

# HISTORIC ST. MARY'S CITY

A MUSEUM OF HISTORY & ARCHAEOLOGY AT  
MARYLAND'S FIRST CAPITAL

## RFP Chapel Interior

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### Attachments

Conceptual drawings/photos  
Bid -Proposal affidavit and Bidders reference sheet  
Cert. Regarding investments in Iran

<b>Historic St. Mary's City Commission(HSMC)</b> <b>SOLICITATION,OFFER, AND AWARD</b> (Construction, Alteration, or Repair)	1. SOLICITATION NO.	2.TYPE OF SOLICITATION  Request for Proposal (RFP)	3.DATE ISSUED	4. PAGE <u>1</u> OF <u>1</u> PAGES
<b>IMPORTANT-The ``Offer'' section must be fully completed by offeror.</b>				
5.CONTRACT NO	6. REQUISITION/PURCHASE REQUEST NO.	7.CONTRACT AWARD DATE	8. TITLE  Chapel Interior	
9. ISSUED BY  Historic St. Mary's City Commission PO Box39 St. Mary's City, MD 20686-0039		10A. ADDRESS OFFER TO  Historic St. Mary's City Commission PO Box 39 St. Mary's City, MD 20686-0039		
10B. NAME  Douglas Hunter	10C.  douglash@digshistory.org	11C. TELEPHONE      240-895-4970  10E. FAX                240-895-4968		
<b>SOLICITATION</b>				
NOTE: In sealed bid solicitations ``offer'' and ``offeror'' mean ``bid'' and ``bidder.''				
11.HISTORIC ST. MARY'S CITY REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS:  Solicitation, Offer and Award Form, The Schedule, Statement of Work, Specifications, Supplementary Conditions, and the HSMC General Conditions.				
12.The Contractor shall begin and end performance within (120) calendar days from date of award of contract				
13a. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS(For bids over \$100,000.00) (If ``YES'' , indicate within how many calendar days after award in item 13b.)  <input checked="" type="checkbox"/> X      Yes <input type="checkbox"/> No			13b. CALENDAR DAYS  10	
14. ADDITIONAL SOLICITATION REQUIREMENTS: a. Offers in original and one(1) copy to perform the work required are due at the place specified in item 10A by <u>4pm local time January 6, 2021</u> . Sealed envelopes containing offers shall be marked to show offerors name and address ,the solicitation number, and the date and time offers are due b. An Offer guarantee is required for any bid over \$100,00.00 c. All offers are subject to the (1) work requirement, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference. d. Offers providing less than 120 calendar days for HSMC acceptance after the date the offers are due will not be considered and will be rejected.				
<b>OFFER SECTION(Must be fully completed by offeror)</b>				
15. In compliance with the above, the undersigned agrees, if this offer is accepted within _____calendar days.(120) calendar days unless a different period is inserted by the offeror)from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item , delivered at the designated point(s) , within the time specified in the schedule.				
16.DISCOUNT FOR PROMPT PAYMENT	10 CALENDAR DAYS	20 CALENDAR DAYS	30 CALENDAR DAYS	_____ CALENDAR DAYS
17.ACKNOWLEDGEMENT OF AMENDMENTS(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated)	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

HSMC  
Solicitation Conditions

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## **SOLICITATION CONDITIONS**

### **1. SOLICITATION**

This solicitation is being requested by the HSMC for certain commodities or services, the purchase of which shall be by written contract.

.1 If a vendor objects to any of the terms and conditions of this Solicitation, the vendor must identify and explain its objections in its bid. The HSMC reserves the right to reject as non-responsive any bid that objects to any of the terms and conditions of this Solicitation.

.2 This procurement is subject to the HSMC Procurement Policies in effect on the date of issue of the solicitation or the date of execution of the contract and/or purchase order. Those policies and procedures are available on line at [www.HSMC.edu](http://www.HSMC.edu)

### **2. TYPE OF CONTRACT**

The HSMC contemplates award of a firm fixed-price construction contract for the services described in this solicitation.

### **3. PRE-PROPOSAL CONFERENCE/SITE VISIT**

All bidders are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

**A Site-visit and pre-bid conference will be conducted at**

**December 10,2020 at 10am**

**At the chapel at Historic St.Mary's City – Parking along Rt. 5 permitted**

### **4. HSMC COST ESTIMATE**

The HSMC estimates the cost of this project at between  
*No cost estimate has been determined .*

### **5. MINORITY BUSINESS PARTICIPATION**

#### **.1 PURPOSE**

Contractor shall structure its procedures for the performance of the work required in this contract to attempt to achieve the minority business enterprise (MBE) goal stated in the solicitation. MBE performance must be in accordance with this article, as authorized by Code of Maryland Regulations (COMAR) 21.11.03. Contractor agrees to exercise all good faith efforts to carry out its requirements set forth in this Attachment.



### MBE Goals and Sub Goals

- C) An MBE subcontract participation goal of 00 percent of the total contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the bidder or

offeror agrees that this percentage of the total dollar amount of the contract will be performed by certified minority business enterprises.

Bidders must provide the MBE forms as outlined in Article 2 of the Supplementary Conditions.

### 6. SURETY BOND ASSISTANCE PROGRAM

Small businesses may qualify for assistance in obtaining bid, performance and payment bonds through the Maryland Small Business Development Financing Authority (MSBDFA). MSBDFA can directly issue bid, performance or payment bonds up to \$5 million. MSBDFA may also guarantee up to 90% of a surety's losses resulting, from a contractor's breach of a bid, performance or payment bond or \$1,350,000, whichever is less. Bonds issued directly by the MSBDFA Surety Bond Program (Program) will remain in effect for the term of the contract. Bond guarantees will remain in effect for the term of the bond.

To be eligible for bonding assistance, an applicant must:

- .1 Have its principal place of business in Maryland or be a Maryland resident;
- .2 First be denied bonding by at least one surety in both the standard and specialty markets within 90 days of submitting a bonding application to MSBDFA;
- .3 Employ fewer than 500 full-time employees or have gross sales of less than \$50 million annually;
- .4 Not subcontract more than 75 percent of the work;
- .5 Have good moral character and a history of financial responsibility;
- .6 Demonstrate that the contract will have a substantial economic impact;
- And
- .7 Never have defaulted on any loan or financial assistance made or guaranteed by MSBDFA.

Applicants are encouraged to apply for assistance under the Program through their respective bonding agents. Questions regarding the bonding assistance program should be referred to:

Maryland Small Business Development Financing Authority  
C/c Meridian Management Group, Inc.  
826 East Baltimore Street  
Baltimore, MD 21202  
Phone: (410) 333-2548  
Fax: (410) 333-2552  
Email: [mmgdeal@mmmegroup.com](mailto:mmgdeal@mmmegroup.com)

### 7. RESERVATION OF RIGHTS

This solicitation implies no obligation on the part of the HSMC. The HSMC reserves the right to increase or decrease the quantities of any commodities or services requested in the solicitation. The HSMC reserves the right to cancel this solicitation, in whole or in part, anytime before the opening of the bids, to accept or reject any and all bids in whole or in part received as a result of this solicitation, to not make an

award, to waive minor irregularities, or to negotiate with all responsible VENDORS in any manner necessary, in order to best serve the interests of the HSMC.

## 8. INTERPRETATIONS AND AMENDMENTS

.1 Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it writing no later than ten (10) calendar days prior to the date established for receipt of offers. Oral explanations or instructions given before the award of a contract will not be binding.

.2 Prospective offerors shall request the Contracting Officer, in writing, via FAX or e-mail for an interpretation or correction on any ambiguity, inconsistency, or error in the contract documents which they may discover or which should have been discovered by a reasonably prudent offeror. Such requests or objections to materials or methods of construction shown or specified shall be directed to the attention of the Contracting Officer at least ten (10) calendar days prior to the date specified for receipt of proposals. Written requests shall be transmitted via e-mail to Mr. Douglas Hunter, Procurement Officer at [douglash@digshistory.org](mailto:douglash@digshistory.org) or via facsimile to (240) 895-4916.

.3 Any interpretations or corrections, as well as any additional modifications the Contracting Officer may desire to include, will be in the form of amendments<sup>1</sup> in writing, which will be sent on the same date to all offerors if that information is necessary in submitting offers or if the lack of it would be prejudicial to other prospective offerors and shall become a part of any subsequent contract. The Contracting Officer reserves the right to answer only such questions as have, in his opinion, a definite bearing upon the proposals to be submitted.

.1 Offerors shall acknowledge the receipt of all amendments to the solicitation by:

- .1 Signing and returning the amendment, or;
- .2 Identifying the amendment number and date in the space projected for this purpose on the "Solicitation, Offer and Award Form", or;
- .3 Letter or telegram, email; or
- .4 Facsimile, if facsimile offers are authorized in the solicitation.

.2 The HSMC must receive the acknowledgment by the time and at the place specified for receipt of offers.

.4 Requests for oral interpretations or any other interpretations not made by amendments will not be accepted, and any information that may possibly be gained by the offerors in that manner is gratuitous and not binding.

.5 If this solicitation is amended, all terms and conditions that are not amended remain unchanged.

(End of Provision)

## 9. GENERAL INFORMATION

.1 Bidders are expected to examine the entire solicitation and all instructions. Failure to do so will be at the bidder's risk. Each bidder shall furnish the information required by the solicitation. The bidder will be held responsible for full knowledge of all information contained therein.

.2 Bidders shall be individuals, partnerships, or corporations who are regularly engaged in the business covered by these specifications and who have established a satisfactory record in the past for performance of contracts of similar character and extent, and who maintain a regular force of workmen

skilled in the performance of the work the bidder undertakes to perform upon submission of his bid. Bidders shall be qualified, competent and amply able to finance and perform the work in a proper and satisfactory manner.

#### 10. VENDOR'S TERMS AND CONDITIONS

Any proposed terms and conditions, including any form contracts which the Vendor proposes to use, shall be submitted by the solicitation due date as part of the bid.

#### 11. BID/PROPOSAL AFFIDAVIT

All Vendors must truthfully complete the Bid/Proposal Affidavit (Attachment No.3) form and submit it with the Bid. This Bid/Proposal Affidavit will be incorporated by reference into the Contract Affidavit which is an exhibit to the procurement contract. Herefore, it is the responsibility of the vendor to report to the HSMC any changes in the contract/bid affidavit information between the date it was submitted to the HSMC and the effective date of the contract.

#### 12. INVESTMENT ACTIVITIES IN IRAN ACT

.1 The Investment Activities in Iran Act states that any company that the Maryland Board of Public Works has found to engage in investment activities in Iran may not participate in procurements with a public body in the State. "Engaging in investment activities in Iran" means:

- Providing goods or services of at least \$20 million in the energy sector of Iran; or
- For financial institutions, extending credit of at least \$20 million to another person for at least 45 days if the person is on the Investment Activities in Iran list and will use the credit to provide goods or services in the energy of Iran.

A company listed on the Investment Activities in Iran list is ineligible to bid on, submit a proposal for, or renew a contract for goods and services with a State agency or any public body of the State. Also ineligible are any parent, successor, subunit, direct or indirect subsidiary of, or any entity under common ownership or control of, any listed company.

.2 Offeror's shall submit, with their proposal, the completed "Certification Regarding Investments in Iran" form (Attachment No. 5)

.3 A Company that cannot make the certification must supply the HSMC, under penalty of perjury, with a detailed written description of its investment activities in Iran.

#### 13. PUBLIC INFORMATION NOTICE

Bidders should give specific attention to the identification of those portions of their bid that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland. Contractors must clearly identify each and every section that is deemed to be confidential, proprietary or a trade secret (it is NOT sufficient to preface your proposal with a proprietary statement or to use a page header or footer that arbitrarily marks all pages as confidential). Any individual section of the proposal that is not labeled as confidential with an accompanying statement concerning the rationale for its claimed confidentiality shall be considered public information.



#### 14. SOLICITATION, OFFER AND AWARD FORM AND THE SCHEDULE

- .1 Fill in all blank spaces. Use "N/A" where the requested information is not applicable.
- .2 Do not alter or change any wording in Solicitation, Offer and Award form or The Schedule.
- .3 State all dollar amounts as requested on The Schedule form. In cases where The Schedule form calls for unit prices and extended totals, both dollar amounts must be completed. In cases where a discrepancy exists between the unit price and the extended total price due to mathematical errors, the unit price shall govern.
- .4 Bids shall be typewritten or written legibly in ink. All erasures or alterations shall be in ink and shall be initialed by the signer. All bids must contain a manual signature of an authorized representative in the spaces provided as follows:

- **As an Individual:** Sign with full name and address and social security number;
- **As a Partnership:** Bid Forms shall be signed by such member or members of the partnership as have authority to bind the partnership; provide also the complete legal name of partnership, the state in which the partnership was formed, the address of the partnership's principal office, partnerships' federal tax identification number, and name and address of partnership's resident agent in Maryland.
- **As a Corporation:** An officer of the corporation shall sign his/her full name, indicate his/her title and include the complete legal name of the corporation and address of the corporation's principal office. The corporate seal shall be affixed near the signature. Provide also the state in which the corporation was incorporated, the corporation's federal tax identification number, and the name and address of the corporation's resident agent in Maryland.

#### 15. SUBMISSION, MODIFICATION, REVISION AND WITHDRAWAL OF OFFERS

.1 Offers and offer modification shall be enclosed, in the quantities specified elsewhere in this solicitation, in sealed envelopes addressed to: Historic St. Mary's City Commission, Business Office, PO Box 39 St. Mary's City, MD 20686-0039, Attn: Mr. Douglas Hunter, Procurement Officer with the offeror's name, address and IFB number in the upper left hand corner.

Hand delivered offers are to be delivered to the Business Office located at the Administration building at 18559 Hogaboom lane St. Mary's City, MD 20686

**Note: Both UPS and FedEx will not guarantee overnight delivery to our location.**

.2 Offerors are responsible for submitting proposals and any modifications or revisions so as to reach the HSMC office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:00 p.m. local time, for the designated office on the date that the proposal or revision is due.

.3 Any proposal, modification or revision received at the HSMC office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered.

.4 At the sole discretion of the Procurement Officer, exceptions may be made only when the reason for the late bid, late request for withdrawal or late modification of a bid, is due to the action or inaction of the HSMC's personnel directing the procurement activity or their employees.

## 16. WITHDRAWAL OF BIDS

Vendors may modify or withdraw bids by submitting a written modification or withdrawal that is received prior to the time and date set for the bid opening. No withdrawal or modifications shall be accepted after the time for opening of bids.

## 17. FAILURE TO SUBMIT BID

Recipients of this solicitation not responding with a proposal should not return this solicitation, unless it specifies otherwise. Instead, they should advise the HSMC by letter, fax, postcard or email, whether they want to receive future solicitations for similar requirements. If a recipient does not submit a bid and does not notify the HSMC that future solicitations are desired, the recipient's name will be removed from the HSMC's applicable mailing list.

## 18. BID ACCEPTANCE PERIOD

In compliance with the solicitation, the bidder agrees, if this bid is accepted within one hundred-twenty (120) calendar days from the date specified in the solicitation for receipt of bids, to furnish any or all items upon which prices are bid at the price set opposite each item, delivered at the designated point(s), within the time specified in the contract specifications.

## 19. CONTRACTOR REFERENCES

Bidder shall provide five (5) references from jobs performed within the past three years which are similar in scope and size to this project. (See Attachment No.6).

## 20. AWARD - SEALED BIDDING

.1 The HSMC will evaluate bids in response to this solicitation and award a contract without discussions to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the HSMC considering only price and price-related factors specified elsewhere in the solicitation.

.2 The HSMC may –

- .1 Reject any or all bids;
- .2 Accept other than the lowest bid; and
- .3 Waive informalities or minor irregularities in bids received.

.3 The HSMC may accept any item or combination of items, unless the bidder qualifies the bid by specific limitations.

.4 The HSMC reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.

.5 A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the offer shall result in a binding contract without further action by either party.

.6 The HSMC may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or sub line items. A bid is materially unbalanced when it is based on prices

significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the HSMC even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

## 21. NOTIFICATION OF LOW BIDDER

Vendors may include a self-addressed stamped envelope with their bid and a copy of the bid tabulation sheet will be mailed back in the envelope or they may telephone the purchasing agent at 240-895-4970 and request a copy of the bid tabulation sheet be faxed or emailed to them.

(End of Solicitation Condition)

## STATEMENT OF WORK

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## 1. BACKGROUND

Historic St. Mary's City is a living history museum that sits on 850 acres along the banks of the St. Mary's river in St. Mary's County Maryland. It is Maryland's first capital established in 1634.

The mission of the Historic St. Mary's City Commission is to preserve and protect the archaeological and historical record of Maryland's first colonial capital and to appropriately develop and use this historic and scenic site for the education, enjoyment, and general benefit of the public. Historic St. Mary's City is a living history museum that sits on 850 acres along the banks of the St. Mary's river.

### **The 1660s Chapel at St. Mary's City**

The reconstructed brick chapel is located at 16721 Pt. Lookout Rd Historic St. Mary's City, MD. The First English Catholic Chapel in the New World (originally constructed around 1667)

The Chapel was built in Maryland by the Jesuits at a time that Catholics were persecuted. The Calvert's received a Charter to settle a Colony in the New World named Maryland. However, the Calvert's insisted that the Colony be open to both Catholic and Protestant worship, and the First Act of Religious Toleration in the New World was passed by the Maryland Assembly in 1649 to formalize that institution. This law provided freedom to worship in the New Colony. Lord Baltimore also initiated a policy of having no state church, a first effort at separation of church and state. These were revolutionary ideas for the time in England and were the first kernels of our traditional American freedom of religion today.

Physically, on the landscape at St. Mary's City, town planners designed the town to separate the Catholic Chapel and State House at opposite ends of the town. The State of Maryland reconstructed the State House in 1934, and the Historic St. Mary's City Foundation completed the Chapel in 2009.

This Chapel is the symbol of liberty of conscience and the separation of Church and State that became American traditions and law today.

Around the original Chapel site are buried the remains of hundreds of Maryland's earliest pioneers (1634-1720). Governor Leonard Calvert, the first Governor, is buried there. In archaeology investigations, we have discovered and disinterred 3 rare lead coffins in the original transept of the original Chapel, belonging to members of the Calvert family. Several other burials were also disinterred to avoid destroying them

during Chapel reconstruction.

The chapel is in the shape of a cross and its exterior dimensions were 54 feet long and 57 feet across at the transepts, with a nave 28 feet in width. It is 30 ft. high with large, leaded-glass windows. The existing foundation ruins are approximately 3 ft. wide all around the footprint of the building and extend about 5 ft. into the ground.

## 2. SCOPE AND DESCRIPTION OF WORK

The project consists of the following elements:

Historic St. Mary's City (HSMC) is requesting proposals to finish the interior components in the reconstructed chapel. This includes designing, fabricating and installing the communion rail, altar, tabernacle, pulpit and fabrication appropriate seating

Our Research Department has done the historical and architectural research on the Chapel interior over the past 20 years. The Contractor will work closely with our research department in the design process to most accurately reconstruct the 17<sup>th</sup> century chapel interior. Attached are some preliminary conceptual drawings that will be used as a reference for the designing of this project. The design will include scaled drawings for all the components with detailed shop drawings that will be used to fabricate each component for the project. Upon completion of the project the contractor will supply as-builts for all of the components that will become property of Historic Saint Mary's City Commission.

### **Key Items Needed to Complete the Reconstruction of**

**The Communion Rail:** This rail separates the chancel from the nave in the chapel and features a central gate for access to the altar. It served as the location where worshipers knelt to receive holy communion, and symbolically separate the sacred chancel from the public nave. The rail is composed of top and bottom boards and elegantly turned ballisters. The two part central gate closes to form a uniform rail during mass. The ballister design is based on period forms and surviving 17<sup>th</sup>-century examples in English churches. An extant 1660's rail from St. Ninians Church in Cumbria is shown in Figure 1.



Figure 1: Photograph of an original 1660s Altar Rail in St. Ninian's Church, Brougham, Cumbria, UK.

