and Construction Drawings/OFEQ Project No. 1403109 dated 3/15/16; 70 sheets)

***To avoid confusion, there is no Attachment “EYE”***

J.9. Attachment J (Package 3 – Many Voices, One Nation Case 65% Lists and Specifications/OFEQ Project No. 1403109 dated 3/15/16, 351 pages)

J.10. Attachment K General Exhibit Specifications for Base Bid and Unpriced Options dated 3/11/15

J.11. Attachment L Exhibit Bid Schedule for the **Landmark Concourse** (to be completed and submitted with Cost Proposal)

J.12. Attachment M Exhibit Bid Schedule for **American Democracy: A Great Leap of Faith** (to be completed and submitted with Cost Proposal)

J.13. Attachment N Exhibit Bid Schedule for the **Many Voices, One Nation** (to be completed

and submitted with Cost Proposal)

J.14. Attachment O (Liberty Square Concept Design Synopsis—a descriptive paragraph, a list of elements, and a floorplan with CAD sketch views)

J.15. Certificate of Insurance (to be supplied by successful Contractor upon notification of award)

J.16. Pursuant to 52.222.49, above, the applicable Service Contract Act Wage determination shall become a part of the resulting contract and will be attached hereto.

\* Pursuant to FAR Clause 52.222-49, to the extent that the Service Contract Act (SCA) applies to this Contract, the Contractor shall apply the most recent SCA wage determination for all its employees covered by the SCA. You may obtain the most recent wage determination for your employees' geographical location through the Department of Labor at the following website <http://www.wdol.gov/sca.aspx#0>.

J.17. As applicable to Fabrication Services, Davis Bacon Wage Determination, General Decision Number: DC160002 02/19/2016, Construction Type: Building, Washington, DC

**Any modification to Davis Bacon Wage Determination, General Decisions referenced above Issued following the opening date of this Request for Proposal. It is incumbent upon the Contractor to obtain and apply any modification to the General Wage Determination above to their proposal prior to submission on or before the deadline outlined in Section L. Should any modification to the general wage determination attached alter the Contractor's proposal following submission but before award, the Contractor shall submit an amended proposal. Wage determinations may be obtained from the following web site: <http://www.access.gpo.gov/davisbacon/allstates.html> or by calling Thomas Dempsey (202) 633-7259.**

J.18. SF 25, Performance Bond, (to be supplied by the successful Contractor upon award)

J.19. SF 25A, Payment Bond (to be supplied by the successful Contractor upon award)

J.20. Registration in SAM: <http://sam.gov>. (This need not be completed prior to submission of bid, however, no contract can be executed with a vendor who is not registered in SAM).

J.21. Contractor's Proposal (to be added at time of contract); and

J.22. Release of Claims, OCon Form R-1(available upon request);

**(End of Section)**

## **Section K - Representations, Certifications, and Other Statements of Bidders**

K.1 Representations and Certifications. The Contractor certifies that they have completed the annual SAM representations and certifications electronically as described in Section J above. After reviewing the SAM database information, the Contractor verifies by execution of this Contract that the representations and certifications currently posted electronically have been entered or updated within the last 12 months, are current, accurate, and complete as of the date of this Contract and are incorporated herein by reference. The certification regarding previous crimes, debarments, suspensions, and defaults contained in Contractor's SAM is a material representation of fact upon which the Smithsonian relies when making award. If it is later determined that the certification was erroneous, in addition to other remedies available to the Smithsonian, the Smithsonian reserves the right to terminate this Contract for default.

**Section L - Instructions, Conditions, and Notices to Bidders**

**L.1 52.204-6 Data Universal Numbering System (DUNS) Number. (APR 2008)**

**L.2 52.207-1 Notice of Standard Competition. (MAY 2006)**

**L.3 52.211-6 Brand Name or Equal. (AUG 1999)**

**L.4 52.215-1 Instructions to Offerors - Competitive Acquisition. (JAN 2004)**

**L.5 52.216-1 Type of Contract. (APR 1984)**

The Government contemplates award of a Firm Fixed Price Contract resulting from this solicitation.