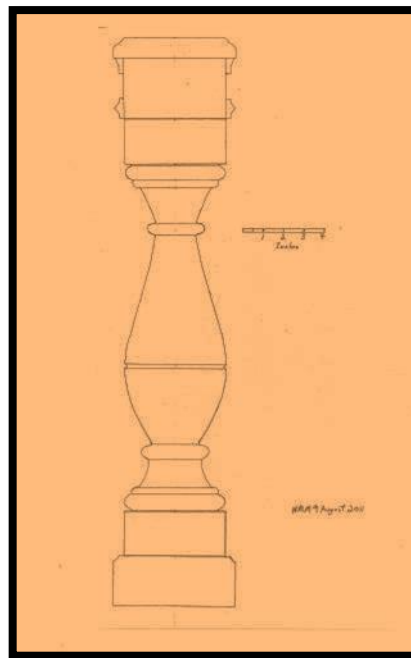


Figure 2. Cross-Section Design of the Altar Rail.

The figure above shows the design drawing for the cross-section of the Chapel rail. A superb, fine grained Red Oak log has been donated to HSMC for this element and the wood is now milled and dried, ready for lathe turning. In addition, wrought iron hardware is needed for the gate. This includes four



sets of hinges and a latch mechanism. Finally, the labor for the fabrication and installation is needed. We obtained a very generous cost estimate for the turning in 2014 from Terry Brock's uncle.

**The Altar:** This is the most important part of the Chapel interior. It rests upon a three step platform on the raised chancel area and against the east wall. The platform is already completed. Jesuit altars of this era consist of the altar itself, an enclosed table, a ledge behind it to hold candlesticks, and two large columns that support an architectural pediment. Between the columns is placed a large framed painting depicting some type of religious art. For this element, HSMC was given several logs of fine Black Walnut by the late Jean Chandler that are now dried and milled and stored in the Bean Barn. Use of such a high quality wood is to be expected for such a significant part of the interior. A schematic design of the altar is shown in Figure 3 below.

The altar is built like a chest with a fixed lid, flanked by column bases and a retable behind. The turned columns have elaborated capitals and support the formal pediment that displays denticulation as decoration in the classical tradition. Workmanship on an altar must be of the highest quality. Set into the top surface of the altar is a small niche that holds an altar stone containing the relic of a saint. It is necessary for the Catholic mass. This will be designed for an actual stone donated to St. Cecil's Catholic Church in St. Mary's City at its dedication in 1974. Jesuit legend held that it was the stone originally

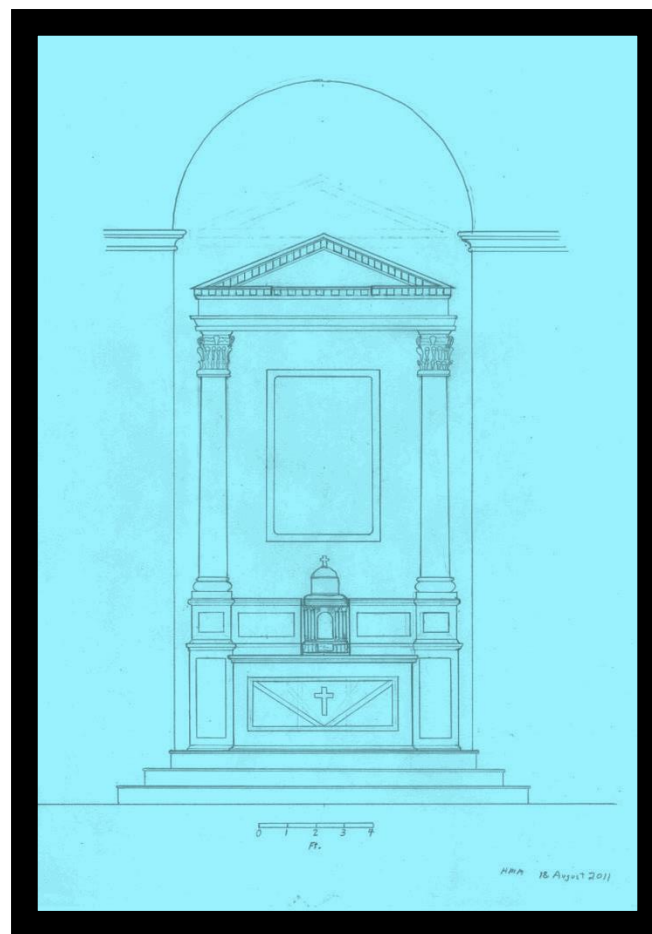
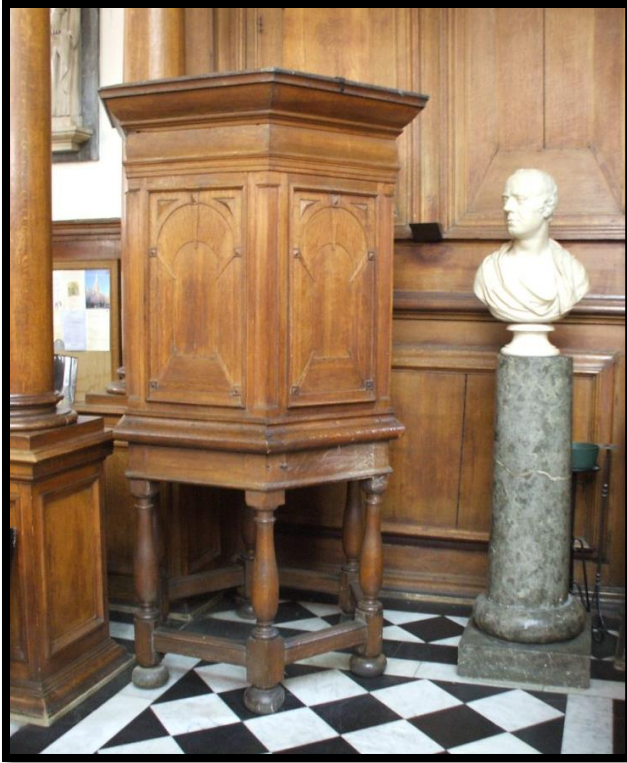


Figure 3: The Preliminary Design of the St. Mary's Chapel Altar

used in the Chapel, although this cannot be verified. The stone would only be used for special occasions due to its rarity and value. We suggest that the columns themselves be purchased and of hollow construction. The capitals will require skilled labor to produce.

The altar also holds the tabernacle that is independent of the altar construction and is discussed below. To build this, HSMC will need to purchase the turned columns, as it does not have the capacity to manufacture such large elements. Labor is the major factor due to the requirement for excellent craftsmanship. Finishing costs may include faux painting of the columns to resemble polished marble and overall painting of the rest.

**The Pulpit:** Every church of this era required a pulpit for the reading of the gospel and sermons. Both tradition and archaeology suggests it was located on the north wall of the chapel, where the north transept began. There is no historical information about the chapel pulpit but it would have been an elevated, enclosed box with stairs and displaying some level of decoration. Over it was a sounding board. There are multiple possibilities in the design and decoration of this item. Pulpits of this period are either supported by a central post or have four legs. The level of decoration can range from simple to exceptionally elaborate carving. We assume that the pulpit was made in Maryland and not imported. Therefore, the design is simple and not overly elaborate in decoration. A common form found at similar sized chapels in the colleges at Oxford University in the 17<sup>th</sup>-century is a four legged type with an architectonic decoration. While from a Protestant context, such a form would have been within the abilities of Maryland artisans and there is considerable overlap between pulpit forms in Protestant and Catholic churches of this era. Given the innovative use of perspective in the city plan of St. Mary's City, the decorative use of perspective on this pulpit would be appropriate; one possibility for consideration is adding a small cross on the far wall of each "device" to emphasize the religious nature of the setting. Figures 4 and 5 show a good example found at Brasenose College, Oxford, which dates to the 1650s.



Figures 4 and 5: A 1650s Pulpit at Brasenose College, Oxford, showing the four legged form and a closeup of the architectural decoration used to create a sense of perspective.

A fine quality hardwood is appropriate for the pulpit. HSMC may be able to obtain this timber but that is currently uncertain. It is suggested that the pulpit be made moveable with concealed wheels to allow it to be moved out of the nave if extra space is needed.

**Nave Bench Furnishings:** Seventeenth-century Catholic practice did not include pews. However, it does seem likely that some benches would be provided, perhaps along the walls, for the elderly, infirmed or pregnant to sit upon. We propose making these of oak for durability, in a style similar to the benches in the 1676 State House. Manufactured in 1934, these benches have stood up to 80 years of use and the style is appropriate for the period. Some lathe turning of the legs will be required to achieve the accurate style. Six benches are proposed to be acquired.



**Tabernacle:** This object is the heart of a Catholic Church, where the consecrated host is reserved after mass. Research suggests that the Carroll family tabernacle that is currently in Baltimore may have been the original at the Chapel, as Carroll family legend states. A current image of it is shown in Figure 8 below. The bottom portion is original, with the upper part and dome a replacement. Analysis by Smithsonian experts indicates it is made of cedar and mahogany and the carved decorations were originally gold leaf covered. Unfortunately, the tabernacle has been painted and then the surfaces stripped down to bare wood in most areas. Because of that action, the original coloring is unknown. My research shows that most examples of the period were either gold colored or made using polished stone, or painted to look like polished stone. Bare or stained wood alone is not likely.



Figure 8: The Carroll Family Tabernacle as it exists today

The best indicator of its possible original appearance is the original tabernacle in the Jesuit mother church of Gesu in Rome. Made ca. 1580, it influenced later Jesuit tabernacle design. During a remodeling phase in the late 1870s it was finally replaced at the Gesu and an Irish Bishop acquired the object for his cathedral in Ireland. Some work was done on the object but it retains many of the original elements. Today, it is located in County Tipperary and is shown in Figure 9. This specimen is made of polished marble and other stones, with a metal door. As Jesuit consultant Dr. Thomas Lucas has pointed out, the Carroll Tabernacle and Gesu example bear a strong similarity in their architectonic form with columns, domed top and the Jesuit seal on the door. The colors of the stone can provide some precedent in guiding the final appearance of the reconstructed tabernacle for the chapel, if it was not solid gold color. This needs to be resolved. In any case, all carvings on the existing Carroll family tabernacle will be reproduced and be gold leaf covered, as they were originally.

The cross and orb for the top of the dome has already been produced by the Society for Colonial Wars and presented to HSMC on Maryland Day, 2016. It is made from the roots of Maryland's Liberty Tree that stood in Annapolis. We further suggest exploring the idea that that some element of the reconstructed tabernacle, such as the heart in the Jesuit seal on the door, be made from wood of the Mulberry Tree, under which legend states Leonard Calvert negotiated to acquire Maryland from the Yaocomico Indians. The museum has a block of the original wood and a small piece could be used. Such symbolism adds to the significance of the overall chapel exhibit. The tabernacle will require much

custom work including detailed carving.



Figure 9: The original Gesu tabernacle from Rome, now in Ireland

Please contact Joe Kangas (Director of Facilities and Grounds ) to set up an appointment to view the chapel and get any more information needed.

*Joe Kangas  
Director of Facilities and Grounds  
Historic St. Mary's City Commission  
PO Box 39  
St Mary's City, Md 20686  
Office 240-895-4964  
Cell 301-247-9154*

[www.HSMCdigsHistory.org](http://www.HSMCdigsHistory.org)

Thank you, Joe

THE SCHEDULE  
Chapel Interior  
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1. GENERAL DESCRIPTION

To design, fabricate and install all the components to finish the interior of the 17<sup>th</sup> Century reconstructed chapel at Historic St. Mary's City

2. SCHEDULE

Item No	Description	Total
01	<b><u>Design phase</u></b> The Contractor shall furnish all supplies, equipment, materials and labor for the <u>design</u> , including detailed shop drawings of the altar, communion railings, tabernacle, pulpit and congregational seating for the reconstructed chapel. And supply as built to HSMC upon completion of the project	<hr/>



02	<p><b><u>Fabrication Phase</u></b></p> <p>The Contractor shall furnish all supplies ,equipment, materials and labor for the <u>fabrication</u> of the:</p> <p>Altar</p> <p>Railings</p> <p>Tabernacle</p> <p>Pulpit</p> <p>Congregational seating and delivery</p>	<p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
----	--	--

03	<p><b><u>Installation phase</u></b></p> <p>The Contractor shall furnish all supplies ,equipment, materials and labor for the <u>installation of the :</u></p> <p>Altar</p> <p>Railings</p> <p>Tabernacle</p> <p>Pulpit</p>	<p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
	.	
05	<p><b><u>Administration</u></b></p> <p>The Contractor shall furnish all supplies ,equipment, materials and labor for all <u>Administration</u> costs.</p>	<p>_____</p>
06	<p>Total price for project.</p>	<p>_____</p>



**GENERAL CONDITIONS OF THE  
CONTRACT  
BETWEEN THE CONTRACTOR  
AND  
HISTORIC ST. MARY'S CITY COMMISSION  
(HSMC)**

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**GENERAL CONDITIONS OF THE CONTRACT  
BETWEEN THE CONTRACTOR AND HISTORIC ST. MARY'S CITY COMMISSION**

**SECTION 1 - DEFINITIONS AND RESPONSIBILITIES**

**1.01 Definitions** - Definitions as used in this document, have the meaning indicated herein.

A. Approved Equal - Those supplies or services, or compatible items of construction whose quality, design or performance characteristics are functionally equal or superior to an item specified and meet all salient characteristics and other requirements of the Contract as determined by the Director of Facilities.

B. Architect - A person, partnership or corporation, registered in the State of Maryland to practice architecture and commissioned by HSMC to prepare various documents including, but not limited to the plans and specifications ("the documents"), for the designated project. Whenever the documents are prepared by an individual, corporation or partnership ("the entity") other than a HSMC employee or an architect commissioned by HSMC, all reference to the Architect shall be construed to refer to the entity. Should no architect have been commissioned by HSMC to prepare the documents and/or provide construction phase architectural or engineering services, then Historic St. Mary's City Commission is the agency referred to as the Architect and the Director of Facilities will be designated as the Architect for HSMC when no Architect has been appointed.

C. As-Builts - A set of drawings annotated by the Contractor to record all changes in the work as they occur, and the specific location of all elements of the work as installed.

D. Change Order - A duly authorized written order issued by HSMC's Purchasing Agent modifying the Contract in accordance with the Change Clause in Section 3.04 herein.

E. Claim - A complaint by the Contractor or by HSMC relating to the Contract.



F. HSMC - The Board of Trustees of Historic St. Mary's City Commission or its authorized representative(s) as defined in Trustee established policy(s).

G. HSMC Inspector - An authorized individual representing HSMC to observe the performance of the Contractor.

H. Contract - The written Agreement executed by HSMC Procurement Authority and the Contractor, which describes the services to be provided by the Contractor, compensation to be paid by HSMC, and the time provided for its completion. The Contract includes the written agreement executed by HSMC Procurement Authority and the Contractor, any documents specifically incorporated in the document, including but not limited to the construction bid form, contract forms and bonds, Instructions to Bidders, any addenda, the executed Bid/Proposal Affidavit and Contract Affidavit, General Conditions, specifications, supplemental conditions and specifications, all special conditions and provisions, all technical provisions, and all drawings . The Contract shall include, when issued by a duly authorized representative of HSMC, all approved submittals and additional documents such as the Notice to Proceed, any executed Change Orders, supplemental written agreements, and written directives.

I. The Contractor - The person or organization having direct contractual relation with HSMC for the execution of the work.

J. Contract Time and Completion Date - The number of calendar days (including weekends and holidays) designated in the Contract as the time allowed for the completion of the work. The contract time shall begin to run from the starting date established in the Notice to Proceed. In case a calendar date of completion is shown in the Contract in lieu of the number of calendar days, the work shall be completed on or before that date.

K. Critical Path Method (CPM) - A scheduling/management tool showing a network of work elements or activities for a construction project as commonly used in the construction industry.

L. Day - A calendar day unless otherwise designated.

M. Director of Facilities- The individual defined by HSMC to be the Director of Facilities. The Director of Facilities is responsible for providing certain direction and communication with the Contractor as provided in the Contract. Except as otherwise stated in the Contract, all matters relating to

the performance of this Contract shall be referred to the Director of Facilities for action. When required by HSMC's Procurement Policy, the Director of Facilities shall seek approval of the appropriate Procurement Authority. At the discretion of HSMC, his designation can be changed by written notice to the Contractor provided by the Director of Finance, the Executive Director of HSMC or their designee.

N. Dispute - A disagreement between the parties which has not been resolved by mutual agreement.

O. Notice to Proceed - A written notice issued by the Director of Facilities to the Contractor after the execution of the Contract which establishes the date on which the work shall commence under the Contract.

P. Payment Bond - Security in a form approved by the Purchasing Agent and executed by the Contractor and his surety, and paid for by the Contractor, to assure payment(s) as required by law to all person(s) supplying labor or material(s) for the completion of the work under the Contract.

Q. Performance Bond - Security in a form approved by the Purchasing Agent, executed by the Contractor and his surety, and paid for by the Contractor to protect HSMC from loss due to the Contractor's failure to complete the Contract as agreed.

R. Plans and Specifications - The documents and any addendum, if any, provided by HSMC for the purpose of establishing a contract price with the Contractor which describe in detail the scope of services to be provided under the Contract and the materials to be utilized.

S. Procurement Authority - The entities and/or individual(s) authorized to enter into the Contract and execute Change Orders as provided by HSMC Procurement Policy.

T. Procurement Policy - That policy established by the Historic St. Mary's City Commission Board of Trustees regarding procurement policy as modified from time to time.

U. Procurement Review Committee (PRC) - The Committee authorized by HSMC as provided by HSMC Procurement Policy, as may be amended from time to time, and also with authority as set forth in these General Conditions.

V. Project Manager - The individual assigned by the Director of Facilities to coordinate routine matters with the Contractor on behalf of HSMC. At the discretion of HSMC, the Project Manager may be changed by written notice to the Contractor by the Director of Facilities.

W. Purchasing Agent - The individual in HSMC responsible for issuing Change Orders to the Contract, receiving Notices of Dispute(s), and providing administrative support to the Procurement Authority and Procurement Review Committee. At HSMC's sole discretion, the Purchasing Agent may be changed by written notice to the Contractor by the Vice Executive Director of Business and Finance or the Executive Director of HSMC, or designee.

X. Section - As used in this document, any reference to any section means the specific portion of these General Conditions referenced unless the sentence refers to a section of another document. If a reference to a Section does not include a specific numerical or caption heading, the reference is understood to relate to the Section of these General Conditions in which the reference is placed.

Y. Subcontractor - Individuals and entities other than Historic St. Mary's City Commission that have a contractual relationship with the Contractor for the project.

Z. The Owner - Historic St. Mary's City Commission , a unit of the State of Maryland.

AA. Work - The furnishing of any and all labor, materials, equipment, services, utilities and other incidentals and the manufacture or fabrication of materials or equipment necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed upon the Contractor by the Contract.

BB. Written Notice - Written notice shall be deemed to have been duly served on the Contractor if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is directed, or if delivered or sent by regular mail, certified mail, overnight mail, or by facsimile transmission to the last business address known to HSMC. Written notice shall be deemed to have been given to HSMC upon actual receipt of written notice to the authorized representative as defined herein.

## **1.02 HSMC's Responsibilities**

A. If appropriate, HSMC may furnish the most recent survey it may have describing physical characteristics, legal boundaries, other known restrictions, and a legal description of the site. HSMC does not warrant the accuracy of the survey information.

B. HSMC will, with reasonable promptness, respond to the Contractor's request for information and approval.

## **1.03 Contractor's Responsibilities**

A. The Contractor shall supervise and direct the work. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract. The Contractor must aggressively and diligently pursue completion of the Contract within the contract time.

B. The Contractor shall be responsible to HSMC for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the work under a contract with the Contractor.

C. The Contractor shall be responsible for the performance of the work in accordance with the Contract and may not be relieved of such responsibilities by the activities or duties of the Architect, or by inspections, tests or approvals required or performed by persons other than the Contractor.

D. The Contractor shall perform all work in accordance with the lines, grades, typical cross sections, dimensions, and other data required by the Contract or as modified by written orders, including the furnishing of all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor, and all other items necessary for the satisfactory prosecution and completion of the project in full compliance with the requirements of the Contract.

E. The Contractor is required to maintain on site at all times when work is in progress a qualified individual who is authorized to represent the Contractor. This individual must be responsible for the entire project, and must be able to communicate with HSMC's representatives.

F. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract and shall not unreasonably encumber the site with any materials or equipment.