(End of provision)

**L.6 52.219-24 Small Disadvantaged Business Participation Program - Targets. (OCT 2000)**

**L.7 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

23%

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 New York City Metropolitan Area

(End of provision)

**L.8 52.225-12 Notice of Buy American Act Requirement - Construction Materials under Trade Agreements. (FEB 2009)**

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "construction material," "designated country construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act--Construction Materials Under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers. (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested--

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

**L.10 52.236-27 Site Visit (Construction). (FEB 1995) - Alternate I (FEB 1995)**

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed. See Site visit instructions below.

**L.9 52.252-1 Solicitation Provisions Incorporated by Reference. (FEB 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer.

(End of provision)

**L.11 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:

\_23% a minimum of the planned subcontracting dollars to be placed with small business concerns. (The following are subsets of the small business goal):

\_5%\_ a minimum of the planned subcontracting dollars to be placed with small disadvantaged small business concerns to include: HBCU/MI's, and

3% a minimum of the planned subcontracting dollars to be placed with veteran owned, service-disabled small business concerns:

\_3%\_ a minimum of the planned subcontracting dollars to be placed with HUBZone small business concerns:

\_5%\_ a minimum of the planned subcontracting dollars to be placed with women-owned small business concerns.

**L.12 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 Smithsonian Institution  
Office of Contracting  
PO Box 37012, MRC1200  
Washington, DC 20013-7012



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

**L.13 Instructions:**

**L.13.1** The purpose of this Request for Proposal (RFP), Solicitation No. T16SOL10027, is to provide interested Offerors with sufficient information to enable them to prepare and submit offers for consideration by the Smithsonian Institution.

**L.13.2** In Order to be considered responsive, Offerors are to respond to the solicitation as written. Offerors who desire to submit alternate proposals for consideration should identify such proposals and clearly mark them "Alternate Offer."

**L.13.3** By not later than 3:00PM EST, June 6, 2016, Offerors are to submit proposals in one of the manners below:

**1. Hard Copies:**

**One (1) original and two (2) copies of Cost Proposal, one (1) original and two (2) copies of Subcontracting Plan (if necessary) and one (1) original and seven (7) copies of Technical Proposals to the following:**

By US Postal Service:  
Smithsonian Institution  
Office of Contracting and  
and  
Personal Property Management  
Management  
PO Box 37012, MRC 1200  
Washington, DC 20012-7012  
Attn.: Thomas Dempsey  
Dempsey

By Private Carrier:  
Smithsonian Institution  
Office of Contracting  
  
Personal Property  
  
2011 Crystal Drive, Suite 350  
Arlington, VA 22202-3709  
Attn.: Thomas

**NOTE: OFFERS SHOULD BE HAND CARRIED OR SENT BY PRIVATE CARRIER IN ORDER TO REACH THE OFFICE OF CONTRACTING IN CRYSTAL CITY, ARLINGTON, VA BY THE CLOSING DATE AND TIME. OFFERS SENT BY US POSTAL SERVICE ARE GENERALLY DELAYED AS MAIL IS ROUTED TO THE IRRADIATION CENTER FOR PROCESSING. THE CRYSTAL CITY ADDRESS SHOWN DOES NOT RECEIVE MAIL THROUGH THE USPS.**

**2. Electronic Copies:**

**One (1) electronic copy of each: Cost Proposal, Subcontracting Plan (if necessary) and Technical proposal to [dempseyt@si.edu](mailto:dempseyt@si.edu).**

**NOTE: THE E-MAIL SITE PROVIDED IS NOT SECURED. THEREFORE, SI CANNOT GUARATNEE THE SECURITY OF DOCUMENTS PROVIDED ELECTRONICALLY. SHOULD THIS BE A CONCERN, OFFERORS SHOULD USE METHOD 1 ABOVE.**

**Proposals will be privately opened.**

**L.13.5** The Smithsonian Institution reserves the right, in accordance with the regulations governing this solicitation, to reject offers which are not received at the time on the date specified.

**L.13.6. Inquiries or** technical clarifications must be submitted in writing, by e-mail to [dempseyt@si.edu](mailto:dempseyt@si.edu) not later than April 29, 2016. As questions must be reviewed by technical personnel, no guarantee is given that responses to requests for clarification received after the above date will be made available.

**L.13.7 Site Visit**

**A site visit will be conducted on April 14, 2016. Please e-mail Dempseyt@si.edu by April 7, 2016 if you intend to participate. Instructions will only be provided to those who indicate their intent to participate in the Site visit.**

Failure to visit the site will not constitute a basis for a claim for change in or differing site conditions, when visiting the site would have provided the Offeror an opportunity to compare the physical site against the drawings and specifications.

**L.13.8.** Offerors shall provide a written statement to the effect that they take no exceptions to this solicitation inasmuch as all sections, terms and conditions of this solicitation and any amendments thereto shall become part of an awarded contract.

**L.14. Notices to Offerors:**

**L.14.1.** Offers submitted for consideration should be prepared in accordance with instructions contained in Section L. Offers that deviate from these instructions may be deemed non-responsive and may be disqualified at the discretion of the Smithsonian Institution.

**L.14.2.** The Smithsonian Institution reserves the right to enter into negotiations with any, all or none of the Offerors who submit proposals.

**L.14.3.** The Smithsonian Institution reserves the right to cancel this solicitation without prior notice.

**L.14.4.** This request does not commit the Smithsonian Institution to pay any preparation costs nor to make reimbursements for any costs associated with a response to this solicitation.

**L.14.5.** Any costs incurred for materials, professional evaluation fees or otherwise expenditures made in anticipation of an award are solely the responsibility of the Offeror.

**L.14.6.** Any and all information, drawings, photographs, or materials submitted with a proposal from the Offeror for consideration by the Smithsonian Institution become the property of the Smithsonian and shall not be returned.

**L.14.7.** Significant questions pertaining to this solicitation **MUST** be submitted in writing. Strictly administrative questions, i.e., mailing office, phone numbers, persons to contact, etc., will be entertained by telephone, e-mail or facsimile.

**L.14.8.** The Smithsonian Institution anticipates awarding a firm fixed-price construction contract as a result of this solicitation, but reserves the right to award the type of contract considered most appropriate.

**L.14.10.** It is the intent of the Smithsonian Institution to procure the services designated in this RFP; however, Offerors should be aware that the Smithsonian Institution reserves the right to increase or decrease quantities as it deems necessary. Proposals should be submitted in direct response to those services required in the RFP and not reflect any anticipation of increases or decreases in quantities.

**L.14.11.** Offerors are required to submit complete pricing technical proposals which are fully and clearly acceptable without additional explanation or information since the Smithsonian Institution may make final determination as to whether an offer is acceptable or unacceptable solely on the basis of the offer as submitted.

**L.14.12.** The Smithsonian Institution may reject any or all offers received in response to this RFP.

**L.14.13.** Any offer considered unbalanced may be considered non-responsive. An offer is unbalanced when items are understated in one area and overstated in another.

**L.14.14.** The Smithsonian Institution will deem offers that exhibit an unsupportable price or technical approach to be inherently lacking in the ability of the Offeror to comprehend the complexity and risk of the contract requirements and may reject such an offer.

**L.14.15.** Requests for clarifications that are deemed by the Contracting Officer to be necessary for completion of proposals by all Offerors shall be amended to the solicitation and a determination will be made as to whether such clarifications warrant an extension of the offer due date.

**L.14.16.** Requests for clarification that contain proprietary information from a Offeror should be so noted and such information identified.

**L.14.17.** Inability of the Smithsonian Institution to reach the Offeror's point of contact, during the verification process from the information provided, may affect the decision on making award.

**L.15. Conditions:**

**L.15.1.** Offerors shall include all charges for the items as listed in the statement of work (Section C.), special contract requirements (Section H.) and other sections of the RFP having an impact on price.