G. If at any time the Contractor, during the performance of work on this Contract, finds or has reason to suspect the presence of asbestos in any areas, he shall immediately notify the Director of Facilities in writing setting forth his observations or suspicions and requesting instructions. At the same time the Contractor shall withdraw all his personnel from the potentially contaminated area.

H. Cutting and Patching of Work:

- (1) The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the work or to make its several parts fit together properly.
- (2) The Contractor shall not damage or endanger any portion of the work or the work of the owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the owner or any separate contractor except with the written consent of the owner. The Contractor shall not unreasonably withhold from the owner or any separate contractor his consent of cutting or otherwise altering the work.

#### **1.04 Performance Evaluations**

A. HSMC may perform for the benefit of itself evaluations of the performance of the Contractor and Subcontractors and Suppliers.

B. Unsatisfactory performance of this Contract (or any part of it), whether or not the Contract is terminated for default may result in a determination that the Contractor is not a responsible bidder or offeror on future projects and/or revoke pre-qualification status if previously established.

## SECTION 2 - CONTRACT, SHOP DRAWINGS AND SUBMITTALS

### 2.01 Contract

A. The Contract documents are complementary. That which is called for by any one shall be as binding as if called for by all. Technical or trade jargon or terms may be used in the Contract and shall be construed, unless defined herein, to have the standard meaning recognized by the industry. The intent of the documents is to include all work necessary for proper, efficient and timely completion of the project. It is not intended, however, to include any work not properly inferable.

B. Clarification: Prior to bidding, the Contractor shall obtain clarification of all questions which may have arisen as to intent of the Contract, or any actual conflict between two or more items in the Contract. Should the Contractor have failed to obtain such clarification, then the Director of Facilities may direct that the work proceed by any method indicated, specified or required or reasonably inferable by the Contract. Such direction shall not constitute the basis for a claim for extra time or costs by the Contractor. The Contractor acknowledges that he had the opportunity to request clarification prior to submitting his bid to HSMC and therefore agrees that he is not entitled to claim extra costs as a result of such clarification.

C. Drawings: The Contractor shall not do any work without proper drawings and/or instructions. Drawings are in general drawn to scale, and symbols are used to indicate materials and structural and mechanical requirements. When symbols are used those parts of the drawings are of necessity diagrammatic and it is not possible to indicate all connections, fittings, fastenings, etc. which are required to be furnished for the proper execution of the work. Diagrammatic indications of piping, duct work and conduit and similar items in the work are subject to field adjustment in order to obtain proper grading, fitting, passage over, under, or past obstructions, to avoid exposure in finished rooms and unsightly and obstructing conditions. The Contractor shall make these adjustments provided that such adjustments do not alter the design performance of the work, at no increased cost to HSMC.

- (1) Copies Furnished: Copies of the drawings and specifications may be obtained by the Contractor by requesting copies from the reproduction company at the Contractor's expense unless otherwise provided in the bid documents.

(2) Copies At the Site: The Contractor shall keep in the job site office a complete set of all drawings, specifications, shop drawings, schedules, etc., in good order and available to the Architect and HSMC. Additionally, one set of all contract drawings should be maintained as record (As-Built) drawings. As-Built drawings shall be marked up by the Contractor in the field on an ongoing basis to record all changes in the work as they occur, and the exact location of all exposed and concealed pipe runs, valves, plugged outlets cleanouts and other control points including electrical conduits and ducts, in such manner as will provide a complete, accurate As-Built record. The location of pipes or control points concealed underground, under concrete, in chases or above hung ceiling shall be dimensioned. As-Built drawings shall be delivered to HSMC with a copy to the Architect, in a condition satisfactory to HSMC, as a condition precedent to final acceptance of work. Release of final retainage will be subject to receipt of the as-built drawings by HSMC.

(3) Ownership: All documents remain the property of HSMC. They must not be used on other work and they shall be returned to HSMC upon completion of the work.

D. Large Scale Detail Drawings: The Architect shall furnish, when HSMC directs, additional instructions, in the form of large scale developments of the drawings used for bidding, or to amplify the specifications for the proper execution of the work. These shall be true developments of the bidding documents and reasonably inferable therefrom. The work shall be executed in conformity therewith.

E. Dimensions: The Contractor shall carefully check all dimensions prior to execution of the particular work. Whenever inaccuracies or discrepancies are found, the Contractor shall immediately consult the Director of Facilities prior to any construction or demolition. Should any dimensions be missing, the Director of Facilities will be consulted and supply them prior to execution of the work. Dimensions for items to be fitted into constructed conditions at the job will be taken at the job and will be the responsibility of the Contractor. The obvious intent of the documents or obvious requirement dictated by conditions existing or being constructed supersedes dimensions or notes which may be in conflict therewith. Whenever a stock size manufactured item or piece of equipment is specified by its normal size, it is the responsibility of the Contractor to determine the actual space requirements for setting or entrance to the setting space. No extra costs or time extensions will be allowed by reason of work requiring adjustments in order to accommodate the particular item of equipment.

F. Whenever new work, building, addition or portions thereof is not accurately located by plan dimensions, the Director of Facilities will supply exact position prior to execution of the work upon the request of the Contractor.

## **2.02 Submittals: Shop Drawings, Product Data Documents and Samples**

A. Submittals: Shop drawings, product data documents, samples and any other information required by the Contract to be submitted by the Contractor for review and approval by the Architect and/or HSMC are commonly referred herein as submittals.

B. Submission Requirements: After checking and verifying all field measurements and after complying with applicable procedures specified in the Contract, the Contractor shall submit to Architect for review and approval, with a copy to the Project Manager, in accordance with the Contractor's schedule, submittals which will bear a stamp or specific written indication that the Contractor has satisfied its responsibility under the Contract with respect to the review of such submittals. The data on the documents submitted by the Contractor shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Architect and HSMC to review the information. These documents shall be prepared in conformity with the best practice and highest standards for the trade concerned. Due regard shall be given to speed and economy of fabrication and erection. All submittals must show the name of the project, the date submitted, and HSMC contract number.

C. Size of Shop Drawings: All shop drawings and details submitted to the Architect for approval shall be printed on sheets of the same size as the contract plans or drawings. When a standard of a fabricator is of such size to print more than one drawing on a sheet of the size of the Architect's drawings, this is acceptable. Sheets larger than the Architect's drawings will not be accepted except when specifically permitted by HSMC. Shop details supplied on a sheet of letter size 8-1/2" x 11" is acceptable for product schedules and small details.

D. Items for which shop drawings will be required: Shop drawings shall be required for all items which are specifically fabricated for the work or when the assembly of several items is required for a working unit. Shop drawings are required for all reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster molds, or moldings, marble and slate, special rough hardware and all heating, ventilating, plumbing and electrical items requiring fabrication or detailed connections including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, etc.

E. Copies Required: The Contractor shall supply two copies of submittals for the Architect's file and two copies for HSMC (send to the Project Manager), in addition to such copies as the Contractor may desire to be returned for his own use.



F. Samples: Samples should be provided as required by the Contract. Samples must remain on the project site until final closeout unless the Contractor obtains written permission by the Project Manager for removal.

G. Examination and Approval: The Architect will examine all submittals with reasonable promptness, noting required corrections, or accepting or rejecting them. Review of Contractor proposed “Substitutions” and “Equals” will require sufficient time for the Architect and HSMC to fully evaluate the characteristics of the proposed “substitution” or “equal” product.

H. Field Dimensions and Conditions: The Architect is not responsible for the check of dimensions or existing conditions in the field. This is the sole responsibility of the Contractor.

I. Resubmission: When the Architect notes required corrections, or rejects submittals, the Contractor shall timely resubmit with corrective changes. Any delays to the project, in whole or in part, caused as a result of the Contractor needing to resubmit submittals in order to obtain approval of the Architect or HSMC are the responsibility of the Contractor.

J. Contractor's Responsibility: Unless the Contractor has, in writing, explicitly notified the Architect and the Director of Facilities to the contrary, at the time of the submission, HSMC and the Architect assume that the submittals are in conformity with the Contract and do not involve any change in the contract price or time or any change which will alter the space within the structure or alter the nature of the work from that required by the Contract, or constitute a substitution of materials or equipment. Failure of the Contractor to serve written notice as above required shall constitute a waiver by the Contractor of any claim in relation thereto.

K. Architect's Notations: Should the Contractor consider any rejection or Architect's notation on the submittals to cause an increase in the cost of the work from that required by the Contract, then the Contractor shall desist from further action relative to the item he questions and shall notify both the Architect and the Director of Facilities, in writing, within three days of determination there is additional or less cost involved. No work on this matter shall be executed until the Contractor is ordered by the Director of Facilities to proceed. Failure of the Contractor to serve written notice as required above shall constitute a waiver by the Contractor of any claim in relation thereto. Similarly, should the Architect's notation or change involve less work than is covered by the Contract, the Contractor shall allow HSMC an equitable credit resulting from the change in the work.

L. Approval: Approval of the submittals by the Architect will not relieve the Contractor from conforming to the requirements of the Contract.

## **SECTION 3 - SCOPE OF THE WORK**

### **3.01 Differing Site Conditions**

A. The Contractor shall immediately, and before such conditions are further disturbed, notify the Director of Facilities orally, and followed within 3 days in writing, of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The Director of Facilities, or designee, shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.

B. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in 3.01A above provided, however, the time for notice prescribed therefore may be extended by the Director of Facilities in writing.

C. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Contract.

### **3.02 Site Investigation**

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not limited to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river

stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of materials, equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials, which shall include the presence of lead or other substances classified by EPA as hazardous materials or controlled substances and the requirements for their removal and disposal, or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by HSMC, as well as from information presented by the drawings and specifications made a part of this Contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost or time of successfully performing the work. HSMC assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by HSMC.

### **3.03 Conditions Affecting the Work**

The Contractor shall be responsible for taking steps reasonably necessary to ascertain the nature and location of the work and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional Contract Time or expense to HSMC. The Contractor agrees not to rely on any understanding or representation concerning conditions made by any HSMC employee or agents prior to the execution of this Contract, unless such understanding or representation are expressly stated in the Contract.

### **3.04 Changes in the Work**

A. Except as herein provided, no order, statement, action, inaction, or conduct of any HSMC representative or agent, shall be treated as a contract modification or entitle the Contractor to an adjustment in the contract price, time or quality.

B. The Procurement Authority or its authorized representative may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In HSMC-furnished facilities, equipment, materials, services or site;
- (4) or, directing acceleration or suspension in the performance of the work.

C. Change Directives:

- (1) The Procurement Authority or its designee, as per the chart below, may direct the Contractor to add or reduce services prior to issuance of a formal Change Order, through the issuance of a written Change Directive signed by the designees below. A Change Directive is used when time is of the essence. A Change Directive does not modify the Contract. The Procurement Authority makes the following designations for purposes of signing Change Directives:

<u>Amount</u>	<u>Designated Signature Authority</u>
\$0 - \$10,000	Director of Facilities AND Project Manger
Between \$10,000 & \$100,000	Vice Executive Director of Business and Finance AND Directorof Facilities
Greater than \$100,000	Not Applicable-can only be modified via Change Order

- (2) When all necessary approvals are obtained, HSMC will issue a Change Order to the Contract associated with a duly authorized Change Directive within a reasonable time period, provided the Contractor fulfills all its obligations in providing complete information as may be required per Section 3.04. Under certain conditions, HSMC must obtain approval from the Maryland State Board of Public Works prior to issuance of a Change Order. Authorized Change Orders to this Contract will be conveyed to the Contractor by the Purchasing Agent of HSMC. Services completed under a Change Directive to this Contract may not be invoiced by the Contractor until issuance of the actual Change Order and shall not be payable before that time.

D. When changes in the work require modification of the contract price and/or time, such modification shall be accomplished using the following procedures:

- (1) When unit prices are stated in the Contract or have been subsequently agreed upon, the change in contract price shall be based on the unit prices as applied to the quantity of work approved by the Project Manager.
- (2) When unit prices are not applicable, then the modification of the contract price shall be a lump sum price agreed upon by both the Director of Facilities and Contractor.

The Contractor shall promptly submit to the Director of Facilities with a copy to the Project Manager and Architect a Change Proposal which includes a fully itemized breakdown of the quantities and prices used in computing the value of the requested change along with a detailed explanation and justification for the proposed change regardless of the nature of the change.

For all changes in the work to be performed by a Subcontractor, the Contractor shall furnish the Subcontractor's fully itemized breakdown of quantities and prices which shall bear the original signature of a representative of the Subcontractor authorized to act for the Subcontractor. If requested by HSMC or its representatives or the Architect, proposals from Suppliers or other supporting data required to substantiate costs shall be furnished.

(a) Modification of the Contract as to price shall be proposed as follows:

- (i) If the change involves only a credit, as to HSMC, the contract price will be reduced by the amount it would have cost the Contractor if the work omitted had not been eliminated; including overhead and profit, however, the Contractor will be allowed to retain a sum not in excess of three percent (3%) for handling.
- (ii) If the change involves both a credit and a debit, both sums shall be shown on the change proposal and the two sums balanced to determine the adjusted total cost or credit. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes in the work.
- (iii) Unless otherwise specified, the allowable mark-up for combined overhead and profit for work performed by the Contractor with his own forces will be 15% based upon the monetary value of the work.
- (iv) For work performed by a Subcontractor with his own forces, the percentages for combined overhead and profit for a Subcontractor will be 15% based upon the monetary value of the work. On work partly or solely performed by a Subcontractor, the Contractor will be allowed five percent (5%) of the total cost of the Subcontractor's labor, materials overhead and profit, including taxes and insurance on labor required by statute.
- (v) For labor costs, unless otherwise specified, the Contractor will be reimbursed for his normal usual rates to include direct hourly rates and his expenditures for Worker's Compensation Insurance, Social Security Taxes and Unemployment Compensation Taxes covering persons actually engaged in the work and the actual increased cost of bonds.

- (vi) The cost of foremen and superintendents may be added only when the Director of Facilities determines it was necessary for the Contractor to hire additional supervisory personnel or makes the Contractor's employment for time additional to that required by the basic contract.
- (vii) The Contractor shall be allowed the actual cost for rental of machine power tools or special equipment, including fuel and lubricants which are necessary to execute the work required on the change, but no percentages shall be added to this cost. The rental rate is to be agreed upon by HSMC and the Contractor; the rate shall relate generally to the latest as filed by the Associated Equipment Distributors.
- (viii) The allowable percentages of cost for overhead and profit are deemed to include any and all such costs, but not limited to, job supervision and field office expense required by the Contract; expenses for timekeepers; clerks and watchmen; cost of correspondence of any kind; insurance not specifically mentioned herein; all expenses in connection with the maintenance and operation of the field office; use of small tools; and cost of small trucks generally used for transporting either workmen, materials, tools or equipment to job location; and incidental job burdens. No percentage allowances will be made for maintenance or operation of Contractor's regularly established principal office, branch office or similar facilities.
- (ix) Under no circumstances will overhead or profit be permitted as items of a claim when such overhead or profit are for periods during which a "Stop Work" order is in effect due to an act, error or omission for which the Contractor is responsible.
- (x) No profit or overhead which includes rental of equipment and the salaries of supervisory personnel will be allowed the Contractor for stoppage of work when written notice of such stoppage, or impending stoppage, is not given reasonably in advance to prevent such stoppage.

- (3) Request for Time Extension: If the Contractor contends that any Change Order, potential Change Order, Change Directive, proposal for a Change Order or other order issued under Section 3.04 will or may cause an increase in the time required for performance, or damages, additional overhead, or costs to the Contractor or his Subcontractor or Supplier at any tier, the Contractor must include the specific additional time, if any, and compensation claimed to be due in the Contractor's change order proposal.

In the event that the Contractor seeks an adjustment in contract time as a result of delays, suspensions or for any other reasons, he shall submit a written request for time extension to the Director of Facilities within 15 days of the Contractor's knowledge of the event or the resolution of the event, whichever is later. Failure to timely submit the request shall constitute a waiver of claim as to all matters related thereto. The written request for time extension shall be in addition to any notice(s) of delay as may be required in other Sections of these General Conditions.

The Contractor is entitled to no additional costs or extensions of the completion time or damages for which he has failed to file a timely notice, or the request for time extension itself, in the proper form and supported by complete and proper documentation, as required by this Section 3.04 and Sections 7.02 and 7.03 and all other applicable provisions of the Contract.

The request for time extension shall include:

- (a) A justification as to the circumstances and cause of the work, delay or other event that is the basis for the request for additional time. The Contractor shall also provide specific reference to the section of these General Conditions for which his request is based;
- (b) A reasonably detailed description of the effect of the event on the adjusted as-planned/as-built critical path;



- (c) A specific proposed number of days to be added/deducted to the contract time based on the information provided above;
- (d) Copy of his timely notice of delay, if any; and
- (e) Any other documentation required to support the request for time extension.

The burden is on the Contractor to substantiate the merits of any request for time extension. Upon receipt of a written request for time extension, the Director of Facilities may require any supplemental information reasonably required to ascertain the facts and to make a determination. The mere existence of a change order or other event does not entitle the Contractor to an extension of time, compensation for delay, or damages or costs associated with delay. The Contractor's entitlement thereto shall be subject to the requirements of Sections 7.02 and 7.03. A change order granting a time extension may provide (a) that the contract completion date will be extended only for specific critical activities, (b) that the remaining contract completion date(s) for all other portions of the work will not be altered, and/or (c) for an equitable adjustment of liquidated damages under the new required completion dates.

- (4) If HSMC and the Contractor fail to agree upon a lump sum price or the application of unit prices to determine the cost of any proposed change, the work shall be done on the basis of a Force Account as hereinafter stated under Section 8.02, Force Account Work. Under these conditions, HSMC shall have the right to issue a Change Directive for the work to be performed and the Contractor shall promptly proceed as directed under the provisions of Section 8.02.
- (5)
  - (a) If the Contractor and the Director of Facilities cannot agree as to the scope or price for any proposed change, then the Contractor shall request a Final Decision by the Director of Facilities. Any disagreement with this Final Decision may be appealed by the Contractor under the Disputes Clause.

- (b) If the Contractor and the Director of Facilities cannot agree as to the extent the Contract time shall be modified, then the Contractor shall request a Final Decision by the Director of Facilities. Any disagreement with this Final Decision may be appealed by the Contractor under the Disputes Clause of this Contract.

E. (1) If the Contractor believes that a written or oral order, direction, instruction, interpretation or determination issued by a HSMC representative or agent, or some other material change in the terms or conditions stipulated under the Contract (defined here to be a Potential Change Order), causes an increase in the Contractor's cost of, or time required for, the performance of any part of the work under this Contract, the Contractor must take the following action:

- (a) The Contractor must, while continuing the Work, provide written notice to the Director of Facilities, and simultaneously send a copy to the Purchasing Agent, that such written or oral order, direction, instruction, interpretation or determination or other material change in the terms or conditions stipulated under the Contract is regarded by the Contractor as a Potential Change Order, within 14 days of the written or oral order, and
- (b) the Contractor must then follow the procedure for modification of the contract time and or price as is described in Section 3.04D.

- (2) Should HSMC agree to modify the Contract it will issue a Change Order. If in the judgment of the Director of Facilities, the Potential Change Order does not increase or decrease the Contractor's cost of, or time required for, performance of any part of the work or is not in fact a material change in the terms and conditions stipulated under the Contract he may direct the Contractor to proceed with the work, in writing, with no adjustment in compensation or contract time. If the Contractor and the Director of Facilities cannot resolve to mutual satisfaction whether a Potential Change Order shall result in an adjustment in the Contractor's cost or time for performance, then the Contractor can only seek recourse under the Disputes Section of this Contract. Failure by the Contractor to provide written notice within the stated time period explicitly stating that the Contractor has encountered a Potential Change Order will result in the Contractor forfeiting any rights to seek compensation or additional time arising from the Potential Change Order .

- (3) Upon receipt of a written order of the Director of Facilities under this Section 3.04E, the Contractor shall comply with the order promptly, within the requirements of the completion schedule, whether or not the Contractor agrees with the terms of the order. Failure to comply with the order in a timely manner shall constitute a breach of contract and grounds for termination for default or any other remedy available to HSMC.

F. The Architect, with the concurrence of the Project Manager, shall have authority to make minor changes in the work not involving extra cost or additional time, and not inconsistent with the purposes of the project. Otherwise, except in any emergency endangering life or property, no extra work or changes to the work shall be done unless authorized by HSMC in accordance with the Changes Clause of this Contract prior to any such work or changes to the work being done.

### **3.05 Unauthorized Work**

The Contractor shall not be paid or granted additional performance time for any work not authorized in writing by HSMC.

## **SECTION 4 - CONTROL OF THE WORK**

### **4.01 Authority of the Architect**

A. Under the direction of HSMC, the Architect shall be the initial interpreter of the Plans and Specifications. He will furnish with reasonable promptness such clarifications as he may deem necessary for the proper execution of the work. Such clarifications are to be consistent with the intent of the Contract. When in special instances he is authorized in writing by the Director of Facilities to act, the Architect has authority to stop work whenever such stoppage may be necessary to insure the proper execution of the Contract.

B. Except as otherwise provided in the Contract, all the Architect's decisions are subject to approval by HSMC.

C. In the event that the Contractor and Architect can not reach mutual agreement on a decision by the Architect involving submittals, clarifications, etc., then the Contractor shall appeal the Architect's decision to the Director of Facilities for determination.

#### **4.02 Conformity with Contract Requirements**

A. All work performed and all materials furnished shall be in conformity with the Contract.

B. In the event the Architect or HSMC finds the materials or the finished product in which the materials are used are not in complete conformity with the contract requirements, then the Director of Facilities shall make a determination whether the work shall be accepted. If accepted, a Change Order will be issued to provide for an appropriate decrease in the contract price, if any.

C. In the event the Architect or HSMC finds the materials or the finished product in which the materials are used or the work performed are not in complete conformity with the Contract requirements, and the Director of Facilities determines that the work is not acceptable, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

#### **4.03 Adjacent Work**

A. HSMC shall have the right, at any time, to contract for and/or perform other work on, near, over or under the work covered by this Contract. In addition, other work may be performed under the jurisdiction of another State agency. The Contractor shall cooperate fully with such other Contractors and carefully fit his own work and schedule to such other work as may be directed by HSMC.

B,. The Contractor agrees that in event of dispute as to cooperation or coordination with adjacent Contractors HSMC will attempt to mediate any such dispute. All decisions made by HSMC will be binding on all Contractors, their Subcontractors and Suppliers. The Contractor agrees to make no claims against HSMC for any inconvenience, delay or loss experienced because of the presence and operations of other Contractors.

#### **4.04 Control by the Contractor**

A. The Contractor shall constantly maintain efficient supervision of the work. The Contractor shall furnish labor and services (1) which expeditiously, economically and properly complete its particular scope of the work in the manner most consistent with HSMC's interests and objectives, (2) in accordance with the Contract, and (3) in accordance with the highest standards currently practiced by persons and entities performing comparable labor and services on projects of similar size and complexity.

B. The Contractor shall carefully study and compare all drawings, specifications and other instructions and check them against conditions existing or being constructed on the project. He shall at once report, in writing, to the Director of Facilities with a copy to the Project Manager and Architect any error, inconsistency or omission which he may discover.

#### **4.05 Cooperation with Utilities**

A. The Contractor warrants he has considered in his bid all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation or time will be allowed for normal delays, inconvenience, or damage sustained by him due to any interference from the said utility appurtenances, the operation of moving them, or the making of new connections thereto.

B. The Contractor shall have responsibility for providing timely written notice in advance to HSMC Project Manager and all affected utility companies prior to performing any work on or near utilities and shall cooperate with them in achieving the desired results. In no case shall this notice be provided less than seven days prior to starting this work. All damage or interruption to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor. In such cases, the Contractor shall promptly notify the Director of Facilities and shall immediately take necessary action at its own cost to repair, replace or reimburse for the damaged utility to the complete satisfaction of the utility company.

C. At points where the Contractor's operations are on HSMC property or adjacent to properties which have on them railway, telegraph, telephone, cable, fiber optics, water, sewer, power, or other utilities or are adjacent to other property, damage to which might result in expense, loss or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor.

D. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that the project progresses in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum and that utility services rendered by those parties will not be unnecessarily interrupted.

E. In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the Director of Facilities and shall cooperate with said authority in the restoration of service.

F. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by HSMC. The Contractor is responsible for seeking and obtaining the necessary approvals.

G. Certain utilities are owned and operated directly by HSMC. In such cases, the Contractor shall cooperate with HSMC in accordance with the above requirements.

#### **4.06 Authority and Duties of HSMC Inspectors**

A. HSMC Inspector(s) ("Inspector") shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work, and to the preparation, fabrication or manufacture of the materials to be used. The Inspector is not authorized to revoke, alter, modify or waive any requirements of the Contract, nor is he authorized to approve or accept any portion of the project. He is authorized, but not required, to call to the attention of the Contractor any failure of the work or materials to conform to the Contract. He is authorized to recommend to the Director of Facilities to reject materials or temporarily suspend the work, at no additional cost to HSMC, until any questions at issue can be referred to the Architect and HSMC and decided by the Director of Facilities. Inspectors shall perform their duties at such times and in such manner as will not unnecessarily impede progress on the Contract. In the case where HSMC does not assign an Inspector to the project, the Project Manager shall assume all responsibilities of the Inspector.

B. The Inspector shall in no case act as foreman or perform other duties for HSMC or Contractor, nor interfere with the management of the work by the latter.

C. Any advice which the Inspector may give the Contractor shall not be construed as binding HSMC in any way, or releasing the Contractor from fulfilling all of the terms of the Contract. The duty of

the Inspector on the project is to observe the progress of the work and to report to HSMC any deviations from the requirements of the Contract.

D. Where there is disagreement between the Contractor and the Inspector, the Inspector will immediately direct the Architect's and Director of Facilities attention to the issues of disagreement. The Director of Facilities will make a determination as to the conformance of the work. If such work is determined to be in nonconformance, the Director of Facilities will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order directing the Contractor to correct the work or to suspend the work and explaining the reason for such direction. As soon as the Inspector is advised of the delivery of a shutdown order, the Inspector shall immediately leave the site of the work. Any work performed during the Inspector's absence will not be accepted or paid for and the Contractor may be required to have such work removed and disposed of at the Contractor's expense.

#### **4.07 Inspection of the Work and Tests**

A. All work, including the fabrication and source of supply, is subject to inspection by the Architect and the various HSMC representatives, and those agencies required by law to inspect specific items.

B. The Contractor shall provide at its own cost accommodations for access and inspection as required by HSMC.

C. If the Contract, HSMC's instructions, laws, ordinances, or any public authority requires any work to be specially tested or approved, the Contractor shall give HSMC and the Architect timely notice of its readiness for inspection, and if the inspection is by another authority, the date fixed for such inspection. Inspections by HSMC shall be made promptly and where practicable at the source of supply. Any work covered without approval of the Architect or other agency with authority to perform inspections must, if required by the Architect or HSMC, be uncovered for examination at the Contractor's expense. The Contractor is responsible for arranging and obtaining all necessary inspections and approvals.

The Contractor shall arrange and coordinate all inspections required and shall give HSMC and the Architect timely notice of its readiness so HSMC or the Architect may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals.

D. If the Director of Facilities determines that any work requires special inspection, testing, or approval which the Contract does not include, the Architect will, upon written authorization from HSMC, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in C above. If such special inspection or testing reveals a failure of the work to comply with the requirements of the Contract, the Contractor shall bear all costs thereof, including compensation for the Architect's additional services made necessary by such failure and any other costs incurred by HSMC.

E. Required certificates of inspection, testing, approval or occupancy shall be obtained and paid for by the Contractor and promptly delivered by him to the Architect. Required inspections and certificates shall include, but not be limited to an electrical certificate from an independent (non-governmental) electrical inspection agency approved by the State Fire Marshal. This certificate must be submitted to HSMC prior to or with the Contractor's invoice for final payment. Also, the Contractor must make application for the inspection, coordinate same, and pay the required inspection fees. The independent electrical inspection agencies are not considered local authorities.

F. HSMC may charge the Contractor any additional cost of inspection when work is not ready at the time specified by the Contractor, or when prior rejection makes reinsertion necessary.

G. Inspections by HSMC or the Architect are for the sole benefit of HSMC. Inspections by HSMC or the Architect, or the presence or absence of a HSMC Inspector or the Architect at any inspection, or the failure of HSMC Inspector or Architect to report any deviation by the Contractor from contract requirements shall not: (1) relieve the Contractor of responsibility for adequate quality control measures, compliance with contract requirements, or damage to or loss of material: (2) constitute or imply acceptance of any work: or (3) affect the continuing rights of HSMC to hold Contractor responsible for failure to meet contract requirements.

#### **4.08 Removal of Defective Work**

A. All work and materials which do not conform to the requirements of the Contract will be considered unacceptable except as provided in Section 4.02B.

B. Any unacceptable or defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause, found to exist shall be removed without undue delay by the Contractor and replaced by the Contractor with work and materials which shall conform to the Contract or shall be remedied otherwise in an acceptable manner authorized by the Director of Facilities. The cost and time to perform any work required to correct or remedy unacceptable or



defective work will be the responsibility of the Contractor. The acceptance of the work set forth herein by HSMC shall not relieve the Contractor of the responsibility of subsequent correction of such unacceptable or defective work.

C. Upon failure on the part of the Contractor to comply promptly with any order of the Director of Facilities, made under the provisions of this Section, the Director of Facilities shall have authority to take any action he deems appropriate including, but not limited to causing defective or unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to cause the costs to be deducted from the contract price via a unilateral Change Order.

#### **4.09 Maintenance of Work During Construction**

A. The Contractor shall maintain the work during construction and until acceptance. This maintenance shall be continuous and effective, prosecuted with adequate equipment and forces to the end that all parts of the work be kept in satisfactory condition at all times and protected from damage of any kind from external sources.

B. Particular attention shall be given to drainage, both permanent and temporary. The Contractor shall use all reasonable precautionary measures to avoid damage or loss that might result from accumulations and concentrations of drainage water, and material carried by such waters and such drainage shall be diverted or dispensed when necessary to prevent damage to excavation, embankments, surfaces, structures or property. Suitable measures shall be taken by the Contractor to prevent the erosion of soil in all construction areas where the existing ground cover has been removed. Such measures shall be in compliance with the requirements of any governmental entity having jurisdiction.

C. All cost of maintenance work during construction and before final acceptance shall be included in the base bid and the Contractor will not be paid any additional amount for such work.

D. In the event that the Contractor's work is halted by HSMC or other agency with jurisdiction for failure to comply with any provisions of the Contract, the Contractor shall maintain the entire project as provided herein, and provide such ingress and egress for local residents or tenants adjacent to the project site, for tenants of the project site, and for the general public as may be necessary during the period of suspended work or until the Contractor has been declared in default.

E. On projects where traffic flow is maintained, the Contractor shall be responsible for repair and restoration of all traffic damage to the work, either partially or totally completed, until such time as the work is accepted by HSMC.

#### **4.10 Failure to Maintain Entire Project**

Failure on the part of the Contractor, at any time, to comply with the provisions of Section 4.09 shall result in the Director of Facilities or Project Manager notifying the Contractor in writing to comply with the required maintenance provisions. In the event that the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, HSMC may immediately proceed with adequate forces and equipment to maintain the project, and the entire cost of this maintenance will be deducted from monies due the Contractor. In addition, the Contractor will be held responsible for all costs to repair deterioration or damage to any portion of the work found to be the result of the Contractor's failure to properly maintain the project.

#### **4.11 HSMC's Right to Do Work**

If the Contractor should neglect to prosecute the work properly or diligently, fail to correct any deficiency, or fail to perform any provision of this Contract, HSMC may after three days' written notice from the Director of Facilities to the Contractor, correct such deficiencies and deduct the cost thereof from the monies then or thereafter due the Contractor. In cases where life safety may be at risk, HSMC may take immediate actions to reduce such risk.

### **SECTION 5 - MATERIALS**

#### **5.01 General**

A. Definition and Appropriate Use: Materials include all manufactured products and processed and unprocessed natural substances required for completion of the Contract. In accepting the Contract, the Contractor warrants he is thoroughly familiar with the materials required and their limitation as to use, and requirements for connection, setting, maintenance and operation. Whenever an article, material or equipment is specified and a fastening, furring, connection (including utility connections),

access hole, flashing closure piece, blocking, bed or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in the Contract shall be interpreted as authorizing any work in any manner contrary to applicable laws, codes, and/or regulations.

B. Quality: All materials shall meet all quality requirements of the Contract. If not specified, all materials shall be of the best quality of the respective kinds. In order to expedite the inspection and testing of materials, the Contractor shall notify in writing the Director of Facilities with a copy to the Architect of the sources from which he proposes to obtain all materials requiring approval, testing, inspection, or certification prior to incorporation into the work as soon as possible after receipt of notification of award of the Contract. The Contractor shall, if requested, either before or after installation, furnish satisfactory evidence as to the kind and quality of materials. The Contractor shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions" and "approved equals" as set forth in Section 5.03 and 5.04 of these General Conditions.

C. Approval: All materials are subject to the Architect's approval as to conformity with the specifications, quality, design, color, etc. No work for which approval is necessary shall be used until written approval is given by the Architect. Approval of a subcontractor or supplier as such does not constitute approval of a material which is other than that included in the specifications.

D. New Materials: Unless otherwise specified, all materials shall be new. Used or old materials must not be used as substitutes for new, regardless of condition or repair, unless approved in advance in writing by the Director of Facilities.

E. Samples: The Contractor shall furnish for approval all samples as required by the Contract. The materials used in the project shall be the same as the approved samples. All samples shall be retained on the project site until final approval of the project.

F. Standard Specifications: When no specification is cited and the quality, processing, composition or method of installation of an item is only generally referred to, then:

- (1) For items not otherwise specified below, the latest edition of the applicable American Society for Testing Materials specification is the applicable specification.

- (2) For items generally considered as plumbing and those items requiring plumbing connections, the applicable portions of the latest edition of the BOCA Code are the applicable specification.
- (3) For items generally considered as heating, refrigerating, air conditioning or ventilation, the applicable portions of the latest edition of the A.S.H.R.A.E. Handbook published by the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. are the applicable specification.
- (4) For items generally considered as site work, i.e., lawns, planting, etc., the applicable portions of the Maryland S.H.A. Standards and Specifications are the applicable specification.
- (5) For items generally considered as electrical, the applicable provisions of the latest edition of the BOCA Code and National Electric Code are the applicable specification.
- (6) For items generally considered as fire protection, the applicable portion of the latest edition of the State Fire Prevention Code and the National Fire Protection Association Code is the applicable specification.

## **5.02 Storage and Handling of Materials**

A. Materials shall be stored so as to assure the preservation of their quality and acceptability for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project site may be used for storage purposes and for the placing of the Contractor's plant and equipment; such storage areas must be restored to their original condition by the Contractor at his expense.

B. All mechanical and/or electrical equipment delivered to the job site shall be stored on pedestals, above ground and under roof or other approved covering. All enclosures for equipment shall be weatherproof. Any motors, which are not totally enclosed, and dry type transformers that are involved in the work, shall be stored in a heated area with a minimum temperature of fifty degrees Fahrenheit (50° F).

All valves shall be stored under roof on wood pedestals, above ground. All insulation shall be stored under roof or in trailers, adequately protected from the weather. The Contractor shall follow all written instructions and recommendations of the manufacturer and all requirements of the Architect on oiling, protection and maintenance of equipment during storage. It shall be the Contractor's complete responsibility for the storage and care of the equipment and materials. Material not properly stored prior to installation shall not be considered for payment.

C. Materials shall be handled in such a manner as to preserve their quality and acceptability for the project.

D. The Contractor shall confine his tools and equipment and the storage of materials to the area delineated in the contract as the location for storage of materials. If no location is provided in the Contract, the Contractor shall request a location for storage of tools and equipment from the Director of Facilities.

E. Explosives.

- (1) Explosives shall not be stored upon any property belonging to HSMC.
- (2) Should the Contractor desire to use explosives on any project he shall first receive written approval of the Director of Facilities and obtain all permits required by law, at the Contractor's expense.
- (3) The Contractor shall assume all responsibility for injury to persons or property damage which may result from the use or transportation of explosives, as well as complying with any and all ordinances, regulation and restriction in relation to the use of explosives.

F. Paints.

- (1) Oil base paints and flammable liquids shall not be stored in large quantities on the project. Containers shall be limited to a five gallon size. Any liquid with a flash point of less than one hundred Fahrenheit (100° F) shall be contained in safety cans, UL approved. Liquid with a higher flash point shall be stored in rigid cans.

- (2) Oily rags, waste, etc. must be removed from the work site at the close of each working day.

- G. Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.

### **5.03 Substitutions**

A. Should the Contractor desire to: a) substitute another material for one or more specified by name or b) substitute a product or material different in any way from that specified, then he shall apply, in writing to the Director of Facilities and to the Architect, for such permission and state the credit or extra cost involved by the use of such material and the impact on the contract time, if any. The Contractor shall also provide complete technical information on the proposed substitution to allow the Architect and HSMC to adequately evaluate the substitution. The Director of Facilities will not consider any substitution unless such substitution affects a benefit to HSMC. The Director of Facilities retains the right to accept any substitution and to establish any credit or extra cost.

B. The Contractor shall not submit for approval materials, other than those specified, without a clear, express, written statement that such a substitution is proposed. Approval in any form or by any means of a "substitute material" when the Contractor has not designated such material as a "substitute" shall not be binding on HSMC nor release Contractor from any obligations of his contract, unless the Director of Facilities approves such "substitution" in writing.

C. Any additional architectural or other costs and fees incurred by HSMC required to consider or evaluate a substitution will be deducted from the contract amount due the Contractor.

D. When the specifications specifically limit a product or material to one or several manufacturers, any submittal proposed by the Contractor utilizing a manufacturer not listed shall be considered a substitution and must be submitted per Section 5.03(A) above.

### **5.04 Approved Equals**

A. The terms "Or Equal," "Equal," "Approved Equal" are used as synonyms throughout the specifications. They are implied in reference to all named manufacturers in the specifications unless otherwise stated. Only materials fully equal in all details will be considered. HSMC is the final judge as to equality. HSMC does not represent or warrant under any circumstances, including by use of the words "or equal," that there exists an equal to any item specified.

B. It is the Contractor's responsibility to provide sufficient information on proposed "Equal" products to facilitate the review of the product as an acceptable equal. Failure by the Contractor to provide sufficient information to evaluate all pertinent details of a proposed "Equal" will result in the proposed material being rejected as an equal. The Contractor may submit the product as a substitution. If the Director of Facilities accepts the product as a substitution, an appropriate price reduction will be made.

## **5.05 Consistency of Products**

When several products or manufacturers are named in the specifications for the same purpose or use, then the Contractor may select any of those so named. However, whenever a product is used in multiple instances, all of the units required for, and used in, the product must be the same in material and manufacture.

## **5.06 Buy American Steel**

Only steel products made in the United States shall be used or supplied in the performance of this Contract or any subcontract thereunder. Steel products include products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed from steel made in the United States. This requirement shall not apply if HSMC shall have determined that the cost of such steel products is unreasonable or inconsistent with the public interest. The provisions of this Section shall not apply where they are in conflict with any Federal or State grant, law, or regulation affecting this Contract.

# **SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES**

## **6.01 Legal Obligations**

A. Maryland Law Prevails, Jurisdiction, and Waiver of Jury Trial: The place of performance of this Contract shall be in St. Mary's City, Maryland. This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland. The Contractor consents that all claims and disputes following a final decision of the Procurement Authority can only be brought to court in the State of Maryland only in either the District Court of St. Mary's County, Maryland or the Circuit Court for St. Mary's County, Maryland. The parties by contract waive their right to a jury trial.

B. Precedence of Contract Documents: (1) In the event of a conflict between any of the Contract Documents, the documents shall prevail in the following order unless a provision of the Agreement expressly provides to the contrary:

(a) The Agreement

(b) Instructions to Bidders

(c) The General Conditions

(d) The Specifications

(e) The Plans

(2) The Director of Facilities has the right to decide the order of priority of Contract Documents not specifically addressed above.

(3) Notwithstanding the precedence above, if any Contract Document contains a more detailed and stringent provision as to the Contractor's responsibilities than another Contract Document, the more detailed and stringent provision will control.



- (4) Whenever the Contract is determined to be ambiguous, it shall be construed or interpreted in HSMC's favor.