**L.15.2.** Indicate in your response if the company is able to start and complete this project in accordance with the time schedule as stated in the contract specifications. Indicate if the time allowed by the Smithsonian is reasonable or if you would take any exceptions.

**L.15.3. Offerors are hereby notified that any and/or all parts of this solicitation and any and/or all information provided in response to the RFP and/or amendments made thereto may become a part of an awarded contract either in full text or by reference.**

**L.16. Offerors shall provide information as outlined in the following three separately bound volumes (Technical Proposal, Subcontracting Plan and Cost Proposal):**

**L.16.1 TECHNICAL PROPOSAL**

The Technical Proposal shall be directly responsive to the Statement of Work and as described in the drawings and specifications and all amendments thereto attached here to and detailed in section J.. THERE SHALL BE NO REFERENCE TO COST AS IT CONCERNS THE IMMEDIATE REQUIREMENT IN THE TECHNICAL PROPOSAL.

**I. Plan of Accomplishment**

Provide a narrative plan of accomplishment that addresses all aspects of the required services and includes a detailed description of how the work will be completed within the applicable time frame. Include project management procedures, communication strategies, quality controls, storage and shipment/delivery plans, coordination of work, coordination within the Contractor's shop and on-site during installation. Describe in detail how the Offeror shall handle Smithsonian change order requests. Provide a time scaled CPM or other project management chart that highlights all required activities. Address how Offeror will manage having a physical presence in the Washington, DC area.

**II. Firm's Experience and Past Performance**

Include three projects of similar size and diversity where the Offeror was the Prime Contractor. Referenced projects should be less than five years old. For each project, provide information concerning overall project size, scope, cost and schedule. Also, provide a point of contact for reference. The Smithsonian Institution will verify past performance.

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

**III. 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 and indicate how they would fit into the organizational structure. List prior projects where the Offeror and subcontractors have worked together.

**L.16.2. SUBCONTRACTING PLAN**

Subcontracting Plan, if necessary, per above-paragraph **11 52.219-S0097**

### **L.16.3 COST PROPOSAL**

**A.** In addition to the required bid sheets listed in section B and attached at J.11-13, Offerors must detail all elements that format the firm fixed price for the project described in the attached drawings, specification, and Scope of Work in this RFP F14SOL10018. Delineate pricing by categories including but not limited to labor, materials, travel, shipping, storage, travel and provide adequate supporting information

**(End of Section)**

## **Section M - Evaluation Factors for Award**

### **M.1 52.215-S0095 Basis of Award (Jun 2009)**

The Smithsonian intends to make one award. The Smithsonian will determine which Offeror can best accomplish the requirements set forth in this solicitation. In making this determination, the Smithsonian 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 Smithsonian, 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.

### **M.2. EVALUATION CRITERIA**

Proposals will be evaluated against the following technical factors that are listed in descending order of importance:

#### **Technical Proposal**

1. Plan of Accomplishment and Contract Time
2. Key Personnel and Subcontractors
3. Firm's Experience and Past performance

**M.3.** All evaluation factors other than cost, when combined, are granted more weight than cost.

**M.4.** 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 Smithsonian Institution

**M.5.** 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.

Cost: The Offeror shall submit pricing information as required in Section B of this RFP. Evaluation of Cost will not necessarily be made on an aggregate of all cost factors presented in each proposal. Rather, the Smithsonian reserves the right to evaluate the costs of the proposal based on the Base Bid alone and/or individual elements priced by the offerors.

**M.6** 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).

- M.7.** The Smithsonian 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 Smithsonian 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.
- M.8.** 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. Therefore, proposals should be submitted initially on the most favorable terms that Offeror can submit to the Smithsonian Institution. Contractors should not assume that they will be contacted or afforded an opportunity to clarify, discuss, or revise their proposal.

**M.9.** Complete Information

Failure to furnish complete information requested in the RFP may cause Offeror to be judged non-responsive and immediately be removed from further consideration.