C. Non-Discrimination: The Contractor agrees: a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; b) to include a provision similar to that contained in Section (a) above in any subcontract except a subcontract for standard commercial supplies or raw materials; and c) to post and to cause Subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

D. Pre-Existing Regulations: In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) which are applicable to Historic St. Mary's City Commission, and all other regulations and policies of Historic St. Mary's City Commission in effect on the date of execution of this Contract or as later amended, are applicable to this Contract.

E. Indemnification:

- (1) To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless HSMC and the Architect and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage or loss or expense (1) is attributable to actual or threatened bodily injury, sickness, disease or death, or to actual or threatened injury to or destruction of tangible property including the loss of use resulting therefrom, and including but not limited to purely economic loss, and (2) is caused in whole or in part by any failure by the Contractor or its Subcontractors or Suppliers at any tier to perform any requirement of the Contractor by any negligent act or omission on the part of the Contractor, its Subcontractors or Suppliers at any tier, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section.

- (2) In any and all claims against HSMC or the Architect or any of their agents or employees by any employee of the Contractor, any Subcontractor or supplier at any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them are liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor or supplier under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- (3) HSMC has no obligation to provide legal counsel or defense to the Contractor or its Subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its Subcontractors as a result of or relating to the Contractors obligations under this Contract. HSMC has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its Subcontractors as a result of or relating to the Contractor's obligations under this contract. The Contractor shall immediately notify the Purchasing Agent by phone with a follow-up in writing within two days of any claim or suit made or filed against the Contractor or its Subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract. The Contractor will cooperate, assist, and consult with HSMC in the defense or investigation of any claim, suit, or action made or filed against HSMC as a result of or relating to the Contractor's performance under this Contract.

F. Assignment: The Contractor shall not sell, transfer, sublease, or otherwise assign its obligation under this Contract or any portion thereof, or any of its rights, title, or interest therein, without the prior written consent of HSMC.

G. Novation: Recognition of a Successor in Interest Novation. When in the best interest of HSMC, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

- (1) The transferee assumes all of the transferor's obligations;
- (2) The transferor waives all rights under the Contract as against HSMC; and

- (3) Unless the transferor guarantees performance of the Contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

H. Compliance with Laws: The Contractor hereby represents and warrants that: a) it is qualified to do business in the State of Maryland and that it will take such action as from time to time, may be necessary to remain so qualified; b) it is not in arrears with respect to the payment of any monies due and owing the State of Maryland or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract; c) the Contractor shall keep fully informed of all Federal, State, and Local laws, ordinances, and HSMC regulations as well as orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders and decrees; he shall protect and indemnify HSMC and its representatives against any such claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, whether by himself or his employees or Subcontractors; d) the Contractor must comply with the provisions of the Workmen's Compensation Act and Federal, State and City laws relating to hours and conditions of labor and e) it shall procure, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

I. Notification of Non-Compliance: If the Contractor observes that the drawings and specifications are at variance with any law, he shall promptly notify in writing, the Architect and the Director of Facilities, and any necessary changes shall be adjusted as provided in the Contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect and HSMC, he shall bear all costs arising therefrom.

J. HSMC Policies, Rules, and Regulations: The Contractor agrees to abide by all applicable HSMC policies, rules and regulations as may be amended from time to time while working on the campus.

K. Contingent Fees:

- (1) The Contractor, Architect, or Engineer warrants that it has not employed or retained any person, partnership, corporation or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor, Architect, or Engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee, bona fide salesperson,

or commercial selling agency, any fee or other consideration contingent on the making of this agreement. Further, except as provided in Section (a) of this Section, unless a person is a bona fide employee, bona fide salesperson, or commercial selling agency working for the Contractor, the person may not offer or agree to solicit or secure a procurement contract under this subtitle if the person's fee is contingent on, or results from, the making of the procurement contract.

(a) A regulated lobbyist, who is described in Section 15-701 (a) (1), (2), or (3) of the State Government Article, may not offer or agree to solicit or secure a procurement contract under this subtitle if the lobbyist's fee is contingent on, or results from, the making of the procurement contract. Except as provided in Section (b) of this Section, a Contractor may not offer to pay a fee or other consideration that is contingent on the making of a procurement contract under this article.

(b) This Section does not apply to a payment to a bona fide employee, bona fide salesperson, or commercial selling agency working for the Contractor.

(2) An employee of a unit of Maryland State Government may not solicit or secure or offer to solicit or secure a procurement contract under this article between the unit and any other person for which the employee is paid or is to be paid a fee or other consideration that is contingent on the making of the procurement contract.

L. Non-Availability of Funding: If funds are not appropriated or otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the new fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either HSMC's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and HSMC from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. HSMC shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

M. Liability for Loss of Data: In the event of loss of any data or records necessary for the performance of the Contract where such loss is due to the error or negligence of the Contractor, the

Contractor shall be responsible, irrespective of the cost to the Contractor, for recreating such lost data or records.

N. Cost and Price Certification: By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of two months of the submission of the cost or price information. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of two months of the submission of the cost or price information referenced above , was inaccurate, incomplete, or not current.

O. Taxes: The Contractor shall be responsible for all applicable Federal, State and local taxes and all payroll related taxes.

P. [Paragraph Deleted]

Q. Drug and Alcohol Free Workplace: The Contractor warrants that the Contractor shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace and require his Subcontractors to do the same, and that the Contractor and his Subcontractors shall remain in compliance throughout the term of the Contract.

R. Century Compliance Warranty: The Contractor warrants that the products provided or systems developed under this Contract are century compliant. "Century Compliant" means that the product:

- (1) Is able to process date data accurately - including date data century recognition, calculations that accommodate same century and multi-century formulas and date values (including leap year factors), and date data interface values that reflect the century - when used either in a stand-alone configuration or in combination with other century compliant products used by HSMC.
- (2) Will not abnormally terminate its function or provide or cause invalid or incorrect results due to incompatibility with the calendar year.

- (3) In addition to any other warranties applicable to this Contractor any remedies otherwise available to HSMC, the Contractor agrees to promptly repair or replace any product furnished under this Contract that is not century compliant, provided HSMC gives notice within a reasonable time following discovery of such failure.

S. HSMC is not responsible for the actions, orders or interpretations of Federal, county, municipal, or other local officials or representatives respecting the application to the work of Federal, State, or local laws, ordinances, regulations or codes. Contractor shall not be entitled to additional compensation for unanticipated costs of complying with any such actions, orders or interpretations.

T. HSMC shall not be precluded or estopped by any measurement, estimate, change order, contract modification, certificate of payment, or payment from showing the true amount and character of the work furnished by the Contractor or from showing that any measurement, estimate, change order, contract modification, certificate of payment, or payment is untrue or was incorrectly made, or from showing that the work does not in fact conform to the Contract. HSMC may recover from the Contractor or his sureties, or both, such damages, loss, or additional expense incurred as a result of any such error in measurement, estimate, change order, contract modification, certificate of payment, or payment as a result of such failure to conform to the Contract. HSMC's rights in this respect shall not be waived or barred by any inspection, acceptance or approval of the work, or by payment therefore, or by granting an extension of time, or by taking possession, or by execution of a change order based on the erroneous measurement, estimate or change order, contract modification, certificate of payment, or payment.

- (1) The activities of the Architect and HSMC personnel respecting this Contract, including inspection of the work, review of submittals, monitoring of progress, and so forth are for the benefit of HSMC only and are not for the benefit of the Contractor. HSMC's failure to bring to the attention of the Contractor deficiencies in the work or the Contractor's performance will not constitute waiver or excuse of the Contractor's failure to comply strictly with contract requirements.
- (2) The waiver by the Procurement Authority or Director of Facilities of any breach of contract by the Contractor shall not operate as a waiver of any other or subsequent breach.
- (3) The rights and remedies of HSMC and the obligations of the Contractor under various provisions of the Contract and under provisions of applicable law are cumulative and not exclusive.

- (4) For any claim or cause of action accruing to HSMC as a result of or arising out of this Contract, HSMC may collect damages of any kind, including, but not limited to, consequential damages and damages for purely economic loss.

U. State Property Not Subject to Lien: Neither the Contractor nor any Subcontractor or Supplier at any tier may have or acquire any lien against the State of Maryland and/or St. Mary's HSMC property.

V. St. Mary's Not Subject to Limitations: HSMC is not bound by laches or any statute of limitation or repose, and Contractor may not assert laches, limitations, or a statute of repose as a defense against any claim or action brought by HSMC or the State.

W. Notices: All notices to HSMC, unless specifically stated otherwise, shall be in writing and given by the Contractor to:

Director of Facilities

Historic St. Mary's City Commission

St. Mary's City, MD 20686

## **6.02 Certifications Required By Law**

A. Cost and Price Certification. If the parties are negotiating for a change order which is expected to exceed \$100,000, the Contractor shall truthfully execute a Cost and Price Information Certificate on a form provided him by HSMC; said certificate will provide, in relevant part, that the Contractor's price and cost information is accurate, complete and current as of a mutually determined date prior to the change order.

B. Corporate Registration and Tax Payment Certification. At the time the parties execute the Contract, if not sooner, the Contractor, if it is a corporation, shall truthfully execute a certification on the Contract/Bid Affidavit provided by HSMC certifying that it is a properly registered corporation and that it has and will pay all appropriate taxes prior to final settlement.

### **6.03 Permits and Licenses**

A. When required by law, regulation, or the Contract, HSMC or its authorized representative will file with the appropriate local authority, drawings and specifications and any pertinent data reasonably proper for their information. The Contractor will be required to pay all necessary fees to local authorities for inspection or for the privilege or right to execute the work as called for in the Contract and he shall include the cost of said fees in his base bid. HSMC shall not be responsible for the actions or interpretations of county, municipal, or other local agencies or officials respecting the application of Federal, State, or local laws, rules, ordinances, regulations, codes, or policies to the work.

B. The Contractor must be licensed as required by Laws of the State of Maryland as required by Title 17, Subtitle 6 or Title 8 of the Business Regulation Article, Annotated Code of Maryland.

### **6.04 Patented Devices, Materials and Processes**

A. The Contractor assumes the responsibilities that any materials, equipment, processes, or other items required under the Contract furnished by the Contractor (including CPM software furnished to HSMC under Section 7.04) are subject to any patent, copyright, trademark, trade secret or other property rights of another. The Contractor shall pay for all royalties and license fees and shall obtain all necessary licenses or permits to permit use of any such item by HSMC. Contractor shall defend all suits or claims of infringement of any patent, copyright, trademark, trade secret or other property rights of another and shall save HSMC harmless from loss or expense on account thereof.

B. When an item specified by HSMC or furnished by the Contractor infringes or is alleged to infringe any patent, copyright, trademark, trade secret or other property right of another, the Contractor will, at his option, and at no additional cost to HSMC, (1) procure for HSMC the right to use the item; (2) replace the item with an approved, non-infringing equal; or (3) modify the item so it becomes non-infringing and performs substantially the same as the original item.

### **6.05 Land, Air and Water Pollution, and Erosion Control**

A. The Contractor shall incorporate all permanent erosion control features into the work at the earliest practicable time and shall maintain them in proper condition during the course of the Contract. Temporary pollution control measures will be used to correct conditions that develop during construction



that were not foreseen during design, that are needed prior to installation of permanent pollution control features, or that are needed temporarily to control erosion that develops during normal construction practices, but are not associated with permanent control features on the project.

B. The Contractor's attention is directed to the fact that temporary pollution control may include measures outside the project site where such work is necessary as a direct result of project construction. HSMC Project Manager shall be kept advised of all such off-site control measures taken by the Contractor. This shall not relieve the Contractor of the basic responsibilities for such work.

C. In case of failure on the part of the Contractor to control erosion, pollution and/or siltation, HSMC reserves the right to employ outside assistance or to use its own forces to provide the necessary corrective measures. All expenses incurred by HSMC in the performance of such duties for the Contractor shall be withheld from monies becoming due to the Contractor and may be deducted from the contract price.

D. The Contractor must submit evidence to the Director of Facilities that the governing Federal, State and local Air Pollution criteria will be, and were met. This evidence and related documents will be retained by HSMC for on-site examination.

E. If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, or by the order of any State or Federal agency or official enforcing applicable laws, such suspension, delay, or interruption shall be considered as if ordered by the Director of Facilities. If it is determined that the suspension, delay, or interruption is due wholly or in part to acts or omissions of the Contractor in breach or violation of the terms of this Contract or acts of the Contractor not required by this Contract, Contractor shall be responsible for all additional costs and delays resulting from such acts or omissions.

F. The term "environmental litigation," as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that HSMC has not duly considered, either substantively or procedurally, the effect of the work on the environment.

## **6.06 Insurance Requirements**

### **A. Insurance During Construction:**

- (1) The Contractor and his Subcontractors shall purchase and maintain comprehensive third-party legal liability insurance and other such insurance as is appropriate for the work to be performed on the project. Further, the Contractor shall be responsible for the maintenance of this insurance whether the work is performed directly by the Contractor, by any Subcontractor, by any person employed by the Contractor or any Subcontractor, or by anyone for whose acts the Contractor may be liable. This insurance shall include protection for:
  - (a) Claims arising from Worker's Compensation statutes or similar employee benefit acts, or third-party legal liability claims arising from bodily injury, sickness and disease, or death of Contractor's employees. The minimum limits of such coverage shall be as required by law.
  - (b) Third-party legal liability claims against the Contractor arising from the operations of the Contractor, Subcontractors and Suppliers with such protection extended to provide comprehensive coverage, including personal injury, completed operations, explosion and collapse hazard, and underground hazard. The minimum-combined limit for personal injury and property damage liability shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate, unless higher limits are stated elsewhere in the Contract.
  - (c) Third-party legal liability claims arising from bodily injury and/or damage to property of others from the ownership, maintenance or use of any motor vehicle, both on-site and off-site. The minimum combined limit for personal injury and property damage liability shall be: \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- (2) The Contractor shall purchase and maintain property insurance (Builder's Risk) covering the project, including improvements to real property and goods and materials on the site to be incorporated into the project. Such property insurance shall be for the full insurable value of the property covered and shall be written on an "All Risk" basis covering physical loss and damage including theft, vandalism and malicious mischief, collapse, water damage, and such other perils as may be applicable to the project. Such insurance shall include the interest of the owner, the General Contractor and all Subcontractors as their interests may appear.

- (3) If any of the work under this contract is subcontracted, the Contractor shall require the subcontractors, or anyone directly or indirectly employed by any of them, to procure and maintain the same insurance coverage in the same amounts specified above.

B. General: All insurance required shall be purchased and maintained with a company or companies lawfully authorized to do business in the State of Maryland. All required insurance policies shall be endorsed to provide thirty (30) days prior written notice by certified mail, of any material change, cancellation, or non-renewal to:

Purchasing Agent

Historic St. Mary's City Commission

St. Mary's City, Md. 20686

Prior to commencement of the work, proof of the required insurance and endorsements shall be made by submission to HSMC, of certificates of insurance and endorsements satisfactory to HSMC. All required insurance shall be maintained until HSMC has fully accepted the work required under the Contract. Failure to obtain or to maintain the required insurance or to submit the required proof of insurance shall be grounds for termination of the Contract for default.

#### **6.07 Separate Contracts**

A. HSMC reserves the right to let other contracts in connection with this work or work adjacent to the project. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs. The Contractor is not entitled to any overhead, profit, or other compensation for work done for HSMC by other contractors.

B. If any part of the Contractor's work depends on proper execution or results of work of any other contractor, the Contractor shall inspect and promptly report to the Architect and the Project Manager any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the

reception of his work, except as to the defects which may develop in the other contractor's work after the execution of his work.

C. To insure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Architect any discrepancy between the executed work and the drawings.

#### **6.08 Relationship of Contractor to Public Officials and Employees**

A. In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no individual liability upon the Procurement Authority, or other authorized representatives of HSMC, it being understood that in all such matters they act solely as agents and representatives of HSMC.

B. HSMC may terminate the right of the Contractor to proceed under this Contract if it is found by HSMC that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of HSMC with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract.

C. In the event this Contract is terminated as provided in Section B hereof, HSMC shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and (2) in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Procurement Authority) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

D. The rights and remedies of HSMC provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

E. Non-Hiring of Employees: No employee of HSMC whose duties as such employee include matters relating to or affecting the subject matter of this Contract shall, while such employee, or within six

months after termination of employment with HSMC, become or be an employee of the party or parties hereby contracting with HSMC.

#### **6.09 Assignment of Antitrust Claims**

The Contractor sells, transfers and assigns to Historic St. Mary's City Commission , a unit of the State of Maryland, all rights, title and interest of, and in and to any causes of action arising at any time before the date of this assignment or during the performance of this Contract under the antitrust laws of the United States, including Section 1 of the Sherman Act, and the antitrust law of Maryland relating to the purchase by the Contractor or St. Mary's HSMC or the State of Maryland of any products from any supplier or source whatever that is incorporated in the structure built under the terms of this agreement. The Contractor hereby certifies that the above causes of action are lawfully owned and that no previous assignment of same has been made nor has the same heretofore been attached or pledged in any manner whatsoever.

#### **6.10 Federal Participation**

When the United States Government pays all or any portion of the cost of a project, the work may be subject to the inspection of the appropriate Federal Agency. In such case, the Contractor shall comply with the Federal inspection which will be in addition to other inspection requirements of the Contract. Such Federal inspection shall in no sense make the Federal Government a party to this Contract.

#### **6.11 Claims and Disputes**

A. This Contract is subject to the judicature of the Procurement Review Committee of HSMC. Claims or other matters in question between the Contractor and HSMC arising out of or relating to this agreement or breach thereof, which cannot be resolved by mutual agreement by the Contractor and the Director of Facilities shall be resolved in accordance with this clause.

B. If the Contractor and the Director of Facilities cannot reach mutual agreement on the resolution of a claim the Contractor shall request, in writing from the Director of Facilities, a Final Decision. The Director of Facilities' Final Decision shall be the final decision of HSMC under the Contract unless the Contractor files a timely written notice of dispute in accordance with this Section. A Final Decision of the Director of Facilities shall be prima facie evidence of the correctness of the decision. On any appeal

from a decision of the Director of Facilities, the Contractor will have the burden of proof and the burden of going forward with the evidence of all issues, including the propriety of a termination for default.

C. Unless a lesser period is provided by applicable statute, regulation, or this Contract, the Contractor must file a written Notice of Dispute with the Purchasing Agent within thirty (30) days after the rendering of a Final Decision by the Director of Facilities. If the Director of Facilities does not issue a Final Decision within 180 days of the Contractor's first written request, then the Contractor will have thirty (30) days from the expiration of the 180 day period to file the Notice of Dispute with the Purchasing Agent.

D. Contemporaneously with or within thirty (30) days of the filing of a Notice of Dispute, the Contractor must submit to the Procurement Authority via the Purchasing Agent its written dispute which must contain the following information:

- (1) An explanation of the dispute, including reference to all contract provisions upon which it is based;
- (2) The amount disputed;
- (3) The facts upon which the dispute is based;
- (4) All pertinent data and correspondence that the Contractor relies upon to substantiate the dispute;
- (5) A copy of the Director of Facilities Final Decision; and
- (6) Certification by a senior official, officer, or general partner of the Contractor that, to the best of the person's knowledge and belief, the dispute is made in good faith, supporting data are accurate and complete, and the amount requested accurately reflects the contract adjustment for which the person believes HSMC is liable.

E. The Procurement Review Committee shall render a written decision on all disputes within ninety (90) days of receipt of the Contractor's complete written dispute, unless the PRC determines that a longer period is necessary to resolve the dispute. The PRC's decision shall be deemed the final action of HSMC. This Contract is not subject to the Maryland State Board of Contract Appeals.

F. Pending resolution of a dispute, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Director of Facilities' decision.

G. As used in this Section, "Subcontractor" includes Subcontractor and Suppliers of the Contractor at any tier. HSMC shall have no liability to the Contractor for any claim of a Subcontractor against the Contractor if the Contractor has no liability therefor to the Subcontractor or if the Contractor has a valid defense against the claim of the Subcontractor. Any agreement between the Contractor and the Subcontractor making liability on the part of the Contractor to the Subcontractor contingent upon a determination of liability on the part of HSMC to the Contractor shall not make HSMC liable to the Contractor for the claim of the Subcontractor if the Contractor would not otherwise be liable therefor. The purpose of this provision is to adopt the Severin doctrine, without exception, as a matter of contract between HSMC and the Contractor.

## **SECTION 7 - PROSECUTION AND PROGRESS OF THE WORK**

### **7.01 Notice to Proceed**

A. After the Contract has been executed, the Director of Facilities will issue to the Contractor a "Notice to Proceed" and this notice will stipulate the date on or before which the Contractor is expected to begin work. The specified contract time shall begin on the day work (other than the erection of the inspector's office, construction stakeout, and mobilization) actually starts or on the day stipulated in the "Notice to Proceed," whichever is earlier. Any preliminary work started, or materials ordered, before receipt of the "Notice to Proceed," shall be at the risk of the Contractor, however, in no case shall the Contractor perform any work without the insurance required by this Contract.

B. Except as provided in Section C below, if HSMC fails to issue a Notice to Proceed within 90 days following execution of the Contract, the Contractor will have as its sole remedy the option of (a) declaring the Contract void without any liability or obligation on the part of HSMC or (b) accepting an extended period, at no additional cost to HSMC for issuance of a Notice to Proceed.

C. If the failure of HSMC to issue a Notice to Proceed within 90 days following completion of award is caused, wholly or in part, by breach or default of the Contractor or other fault of the Contractor or his Subcontractors or Suppliers at any tier, the Contractor shall be entitled to no relief under Section B above based on delay in issuance of the Notice to Proceed. In such a case, the Contractor shall be bound to perform the Contract within the time allowed following actual issuance of the Notice to Proceed, at no additional cost to HSMC.

## **7.02 Contract Time**

A. All time limits in the Contract are of the essence of the Contract. The deadline for the completion of the work will be that deadline as defined in the written Agreement. No deadline may be extended except by written Change Order issued pursuant to the Changes Clause, Section 3.04.

B. Contractor and HSMC agree that the time stated in the Contract for the completion of the work is a reasonable time, considering the climatic range and the usual business conditions prevailing in the locality of the project. The contract time shall be the full time allowed or required for completion of every task involved in completion of the work, including lead-time for ordering and fabrication of equipment and materials.

C. This project is subject to limited funding and tight budgeting. HSMC's budgeting, including budgeting for expenses of operation after completion and for payment to the Architect and others working on the project, is based on the Contract extending for the full time allowed by the Contract for completion. HSMC is not obligated (a) to accept an early completion schedule from the Contractor, or (b) to accept the project prior to the completion date stated in the Contract. HSMC will not be liable for any claims based on the Contractor's assertion of an intention to finish early.

D. Requests for time extensions must be filed and supported as provided in Section 3.04 and other applicable provisions of the Contract. Failure of the Contractor to request a time extension as required by Section 3.04 and this Section 7.02, or provide proper notice as required by Sections 7.03H, shall constitute a waiver of Contractor's right to an extension of the required completion date and any damages for delay to which he might be entitled.



E. Except as may be expressly agreed otherwise by the Director of Facilities in writing, no action or inaction by HSMC or its representatives shall constitute a grant of an extension of the completion date or the waiver of a delay or other default by the Contractor or agreement of HSMC to pay for alleged delays or acceleration of construction, including: (1) a request for a revised schedule, a recovery schedule, or an anticipated completion date from Contractor; (2) allowance, approval or acceptance of any schedule; (3) failure to terminate for default at an earlier date; or (4) demand that the Contractor finish the project by the required completion date or by any subsequent date promised by the Contractor.

F. An equitable adjustment in contract time or price for delay shall be subject to the requirements and conditions set forth in Section 3.04, 7.03 and 7.04.

### **7.03 Delays**

A. The term “delay” shall mean any act, omission, occurrence, event, or other factor which necessarily results in the extension of the time reasonably required for completion of the Contract. This Section covers every such act, omission, occurrence, event, or other factor, whether called delay, disruption, interference, impedance, hindrance, suspension, constructive suspension, extension or otherwise.

B. In the event that a delay is excusable as provided in Section 7.03D below, or is otherwise not the responsibility of the Contractor, the Contractor must take all reasonable action to avoid and/or mitigate the effects of the delay, including but not limited to:

- (1) Rescheduling or resequencing the work,
- (2) Accepting other work, and/or
- (3) Reassigning personnel.

Such action by the Contractor excludes any action that causes an increase in the Contractor’s cost to perform the work unless such costs are authorized or directed by HSMC in accordance with Section 3.04.

C. In the event that a delay is the responsibility of the Contractor, the Contractor must take action to accelerate construction, work overtime, add additional shifts or manpower, work on weekends, or to do anything else reasonably necessary in order to finish on time, at no additional cost to HSMC. The Contractor does not have the unilateral right to complete the work late and pay liquidated or other damages.

D. Excusable Delays: The Contractor shall be entitled to an extension of the contract time for delay if all of the conditions listed below in (1) through (6) are met:

- (1) The delay in the completion arises from either:
  - (a) unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of HSMC in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with HSMC, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of Subcontractors or Suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the Subcontractors or Suppliers, or
  - (b) A suspension of the work as provided in Section 7.03E; and
- (2) The Contractor provides the Director of Facilities proper notice per Section 7.03H;
- (3) The delay impacts the critical path identified on the Contractor's schedule per Section 7.04H;
- (4) The Contractor is reasonably unable to mitigate the impact of the delay as required by Section 7.03B;

- (5) The Contractor properly requests an extension of time in accordance with Sections 3.04 and 7.02; and
- (6) The Director of Facilities, having ascertained the facts based on information provided by the Contractor as required in the General Conditions and any other information he may obtain, extends the time for completing the work when, in his judgment, the findings of fact justify such an extension, through a change order. The determination by the Director of Facilities shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this Contract.

E. Suspension of the Work:

- (1) The Director of Facilities or the Vice Executive Director of Business and Finance may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as it may determine to be appropriate for the convenience of HSMC.
- (2) If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of HSMC in the administration of the Contract, or by its failure 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 any increase in the direct jobsite cost of performance of this Contract (in accordance with Sections 3.04) necessarily caused by an unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.
- (3) No claim under this clause shall be allowed: (1) unless the Contractor provides proper notice and meets all other procedural requirements of these General Conditions, (2) for any costs incurred more than 10 days before the Contractor shall have notified the Director of Facilities 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 provided under Section 7.03E(1) above), (3) unless the

Contractor is entitled to an extension of the Contract time per section 7.03D, and (4) unless the claim, in an amount stated, is asserted in writing within 30 days after the termination of a suspension, delay, or interruption.

F. Damages for Delay:

- (1) Whenever HSMC shall be liable to the Contractor for an equitable adjustment for delay, the amount of the equitable adjustment shall be determined in accordance with Section 3.04 and this Section 7.03.
- (2) Only the following items may be recoverable by the Contractor as compensation or damages for delay: (a) direct costs, consisting of (i) actual additional salaried and non-salaried on-site labor expenses; (ii) actual additional costs of materials; (iii) actual additional equipment costs, based solely on actual ownership costs of owned equipment or actual reasonable costs of rented or leased equipment; (iv) actual additional extended field office expenses, excluding those which are to be included in overhead; (v) actual additional reasonable costs of Subcontractors and Suppliers at any tier for which the Contractor is liable, subject to Section 3.04; (b) actual additional costs, proven by clear and convincing evidence, resulting from labor or other inefficiencies; and (c) an additional percentage, determined in accordance with Section 3.04 of the total of items (a)(i) through (v) above, for overhead and profit.
- (3) No other compensation or damages are recoverable by the Contractor for compensable delays or extensions of the completion time except as expressly stated in this Section 7.03F . In particular, HSMC will not be liable for the following (by way of example and not of limitation) whether claimed by the Contractor or by a Subcontractor or supplier at any tier: (a) profit in excess of that provided herein; (b) loss of profit; (c) home office or other overhead in excess of that provided herein; (d) overhead calculated by use of the Eichleay formula or similar formulae; (e) consequential damages of any kind, including loss of additional bonding capacity, loss of bidding opportunities, and insolvency; (f) indirect costs or expenses of any nature except those expressly provided for herein; and (g) attorney's, accountant's or consultant's fees, costs of claims preparation and presentation, and fees and costs of litigation.

- (4) There shall be deducted from the compensation payable to the Contractor under this section for delay any and all costs, expenses, and overhead recovered or recoverable by the Contractor under change orders issued to the Contractor or otherwise recovered or recoverable by the Contractor.

G. Delays set forth in Section 7.03D(1)(a) shall be no compensable even if an extension of time is granted.

H. The Contractor shall be entitled to no time extensions, compensation or damages for delay unless:

- (1) the Contractor satisfies all requirements stipulated in these General Conditions; and
- (2) the Contractor notifies the Director of Facilities in writing, within five (5) calendar days of the act, omission, occurrence, event or other factor alleged to have caused the delay of:
  - (a) the alleged delay and its anticipated duration, and
  - (b) the act, omission, occurrence, event or other factor allegedly causing the delay.
- (3) Knowledge on the part of HSMC of the act, omission, occurrence, event, or other factor, or of the delay allegedly resulting therefrom, shall not excuse Contractor's failure to give HSMC the notice required by this Section 7.03H.

I. Weather:

- (1) Definition of rain days and drying days should be as follows unless otherwise agreed by the Director of Facilities.

- (a) Rainfall sufficient to result in a workday being potentially lost due to rain (rain day) shall be defined as liquid precipitation greater than .10 inch.
  - (b) It shall be considered normal for the workday immediately following a rain day of precipitation greater than 1.00 inch to potentially be lost due to wet ground conditions (drying day). The Director of Facilities may allow additional drying days if deemed reasonable, in his discretion.
- (2) Unusually severe weather - rain.

To qualify as unusually severe weather due to rain, the number of actual weekdays lost due to rain days and drying days must be greater than that calculated for the month in question using the following procedure:

- (a) Using the last ten (10) years of weather data from the weather station at Patuxent Naval Air Station, Contractor shall compute the average number of weekdays lost due to rain days and drying days for the month in question and one standard deviation from the average.
- (b) Contractor shall then add the average number of weekdays lost to the value of one standard deviation. The sum (the average plus one standard deviation) shall be considered normal for the month in question.
- (c) Actual weather impact shall be calculated by first determining the actual lost rain weekdays during each month in question. If any of the following conditions existed on a given weekday, the day will be deducted from the total actual rain days or drying days for the month to determine the net number of weekdays lost to rain:
  - (i) rainfall occurred on a non-work weekday such as a holiday;

- (ii) rainfall occurred at a time when no weather-dependent work was in progress or occurred during planned or unplanned shutdowns due to other (non-weather) circumstances such as equipment failure, strikes, delays, etc.; or
  - (iii) Contractor was still working or able to work on all weather dependent activities to the extent that production was or could have been within actual normal levels established on the project.
- (d) Time adjustments for rain. If the net number of weekdays lost to rain is less than the normal number in question (average rain days and drying days plus one standard deviation), no time adjustment will be made. If the net number of weekdays lost to rain is more than the normal number for the month in question, an excusable and noncompensable time extension will be granted. No adjustments will be made for the time between the starting time stated in the Notice to Proceed and the first day of the following month or for the last partial month.
- (3) Other weather conditions. Time extensions for delays due to unusual weather conditions other than rain (such as snow; extreme cold or heat; high winds, etc.) will be considered only to the extent Contractor can prove (a) conditions were unusually severe, and (b) they caused actual delay to the adjusted as-planned/as-built critical path.

## **7.04 Schedules**

### **A. Preliminary Progress Schedule:**

- (1) Unless the Contract expressly state otherwise, the Contractor is to furnish a preliminary progress schedule.

- (2) Within 14 days of the execution of the Contract, the Contractor must submit a preliminary progress schedule outlining activities for the first 90 days of construction. A skeleton diagram for each significant construction activity for the remainder of the work shall be included on the preliminary schedule. This preliminary progress schedule must be approved prior to the first requisition being processed. Include each significant construction activity. Each activity in the preliminary progress schedule shall be coordinated with all other activities. Each construction activity shall be in proper sequence.
- (3) The Contractor shall include with submission of the preliminary progress schedule, a tabulation by date of submission of submittals required during the first 90 days of construction. All submittals required to maintain orderly progress of the work, and those required early because of long lead time for manufacture or fabrication shall be clearly identified.
- (4) The preliminary progress schedule shall be distributed to all parties that need to know about construction activities that are scheduled early, including the Architect and the Project Manager.

B. Completion Schedule:

- (1) Within 45 days after contract execution and at such other times as required herein, the Contractor shall submit a schedule indicating the time allocated by the Contractor for the performance of each portion of the work, and the submittal information required by Section 7.04C. When CPM scheduling is required, the schedule shall also include the dollar value of each work item (dollar loading) properly and reasonably sequenced, and the Contractor's labor requirements (labor loading) for achieving each task shown on the schedule. The schedule shall show completion of the work within the contract time.
- (2)
  - (a) The Contractor shall also submit, with the schedule required under (1) above, the following whenever CPM scheduling is required:
    - (i) A written narrative explaining the bases of the Contractor's determinations of durations and prices for major work activities



and describing the Contractor's approach for meeting the interim and final completion dates;

- (ii) A listing of the major items of construction equipment planned for use on the project (including type, number of units, unit capacities, and a schedule showing the proposed time each piece of equipment will be on the job, keyed to the activities on which the equipment will be used);
  - (iii) Identification of activities which may be expedited by use of overtime or additional shifts;
  - (iv) Identification of sequencing and other restraints such as manpower, material, and equipment; and
  - (v) A listing of the proposed work days, holidays and any special non-work days being used for the computer reports (schedules and updates).
- (b) If required by the Director of Facilities, such explanation shall include (at no additional cost to HSMC) estimated quantities and production rates, hours per shift which are proposed, unit prices of materials, and prices of installed equipment.

C. Submittal Schedule:

- (1) The Contractor's schedule shall include as separate work activities, all necessary activities relating to submittals, including but not limited to the work or materials covered by the submittal, the Subcontractor involved, the submittal required, the activity or event number as shown in the CPM schedule (if required), and all necessary dates for submittal, review and response, resubmittal (if necessary), and final approval by the Architect and/or HSMC.

- (2) In the event that the Contractor intends to submit “substitute” or “equal” products, he must include sufficient time for the Architect and HSMC to fully evaluate the submittal. Any delays to the project resulting from the Architect’s and HSMC’s review of substituted or equal” products will be the responsibility of the Contractor.

D. The Contractor shall submit with each application for payment a revised schedule and accompanying written report accurately updated to reflect all: (1) revisions to the schedule; (2) changes made or planned in the construction sequence; (3) actual construction activities to date including (i) commencement and completion dates for activities started or completed during the reporting period, (ii) current progress of activities started in prior reporting periods including completion dates for activities completed during the reporting period; (4) delays and their effects on the critical path (whether or not a CPM schedule is required); (5) extensions of time granted by HSMC; (6) the Contractor’s planned schedule for completing remaining activities; and (7) when CPM schedules are required, adjustments to the dollar loading and labor loading associated with items (1) through (6) above. This required schedule update shall be furnished monthly whether or not the Contractor submits an application for payment in that month.

E. All of the Contractor’s schedules, including monthly schedule updates and recovery schedules under Section 7.04G, shall be reviewed by the Architect and HSMC and shall be approved or disapproved by the Director of Facilities. Approval by HSMC of any schedule submitted under this Section 7.04 shall constitute approval of the schedule only for general conformity with contract requirements and shall not constitute approval, acceptance, or admission of the reasonableness, accuracy, achievability, or feasibility of the schedule or of the Contractor’s ability to meet the schedule, or waiver or excuse of default or delay by the Contractor, extension of the time for completion, waiver or modification of contract requirements, admission of fault or responsibility for delay on the part of HSMC or the Architect, or acceptance or admission on the part of HSMC of any liability or responsibility for the schedule or for acceleration or for other costs or delay damages of the Contractor which are inferable from the Contractor’s schedule or update.

F. The Contractor agrees that accurate schedules and updates are critical to completion of the project efficiently and economically; to HSMC’s ability to judge the impact of alleged delays, differing site conditions, change orders and other events; in order to deal fairly with the Contractor. If the Contractor fails to submit reasonable and accurate preliminary progress schedules, completion schedules or revisions, including recovery schedules under Section 7.04G, as required by the Contract, then (1) HSMC is not obligated to pay the Contractor for work completed until proper, accurate schedules, and updates are furnished as required; and (2) HSMC is not liable for and the Contractor is not entitled to damages, compensation, or time extensions for delays starting, occurring or continuing during the period when an accurate and reasonable schedule or update was due but not furnished by the Contractor.

G. Whenever the project shall be behind schedule or alleged by either party to be behind schedule, the Director of Facilities may require the Contractor to furnish, at no additional cost to HSMC, a revised schedule (hereinafter called a “recovery schedule”) showing how the Contractor will finish the project by the contract completion date. This recovery schedule shall include all of the information required under Sections B and D above, subject to the requirements of Section 7.04 I, if CPM schedules are required.

H. The Contractor’s construction schedule shall begin with the date of issuance of Notice to Proceed and conclude with the required date of final completion of the project as stated in the contract. Float or slack time available in the schedule at any time shall not be for the exclusive use or benefit of either the Contractor or HSMC but is jointly owned. Delay for which HSMC is responsible in any portion of the work shall not automatically mean that the extension of the completion date is warranted or due the Contractor. The Contractor agrees that a delay in any given activity at any given time may not necessarily affect critical activities and may not necessarily cause noncritical activities to become critical. The effect of any given delay may be only to absorb float and may not necessarily delay critical activities. Subject to Sections 7.02 and 7.03, extensions of time for delays for which HSMC is responsible will be granted only to the extent that affected activities exceed the total float along their paths on the current adjusted as-planned/as-built schedule.

I. CPM Scheduling

- (1) Unless the contract expressly permits the Contractor to use a schedule other than a CPM schedule, the schedules to be furnished by the Contractor under this Section 7.04 shall be CPM schedules. The Contractor’s CPM schedule must be submitted with 45 days after the Contract is executed. Following rejection by HSMC or conditional approval subject to correction, Contractor shall make the necessary corrections, and resubmit proper schedules within 14 calendar days. Contractor may use only CPM schedule software approved by HSMC.
- (2) (a) Scheduling of construction is the responsibility of the Contractor. CPM scheduling is required to assure adequate planning and execution of the work and to assist HSMC, the Architect, and the Contractor in evaluating the progress of the work and the impact on the schedule of events which could affect the completion date.

- (b) Logic or network diagrams shall show the order and interdependence of activities and the sequence in which the work is to be accomplished as planned by the Contractor. These diagrams must show how the start of a given activity is dependent on preceding activities and how its completion restricts the start of following activities.
- (c) Detailed logic or network activities shall include, in addition to construction activities, the submittal and approval of samples of materials and shop drawings, the procurement of critical materials and equipment and their installation and testing. All activities of HSMC and the Architect that affect progress and Contract required dates for completion of all or part of the work will be shown.
- (d) The selection and number of activities shall be subject to HSMC approval. Logic or network diagrams need not be time scaled but shall be drafted to show continuous flow from left to right with no arrows from right to left. The following information shall be shown on the diagrams for each activity: preceding and following event number, description of the activity, cost loading, labor loading, and activity duration in calendar days. Schedules shall be plotted so they can be displayed on a wall eight feet high. A summary schedule plotted on a single sheet, shall be provided also.
- (e) The mathematical analysis of the network shall include a tabulation of each activity. The following information will be furnished, at a minimum, for each activity:
  - (i) I, J numbers if Arrow Diagramming Method (ADM) is used
  - (ii) Activity and Precedence relationships if Precedence Diagramming Method (PDM) is used
  - (iii) Activity Description
  - (iv) Estimated duration of activity (in calendar days)
  - (v) Percent of activity completed
  - (vi) Earliest start date (by calendar date)

- (vii) Earliest finish date (by calendar date)
  - (viii) Actual start date (by calendar date)
  - (ix) Actual finish date (by calendar date)
  - (x) Latest start date (by calendar date)
  - (xi) Latest finish date (by calendar date)
  - (xii) Float or slack (by calendar date)
  - (xiii) A monetary value of each activity
  - (xiv) Subcontractor responsible for each activity
  - (xv) Labor requirements for each activity
- (f) Work elements should be broken down into activities of durations of from 1 to 21 days. No activity should ever represent more work than can be accomplished in 21 calendar days.
- (g) The analysis shall list the activities in sorts or groups as follows:
- (i) By the preceding event number from lowest to highest and then in order of the following event number;
  - (ii) by the amount of float, then in order of preceding event number;
  - (iii) In order of latest allowable start dates, then in order of preceding event numbers; and
  - (iv) In order of latest allowable finish dates, then in order of preceding event numbers.
- (h) In addition to the requirements of Section 7.04D, updates shall show the activities or portions of activities completed during the reporting period and their total value as basis for the Contractor's periodic request for payment. Payments made to the Contractor will be based on the total value of such activities completed or partially completed after verification by HSMC and the Architect, and this updated schedule analysis shall be used as a basis for partial payment. The update will state the percentage of the work actually completed and scheduled as of the report date and the

progress along the critical path in terms of days ahead or behind the allowable dates. If the project is behind schedule, progress along other paths with negative float shall also be reported. The Contractor also shall submit a narrative report with the updated analysis which shall include, but not be limited to, a description of the problem areas, current and anticipated, delaying factors and their impact, and an explanation of corrective actions taken or proposed.

- (i) Sheet size of diagrams shall be 30 x 42 inches. Each updated copy shall show a date of the latest revision, and the date of the latest updating.
  - (j) All schedules, including the initial schedule, recovery schedules, and monthly updates, shall be submitted in three (3) paper copies and, if requested, one (1) copy on diskette.
  - (k) The Contractor shall be prepared to effect schedule revisions in the network in response to changes to the Contract under the terms thereof, at the direction of HSMC. In the event that change orders are experienced, they shall be reflected as new activities in the network, or as changes in logic and/or time framing of existing activities. They shall be introduced at the next updating after receipt of a change order, and shall be subject to the approval of HSMC. Change order logic shall affect only those intermediate activities and performance dates directly concerned. Adjustments required in completion dates for those intermediate dates, or for the Contract as a whole, will be considered only to the extent that there is not sufficient remaining float to absorb the additional time which may be authorized for completion of individual activities.
  - (l) When the first schedule is furnished, the Contractor shall also furnish to HSMC for HSMC's permanent use and retention, the CPM scheduling software used by the Contractor for scheduling the project and one copy of an operating and user's manual for using the software.
- (3) (a) CPM schedules and updates, including recovery schedules, shall include the following: (a) lists of activities showing early and late start and finish dates; (b) a brief time-impact comparison in graph form (preferably

on one page) comparing the critical path as-built to date and as-planned for the remainder of the work (as shown on the Contractor's last schedule or update) with the critical path as-built and as-planned as of the time of the schedule or update currently being submitted; and (c) all other information normally provided in a reasonable CPM schedule or update.

- (b) Logic or network diagrams must be furnished (1) with the first schedule submitted under this Section 7.04 I; (2) with recovery schedules submitted under Section 7.04G; (3) if requested by HSMC with each monthly update submitted under Section 7.04D; and (4) whenever the Contractor changes the sequence of work, whether diagrams are requested by HSMC or not.

## **7.05 Progress Meetings**

The Contractor shall meet with HSMC and the Architect (unless the Architect's absence is excused by HSMC) at least monthly to discuss the progress of the job and to discuss in detail the contractor's updating of the schedule, the necessity for revisions or corrections in the schedule or updates, and all other issues or matters relating to the scheduling of the project and the Contractor's obligations under the project respecting scheduling. The Project Manager may require progress meetings to be held more frequently than monthly at no additional costs. Minutes of progress meetings will be prepared and circulated by the Architect.

## **7.06 Project Signs**

A. The Contractor may provide one project sign for each major entrance to the project. The Contractor shall be responsible for installation, at a location directed by HSMC, and maintenance of the signs(s).

B. Posts for sign(s) shall be supplied by the Contractor and made of 4x4 inch construction-grade lumber, pressure preservative treated, 10 feet long. The sign(s) shall be bolted to the posts using at least two 1/2 inch bolts per post. Washers shall be used between the bolts and the sign faces and the posts and nuts. The posts shall be set into the ground to a depth of three feet, six inches with the bottom of the signs two feet six inches above the ground.

C. The Contractor shall be responsible for removing the sign(s) after final acceptance of the work and shall dispose of the sign(s) off campus as directed by HSMC's authorized representative. The Contractor shall also restore site to its original condition.

## **7.07 Public Convenience and Safety**

The Contractor at all times shall conduct the work in such a manner as to create the least practicable obstruction to all forms of traffic. The convenience of the general public, tenants, and of the residents along and/or adjacent to the improvement shall be respected. Material stored upon the project shall be placed so as to cause a minimum of obstruction to the public. Sprinkling shall be performed at the direction of HSMC. The Contractor shall, unless otherwise specified, provide and maintain in passable condition such temporary access, roads and bridges as may be necessary to accommodate traffic diverted from the project under construction, or using the project under construction and shall provide and maintain in a safe condition temporary approaches to, and crossings of, the project. Existing facilities planned to be removed, but which might be of service to the public during construction are not to be disturbed until other and adequate provisions are made. Fire hydrants on or adjacent to the project shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within 15 feet of any such hydrant. Work closed down for the winter or at any other times shall be left entirely accessible at all points to fire apparatus. All footways, gutters, sewer inlets and portions of the project under construction shall not be obstructed more than is absolutely necessary.

## **7.08 Barricades and Warning Signs**



A. The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other control devices, and shall take all necessary precautions for the protection of the work and safety of the public. All highways and other facilities closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness with electric lights. State Highway Administration Standards will be followed as applicable.

B. The Contractor shall erect warning signs in advance of any place on the project where operations may interfere with the use of the facility by vehicular or pedestrian traffic, and at all other points where the new work crosses or coincides with an existing roadway or traffic lane(s). Such warning signs shall be constructed and erected in accordance with the FHWA Manual on Uniform Traffic Control Devices, or as directed.

C. In cases where the Contractor's sequence of operations results in grade differentials which would be hazardous to vehicular or pedestrian traffic, the Contractor will, at the direction of HSMC and at no additional cost to HSMC provide suitable substantial guardrail to the extent determined by HSMC.

## **7.09 Preservation, Protection and Restoration of Property**

A. (1) The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect HSMC property from injury or loss arising in connection with this Contract. He shall repair and indemnify against any such damage, injury or loss, except such as may be directly due to errors in the Contract or caused by agents or employees of HSMC. He shall adequately protect adjacent property as provided by law and the Contract.

(2) Repair - Where used in the Contract, repair shall be taken to mean to restore after injury, deterioration, or wear; to mend, to renovate by such means as appropriate and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth and fully serviceable. Upon completion of such repair it must be, unless otherwise stated, rendered to such conditions as to present a first class finished work, or in instances where the repaired item serves as a base for additional finish, the repaired work must be such as to permit a first-class finish, to be applied without extra cost to HSMC. When the word "repair" is used in connection with machinery or mechanical equipment

it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient ready for normal use for which it was intended originally.

(3) Cutting and Patching of Work:

- (a) The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the work or to make its several parts fit together properly.
- (b) The Contractor shall not damage or endanger any portion of the work or the work of the owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the owner or any separate contractor except with the written consent of the owner and of such separate contractor. The Contractor shall not unreasonably withhold from the owner or any separate contractor his consent to cutting or otherwise altering the work.
- (c) The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect HSMC property from injury or loss arising in connection with this Contract. The Contractor shall make any and all repairs for damages to adjacent property caused as a result of work on this Contract and he must restore conditions to their previously existing state to the satisfaction of HSMC.

B. The Contractor shall box and protect to the drip line, all trees which are liable to injury to either their limbs, trunk or roots, by the moving, storing and working up of materials. He shall use no tree for any attachment or anchorage. Protection shall also include avoiding over compaction of the root zone, trenching or infiltration of substances hazardous to the health of the tree.

C. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.

D. In any emergency affecting the safety of life, or of the work, or of the adjoining property, the Contractor, without special instruction or authorization is hereby permitted to act, at his discretion, to prevent such threatened loss or injury. If he is specifically instructed by the Director of Facilities or the Vice Executive Director of Business and Finance to do work in an emergency, the Contractor shall do the work and will be paid compensation as outlined in Section 3.04.

#### **7.10 HSMC's Right to Terminate For Its Convenience**

A. The performance of work under this Contract may be terminated by HSMC in accordance with this clause in whole, or from time to time in part, whenever the Procurement Authority shall determine that such termination is in the best interest of HSMC. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

B. After receipt of a Notice of Termination, and except as otherwise directed by the Procurement Authority, the Contractor shall:

- (1) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- (2) Place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of the portion of the work under the Contract as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (4) Assign to HSMC in the manner, at the times, and to the extent directed by the Procurement Authority, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case HSMC shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

- (5) Settle all outstanding liabilities and all claims arising out of the termination of orders and subcontracts, with the approval or ratification of the Procurement Authority to the extent that it may require, which approval or ratification shall be final for all the purposes of this clause;
- (6) Transfer title and deliver to HSMC in the manner, at the times, and to the extent, if any, directed by the Procurement Authority, the following:
  - (a) the fabricated or unfabricated parts, works in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination, and
  - (b) the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to HSMC;
- (7) When directed by the Procurement Authority, the Contractor shall use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Procurement Authority, any property of the types referred to in (6) above; provided, however, that the Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Procurement Authority. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by HSMC to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the Procurement Authority may direct;
- (8) Complete performance of such part of the work as may not have been terminated by the Notice of Termination; and
- (9) Take such action as may be necessary or as the Procurement Authority may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which HSMC has or may acquire an interest. The Contractor may submit to the Procurement Authority a list, certified

as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Procurement Authority, and may request HSMC to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, HSMC shall accept title to such items and remove them or enter into a storage agreement covering the same; provided that the list submitted shall be subject to verification by the Procurement Authority upon removal of the items, or if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

C. After receipt of a Notice of Termination, the Contractor shall submit to the Procurement Authority his termination claim, in the form and with certification prescribed by the Procurement Authority. Such claim shall be submitted promptly but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the Procurement Authority, upon request of the Contractor made in writing within such 90 day period or authorized extension thereof. However, if the Procurement Authority determines that the facts justify such action, the Contractor may receive and act upon any such termination claim at any time after such 90 day period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Procurement Authority may determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

D. Subject to the provisions of Section 7.10C, the Contractor and the Procurement Authority may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price of work as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in Section 7.10 of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Procurement Authority to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this Section 7.10D.

E. In the event of the failure of the Contractor and the Procurement Authority to agree, as provided in Section 7.10D, upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Procurement Authority may pay to the Contractor the amounts

determined by the Procurement Authority as follows, but without duplication of any amounts agreed upon in accordance with Section 7.10D.

- (1) With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:
  - (a) The cost of such work;
  - (b) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Section 7.10B(5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor before the effective date of the Notice of Termination of work under this Contract, which amounts shall be included in the cost on account of which payment is made under (a) above; and
  - (c) A sum, as profit on (a) above, determined by the Procurement Authority, to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subdivision (c) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- (2) The reasonable cost of the preservation and protection of property incurred pursuant to Section 7.09, and any other reasonable cost incidental to termination of work under this Contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this Contract.

The total sum to be paid to the Contractor under (1) above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that HSMC shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (1) above, the fair value, as determined by the Procurement Authority, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to HSMC, or to a buyer pursuant to Section 7.10 B(7) and (2).

F. Costs claimed, agreed to, or determined pursuant to Section 7.10C, D, E, and I hereof shall be in accordance with COMAR 21.09 as in effect on the date of this Contract.

G. The Contractor shall have the right of appeal, under the clause of this Contract entitled "Disputes," from any determination made by the Procurement Authority under Section 7.10C, E, or I hereof, except that if the Contractor has failed to submit his claim within the time provided in Section 7.10C or I hereof, and has failed to request extension of such time he shall have no such right of appeal. In any case where the Procurement Authority has made a determination of the amount due under Sections 7.10C, E, or I, hereof, HSMC shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Procurement Authority, or (2) if an appeal has been taken, the amount finally determined on such appeal.

H. In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advances or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract, (2) any claim which HSMC may have against the Contractor in connection with this Contract, and (3) the agreed price for, or the proceeds of sale of any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to HSMC.

I. If the termination hereunder be partial, the Contractor may file with the Director of Facilities a claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the Procurement Authority.

J. HSMC may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Procurement Authority the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to HSMC upon demand, together with interest computed at the legal rate for period from the date such excess payment is received by the Contractor to the date on which the excess is repaid to HSMC; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Procurement Authority by reason of the circumstances.

K. Unless otherwise provided for in this Contract, or by applicable statute, the Contractor shall, from the effective date of termination until the expiration of three years after final settlement under this Contract, preserve and make available to HSMC at all reasonable times at the office of the Contractor but without direct charge to HSMC all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the work terminated hereunder or, to the extent approved by the Procurement Authority, photographs, microphotographs or other authentic reproductions thereof.

#### **7.11 Termination for Default - General**

A. If the Contractor fails to fulfill its obligations in whole or part under this Contract properly and on time, or otherwise violates any provision of the Contract, HSMC may terminate the Contract in whole or in part by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at HSMC's option, become HSMC property. HSMC shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and HSMC can affirmatively collect damages.

B. HSMC may terminate for default under Sections 7.11 and 7.12 at any time when the Contractor is in default or breach of any material obligation of the Contract, including after substantial completion, such as for failure in a timely manner to complete a punch list, to perform warranty work, or to perform any other substantial requirement of the Contract.

#### **7.12 Termination for Default - Damages For Delay - Liquidated Damages**

A. If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall insure its completion within the time specified in this Contract, as may have been modified by executed change orders, or fails to complete said work within this time, the Procurement Authority may, by written notice to the Contractor, terminate his right to proceed (Termination for Default) with the work in full or in part or the part of the work as to which there has been delay. In this event HSMC may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work the materials including materials stored off-site, appliances, and plant as may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to HSMC resulting from his refusal or failure to complete the work within the specified time.



B. The Contractor's right to proceed may not be so terminated nor the Contractor charged with resulting damages if the delay in the completion of the work is determined to be an excusable delay in accordance with Section 7.03D.

C. Liquidated Damages:

- (1) For each day that the work shall be uncompleted after the contract completion date, as may be extended through a Change Order, the Contractor shall be liable for liquidated damages in the amount specified in the contract. Prior to and after expiration of the contract completion time, HSMC may withhold an amount equal to liquidated damages whenever the progress of construction is such that, due to the fault or responsibility of the Contractor, the Contractor, in the judgment of the Director of Facilities, is behind schedule so as not reasonably to be able to complete the Contract on time. Due account shall be taken of excusable delays, any extensions of time reasonably due the Contractor for completion of additional work under change orders, and for delays for which HSMC is responsible, provided that the Contractor has properly requested, in writing, time extensions therefor. After submission of a bid, the Contractor may not contest the reasonableness of the amount of liquidated damages stated in the contract.
- (2) Liquidated damages will be assessed from the date specified as the contract completion date, as may be adjusted by an executed Change Order, per the following:
  - (a) If fixed and agreed liquidated damages are provided in the Contract and if HSMC so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for final completion of the work together with any increased costs occasioned HSMC in completing the work.
  - (b) If fixed and agreed liquidated damages are provided in the Contract and if HSMC does not so terminate the Contractor's right to proceed, the resulting damage shall consist of these liquidated damages until the work is completed or accepted.

- (c) HSMC shall deduct and retain out of the contract amount due to the Contractor hereunder the amount of liquidated damages, and if the amounts due the Contractor are less than the amount of such damages, the Contractor shall be liable to HSMC for the difference.

D. If, after notice of termination for default of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of Section 7.11 and/or 7.12 , or that the delay was excusable under the provisions of Section 7.03, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to a termination for convenience of HSMC.

E. The rights and remedies of HSMC provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

F. As used in this Section, the term "Subcontractors or Suppliers" means Subcontractors or Suppliers at any tier.

G. If the Contract includes several completion dates for different portions of the work, then the provisions of this Section shall apply to each completion date.

### **7.13 Partial Acceptance**

A. If during the construction of work HSMC, in its sole discretion, desires to occupy any portion of the project, HSMC shall have the right to occupy and use those portions of the project which in the written opinion of the Director of Facilities can be used for their intended purpose; provided that (1) the conditions of occupancy and use are established by the Director of Facilities and (2) the responsibilities of the Contractor and HSMC for maintenance, heat, light, utilities, and insurance are mutually agreed to in writing by the Contractor and the Director of Facilities. If no agreement can be reached, HSMC may move into the facility and the matter of the responsibility of the Contractor and HSMC for maintenance of heat, lights, utilities, and insurance may be decided by the Procurement Review Committee pursuant to Section 6.11. The Contractor has the duty to advise HSMC of any reasons which may make partial occupancy unsafe.

B. Partial occupancy shall in no way relieve the Contractor of his responsibilities under the Contract.

C. When HSMC occupies the project in portions or accepts the work in portions, if the beneficial use of any accepted portion or of the project as a whole depends on substantial completion or beneficial use of any other portion, then: (1) warranties on the accepted portions do not begin to run until substantial completion of all portions on which beneficial use of the whole project depends, and (2) substantial completion of the whole project shall not be deemed to be achieved until substantial completion of all portions on which beneficial use of the whole depends.

#### **7.14 Substantial Completion and Final Inspection**

A. When the work is substantially completed, the Contractor shall notify HSMC and the Architect that the work will be ready for final inspection by the Architect and HSMC and test on a definite date. Sufficient notice shall be given to permit the Architect and the Director of Facilities to schedule the final inspection.

B. Final inspection shall not be scheduled until after the Contractor has obtained all permits or approvals from outside agencies (Fire Marshall, electrical, etc.) as required for use and occupancy.

C. On the basis of the inspection, if the Architect and HSMC determine that the work is substantially complete and the project can be occupied or used for its intended purpose, the Director of Facilities shall establish the date of substantial completion in writing and shall state the responsibilities of HSMC and the Contractor for maintenance, heat, utilities, and insurance and shall fix the time for which the guarantee will begin.

D. The Director of Facilities shall fix the time within which the Contractor shall complete any remaining items of work which will be indicated on a punch list prepared by the Architect and/or HSMC. If the Contractor fails to complete the remaining items so listed in the time stipulated by HSMC, HSMC shall have the undisputed right to complete the work and deduct any cost incurred from any monies retained under the Contract. The Contractor may be required to complete multiple punch lists until the Contract is performed in its entirety. Failure to complete punch list work in a timely manner shall constitute grounds for termination of the Contract for default.

E. At all times during the period in which punch work is to be completed, the Contractor shall keep up to date a copy of the punch list on site indicating completed work.

F. Acceptance of the work as substantially complete shall not excuse or waive any failure of the Contractor to complete the Contract as required by the Contract.

G. The work shall not be considered substantially complete until (1) all electrical, mechanical, and life safety systems shall be completed and successfully inspected for conformity to all requirements of the Contract and all applicable codes and standards, (2) all training, demonstrations, and owner's manuals, as required by the Contract, are satisfactorily provided, (3) As-Builts are delivered and (4) all other requirements for substantial completion are met.

#### **7.15 Cleaning-up**

The Contractor shall at all times keep the construction area, including storage areas used by it, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of HSMC. Upon completion of the construction, the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the Director of Facilities.

At the end of each work day the Contractor shall remove from areas outside his controlled construction area, at his expense, all trash and debris resulting from work on this Contract. At all times rubbish, trash, dirt and debris generated from this Contract shall be kept clear of vehicle and pedestrian circulation throughout the site.

Prior to final acceptance all areas shall be thoroughly cleaned by sweeping and or washing. Any defacement or stains shall be removed at no additional cost to HSMC. All construction equipment, excess materials, tools, rubbish and debris shall be removed from the site.

#### **7.16 Guarantees**

A. The Contractor guarantees the following for a two year period (unless a greater period is specified in the Contract) commencing on the date of substantial completion of the project as a whole except as provided in Sections 7.13 and/or 7.14 :

- (1) That the work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship;

- (2) That all mechanical and electrical equipment, machines, devices, etc. shall be adequate for the use to which they are intended, and shall operate with ordinary care and attention in a satisfactory and efficient manner;
- (3) That he will expeditiously re-execute, correct, repair, or remove and replace with proper work, without cost to HSMC, any work found not to be as guaranteed by this section. The Contractor shall also make good all damages caused to other work or materials in the process of complying with this section;
- (4) That the entire work shall be water-tight and leak-proof in every particular; and
- (5) That method of installation or workmanship by the Contractor will not result in a lessening of manufacturers warrantee for installed item.

B. During the guarantee period, the Contractor is bound to replace work in addition to being liable for failure to perform the Contract in accordance with its terms. Nothing herein releases or limits the Contractor's liability for latent defects or for any substantial failure to perform the work in accordance with the Contract, even if such defects or failures are discovered after the expiration of the warranty period provided by this section.

#### **7.17 Notice to HSMC Of Labor Disputes**

A. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Director of Facilities.

B. The Contractor agrees to insert the substance of this clause, including this Section B., in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify his next higher tier Subcontractor, or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

## **SECTION 8 - PAYMENTS**

### **8.01 Invoicing**

A. For this Section 8, the terms “invoice”, “pay requests”, and “application for payment” are interchangeable.

B. To the extent of the then current contract amount as it has been modified by executed change orders, if any, the Contractor may only invoice HSMC for:

- (1) The value of work accomplished.
- (2) On account of materials or equipment delivered on the site which are suitably stored and protected.
- (3) On account of materials or equipment stored at an approved off-site location agreed upon by HSMC; conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to HSMC to establish HSMC's title to such materials or equipment or otherwise protect HSMC's interest including applicable insurance, transportation to site, and freedom from liens and security interests.

C. Prior to application for the first payment, the Contractor shall submit to HSMC and the Architect a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the Contract.. The form of this submission shall be as the Contractor and HSMC have agreed upon and shall be supported by such evidence as to correctness as HSMC may direct. This schedule shall be used as a basis for certificates of payments unless at a later date found to be in error.

D. Application for payment shall be submitted on a monthly basis.

E. In applying for payments the Contractor shall submit an invoice, based upon the schedule of values (see C above) itemized in such form and supported by such evidence as HSMC may require. In addition, no payments will be made to the Contractor without the proper submission of the following:

- (1) In applying for all payments, excluding the first payment, the Contractor shall submit, in addition to the above an affidavit that he has paid:
  - (a) All labor to date.
  - (b) All vendors and material suppliers to date for all items received.
  - (c) All Subcontractors to date, less the retained amount.
- (2) The Contractor shall also submit with each pay request, excluding the first pay request, an affidavit signed by each of the Subcontractors that they have been paid, less any retainages, for all pay requests to date.
- (2) The Contractor shall also submit with each pay request a certification that record drawings ("As-Built") are current and up to date. Prior to HSMC's approval of the pay request the Contractor shall review the record drawings with the Architect and obtain the Architect's concurrence that the record drawings are satisfactorily maintained and up to date.
- (4) The Contractor will also submit with each pay request updated schedule reports which indicate the current progress and, as appropriate, revise the schedule for remaining work. Schedules are to be updated per Section 7.02.
- (5) Contractor will also submit with each pay request all MBE Progress reports as specified in Section 10, if applicable.

F. Payments of HSMC Obligations: The Contractor agrees to include on the face of all invoices billed to HSMC both the Contract Number and the Firm's Federal ID number or Contractor's Social Security Number. The Contractor shall mail invoices with all supporting documents required herein to: Accounts Payable, Historic St. Mary's City Commission, St. Mary's City, MD 20686, and, simultaneously will submit a complete copy to the Architect and Project Manager for approval.

G The Contractor will review the pay request with the Architect and the Project Manager and obtain their written approval. After obtaining approval by the Architect and the Project Manager, the Project Manager will authorize Accounts Payable to process the invoice.

H. Payments made to the Contractor pursuant to this Contract shall be made no later than thirty (30) days after HSMC has received and approved of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

I. In addition to any other available remedies if, in the opinion of the Director of Facilities, the Contractor fails to perform in a satisfactory and timely manner, the Director of Facilities may refuse to allow or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Director of Facilities.

## **8.02 Force Account Work**

A. When the Contractor is required to perform work on a Force Account basis, as directed through issuance of a Change Directive, per Section 3.04, the basis for compensation shall be in accordance with this Section. The compensation as set forth herein shall be received by the Contractor as payment in full for the work done on a force account basis.

- (1) Labor. For all labor and for foremen in direct charge of the specific operations, the Contractor shall receive the actual wages and usual prorated benefits and indirect costs, for each and every hour that said labor and foremen are actually engaged in Force Account work.
- (2) Materials. For materials accepted by the Architect and Project Manager and used, the Contractor shall receive the actual cost of such materials delivered on the work, including transportation paid by him (exclusive of machinery rentals as hereinafter set forth).



- (3) Equipment. For any machinery or special equipment (other than small tools, whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such work is begun, or the Contractor shall receive those rates which may be specified elsewhere in the Contract. For purpose of definition, equipment with a new cost of \$500 or less will be considered small tools.
- (4) Materials and Supplies Not Incorporated in the Work. For materials and supplies expended in the performance of the work (excluding those required for rented equipment) and approved by the Architect (and Project Manager), the Contractor shall receive the actual cost of such materials and supplies used.
- (5) Bond, Insurance, and Tax. For bond premiums, if an increase in the bonds is required by HSMC, and insurance premiums for property damage and liability, the Contractor and Director of Facilities shall determine an equitable percent to be applied.
- (6) Subcontractors. For work done solely by a Subcontractor, the Subcontractor's cost shall be determined as stipulated in Section 8.02 A(1) through (5). The allowable percentages for combined overhead and profit for the Subcontractor shall be a reasonable amount not to exceed 15% of the Subcontractor's cost. . The Contractor shall be entitled to an allowance of five percent (5%) of the Subcontractor's total cost of doing the work.
- (7) Superintendence. No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided. The cost of foremen may be considered only when the modification makes necessary the hiring of additional supervisory personnel or makes necessary their employment for time additional to that required by the Contract.
- (8) Contractor's Overhead and Profit. The Contractor will be paid for completed work performed by his own forces, a percentage thereof to cover his overhead and profit which shall be a reasonable amount not to exceed 15% of the Contractor's cost.

B. Daily Accounting: At the end of each day, the Contractor shall submit to the Project Manager his records of the cost of work performed that day as ordered on a force account basis.

C. Final Accounting: Upon completion of the Force Account work, or sooner as may be requested by the Project Manager, the Contractor shall furnish the records supporting his actual costs in performance of the Force Account work. The Contractor shall include the following:

- (1) Name, classification, date, daily hours, total hours, rate, and extension for such laborer, foreman;
- (2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment;
- (3) Quantities of materials, prices, and extensions;
- (4) Costs of transportation of materials; and
- (5) Cost of property damage, liability and Workmen's compensation insurance premiums, unemployment insurance contributions, and social security tax.
- (6) Items under Sections (3) and (4) shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the original invoices, the statements shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used and that the price and transportation of the material as claimed represent actual cost.
- (7) Force Account work performed by Subcontractors shall be in accordance with Sections (1) through (6) above.

D. Upon review and approval by the Director of Facilities of the information provided in Section 8.02C above, HSMC will issue a Change Order.

### **8.03 Cash Allowances**

Whenever an allowance is mentioned in the specifications, then the Contractor shall include in his contract sum the entire amount of such specified allowances. The Contractor's expenditure of these allowances is at the Director of Facilities direction. However, the allowance expenditure is limited to items properly inferable from the title and description of the allowance. Unexpended balances are to revert to HSMC via the change in work procedure (Section 3.04). The cost of installation of materials purchased with these specified allowances and other expenses, and Contractor's profit are not included in the allowance. The Contractor shall install all material purchased under allowances and shall include in the contract bid a sufficient amount, in addition to the allowance to cover the installation, other costs and profit.

### **8.04 Payments Withheld**

A. HSMC may withhold or, on account of subsequently discovered evidence, nullify or reduce the whole or part of any certificate or payment to such extent as may be necessary to protect HSMC from loss on account of any of the following:

- (1) Defective work not remedied
- (2) Claims filed or reasonable evidence indicating probable filing of claims against HSMC for which the Contractor may be liable to HSMC
- (3) Failure of the Contractor to make payments properly to Subcontractors or Suppliers for material or labor
- (4) A reasonable doubt that the Contract can be completed for the balance then unpaid
- (5) Damage to another Contractor caused by the Contractor
- (6) Liquidated damages or other damages or compensation due to HSMC for claims of HSMC against the Contractor

- (7) Failure to maintain As-Builts
- (8) Retainage
- (9) Failure to update progress schedules
- (10) Estimated or actual cost of completing unfinished punch list or warranty work.

B. When the above grounds are removed, payment shall be made for amounts withheld because of them.

C. Retainage: HSMC will withhold ten (10) percent retainage from all payments until final payment. Reduction of the retainage percentage may be allowed at the discretion of the Director of Facilities. Retainage is in addition to any deductions, charges, back charges, or liquidated damages as may be imposed by the Director of Facilities in accordance with Section 8.04 A.

## **8.05 Acceptance and Final Payment**

- A.
  - (1) Upon final completion of the work, the Contractor shall prepare final payment forms and submit them.
  - (2) HSMC will promptly proceed to make any necessary final surveys, to complete any necessary computations of quantities, and to complete other activities necessary to determine the Contractor's right to final payment. The Director of Facilities will then reply to the Contractor's request for final payment, informing the Contractor of the amount of final payment considered to be due the Contractor. Such reply shall inform the Contractor of all deductions, damages, costs, back charges, and other charges assessed against the Contractor by HSMC and the reasons therefor.

- (3) Final payment shall not be made until all contract work, including punch list, is complete to the satisfaction of HSMC. In no case shall final payment to the Contractor be made without the Contractor providing the following:
- (a) Such evidence as will establish HSMC's title to materials and give reasonable assurance that causes for liens by labor and other do not exist;
  - (b) All permits, certificates, etc. from inspecting agencies as required by the Contract;
  - (c) All other guarantees as called for by the Contract;
  - (d) All required equipment, operation, training, maintenance and other equipment manuals and parts lists; and
  - (e) Complete set of all drawings indicating as-built conditions to HSMC with a copy to the Architect.

B. Notwithstanding Section 8.05A(1) above, prior to or in the absence of a request from Contractor for final payment, the Director of Facilities may determine under Section 8.05A(2) the amount of the final payment it considers to be due the Contractor. In such case, the Director of Facilities shall notify the Contractor in writing of his determination.

C. If the Contractor disagrees with the Director of Facilities reply regarding final payment due after the Director of Facilities issues his reply, the Contractor has up to thirty (30) days to provide notice of such disagreement. If following notice the Contractor and Director of Facilities cannot agree on the final payment due, the Contractor shall request a Final Decision in accordance with Section 6.11. At its option, HSMC may withhold final payment pending completion of the Dispute process. If the Contractor fails to file a notice with the Director of Facilities that the Contractor disagrees with the Director of Facilities' computation of the final payment due within the thirty (30) day period, the Director of Facilities may initiate final payment.

D. Acceptance by the Contractor of any payment identified by HSMC as being final payment shall operate as an accord and satisfaction and a general release of all claims of the Contractor against HSMC arising out of or connected with the Contract, except as may be expressly agreed otherwise in writing between the Contractor and the Procurement Authority.

E. No claims by the Contractor may be asserted for the first time after application is made by the Contractor for final payment or after final payment is made by HSMC.

F. All prior partial estimates and payments shall be subject to correction at the time of Acceptance and Final Payment and if the Contractor has been previously overpaid, the amount of such overpayment shall be set forth in the Final Payment forms and the Contractor hereby agrees that he will reimburse HSMC for such overpayment within forty-five (45) days of receipt of such advice, and his surety will not be granted release from obligations under the terms of the Contract until reimbursement has been made in full.

#### **8.06 Retention of Records - Audits By HSMC**

A. The Contractor and his Subcontractors and Suppliers at any tier shall retain and maintain all records and documents relating to this Contract for three years after final payment by HSMC hereunder or any applicable statute of limitations whichever is longer, and shall make them available for inspection and audit by authorized representatives of HSMC including the Director of Facilities, at all reasonable times.

B. If Contractor or his Subcontractors or Suppliers at any tier fail to retain for the period of time required by this section original documents used, made, or relating to the preparation or calculation of Contractor's bid to HSMC or of bids, quotes, estimates of Subcontractors or Suppliers at any tier, Contractor shall be entitled to no damages, compensation, or equitable adjustments (including time extensions) for any claims based on calculations, assumptions, understandings or beliefs allegedly made at the time of preparation of such bids, quotes, or estimates.

C. In the event a claim is initiated under Section 6.11, the Contractor and his Subcontractors or Suppliers at any tier shall retain such books, papers, records and any other documents until expiration of the aforesaid three-year period or until final, unappealable resolution of the claim or dispute, whichever is later.

#### **SECTION 9 - EMPLOYEES, SUBCONTRACTORS AND WORK CONDITIONS**

## **9.01 Employees and Workmanship**

A. Qualification of Employees: Only personnel thoroughly trained and skilled in the task assigned them may be employed on any portion of the work. Any employee found to be unskilled or untrained in his work shall be removed from the work.

B. Licensed Employees: When Municipal, County, State or Federal laws require that certain personnel (electricians, plumbers, etc.) be licensed, then all such personnel employed on the work shall be so licensed.

C. Quantity of Labor: The Contractor shall employ on the work, at all times, sufficient personnel to complete the work within the time stated in the Contract.

D. Work Areas: The Contractor shall confine the operations of his employees to the limits as provided by law, ordinance, permits or directions of HSMC. Generally, the work area will be as indicated in the construction documents.

E. Methods and Quality:

(1) Whenever the method of the work or manner of procedure is not specifically stated in the Contract, then it is intended that the highest standard of practice shall be followed. Unless the Contract expressly require stricter standards, recommendations of the manufacturers of approved materials shall be considered as a part of these specifications and all materials shall be applied, installed, connected, erected, used, cleaned and conditioned as so called for thereby. If any manufacturer's recommendations are defective, faulty, inaccurate or negligently made, the Contractor shall be responsible for any loss resulting therefrom, including liability for loss incurred by HSMC.

(2) All materials shall be accurately assembled, set, etc., and when so required in good construction, shall be true to line, even, square, plumb, level and regularly spaced, coursed, etc. Under no circumstances, either in new or old work shall any material be applied over another which has not been thoroughly cleaned, sanded, or

otherwise treated so as not to impair the finish, adhesion, or efficiency of the next applied item.

- (3) All methods, procedure and results are subject to the Architect's and Director of Facilities' approval as to finished result to be obtained. However, this is not to be interpreted as placing upon the Architect or Director of Facilities any responsibility for the work management which is solely the responsibility of the Contractor.

F. Scheduling and Coordination:

- (1) The Contractor shall so schedule and coordinate the work as to ensure expeditious, efficient and uninterrupted progress and to hold to an absolute minimum the cutting and patching of new work. All cutting, patching and digging necessary to the execution of the work should be included in the schedule.
- (2) The Contractor shall so schedule the construction performed by each group or trade that each installation or portion of the construction shall mesh with and join with every other new or old work as required for a complete installation, all according to accepted best construction practice.

G. Superintendent. The Contractor shall keep on the work, at all times during its progress, a competent Superintendent who is able to communicate with HSMC and its representatives and any necessary assistants, all of whom shall be approved by HSMC prior to commencement of the work. The Contractor shall submit in writing to HSMC the name of the person it intends to employ as superintendent for the execution of this Contract with a statement of the proposed superintendent's qualifications. This data will be reviewed by HSMC and an approval or rejection given in writing. Persons who have previously proved unsatisfactory on work executed for HSMC or the State of Maryland, or who are without proper qualifications, will not be approved. Should it be necessary to change the superintendent, this procedure will be repeated. A single Superintendent will be permitted to superintend two or more projects only when approved by the Director of Facilities in writing. The Superintendent shall represent the Contractor. All directions given to the Superintendent shall be as binding as if given to the Contractor. Should the Director of Facilities request removal of the Superintendent, he shall be immediately removed from the work and a new Superintendent shall immediately be obtained by the Contractor and approved as described above.

H. The Contractor shall at all times enforce strict discipline and good order among his employees and Subcontractors and shall not employ or permit to remain on the work any unfit person. He



shall enforce all instructions relative to use of water, heat, power, no smoking, and control and use of fires as required by law, HSMC, and the State. Employees must not be allowed to loiter on the premises before or after working hours. The Contractor's employees shall not fraternize with individuals at or around the project site not having an official responsibility in connection with this project. The Director of Facilities shall have the right to require the Contractor to remove any individual from his workforce or the workforce of his Subcontractors who fails to conduct himself/herself in a professional manner.

I. The Contractor shall designate a responsible member of his organization, on the work site, whose duty it shall be, in addition to his other duties, to prevent accidents and to enforce the standards of Section 9.05. The name and position of the person so designated shall be reported to the Director of Facilities with a copy to the Architect, by the Contractor at the commencement of the work.

## **9.02 Non-discrimination in Employment Policies**

A. The contents of Section 13-219 of the State Finance & Procurement Article of the Annotated Code of Maryland, is adopted by HSMC, and is called to the attention of the Contractor and Subcontractors as follows:

- (1) A contract subject to this Article may not be awarded to any Contractor unless the Contract contains provisions obligating the Contractor not to discriminate in any manner against any employee or applicant for employment because of sex, race, creed, color, national origin or age and obligating the Contractor to include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the Contractor and Subcontractor agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.
- (2) Failure to include such a contract provision renders any contract void *ab initio*, but any party shall be entitled to the reasonable value of services performed and materials supplied. However, HSMC may elect to compel the performance of any contract under this section not containing the nondiscrimination provisions, but recovery against the proper party shall be limited to the reasonable value of services performed and materials supplied.

- (3) Where the Contractor willfully fails to comply with the nondiscrimination provisions HSMC may, where the Contract is still executory in part, compel continued performances of the Contract, but it shall be liable only for the reasonable value of services performed and materials supplied from the date that the breach of contract was discovered or should have been discovered, and any sums previously paid by HSMC under the Contract, shall be set off against the sums to become due as the Contract is performed.
- (4) If the Subcontractor willfully fails to comply with the nondiscrimination provisions, the Contractor may void the contract note and shall be liable only for the reasonable value of the services performed and materials supplied.

B. It is understood that the provisions of the Civil Rights Act of 1964 as amended are hereby included in this Contract to the end that no person in the United States shall, on the ground of race, color, sex, religion or natural origin, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under this Agreement.

C. If requested, each Contractor with HSMC will submit to the Purchasing Agent of HSMC information as to the composition of the Contractor's work force. This information will be furnished in a form to be prescribed by HSMC.

D. The Contractor and all Subcontractors will develop and maintain an Affirmative Action Plan directed at increasing the utilization of women and members of minority groups on HSMC projects.

### **9.03 Subcontracts**

A. The Contractor shall, as soon as practicable and before the execution of the Contract, notify the Architect and HSMC in writing, of the names of subcontractors proposed for the principal parts of the work and for such others as the Director of Facilities may direct and shall not employ any that the Architect or HSMC may reasonably object to as incompetent or unfit.

B. The Contractor agrees that he is as fully responsible to HSMC for the acts and omissions of his Subcontractors and of persons either directly employed by them, as he is for the acts and omissions of persons directly employed by him.

C. Nothing contained in the Contract shall create any contractual relation between any Subcontractor and HSMC, and nothing in the Contract is intended to make the Subcontractor a beneficiary of the Contract between HSMC and the Contractor.

#### **9.04 Relation of Contractor to Subcontractor and Suppliers**

A. The Contractor agrees to bind every Subcontractor and Supplier and will see that every Subcontractor agrees to be bound by the terms of the Agreement, the General Conditions, the Drawings and Specifications as far as applicable to his work and any documents incorporated by the Agreement, unless specifically noted to the contrary in a subcontract approved in writing as adequate by HSMC.

B. The Contractor agrees to include the following provisions in all subcontracts and supply contracts applicable to the work:

- (1) Subcontractor and Supplier agrees to be bound to the Contractor by the terms of the Contract and any other documents incorporated thereto, and to assume toward him all obligations and responsibilities that he, by those documents, assumes toward HSMC;
- (2) The Subcontractor and Supplier agree to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Section 8 of these General Conditions;
- (3) The Subcontractor and Supplier agrees to make all claims for extras, for extensions of time, and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon HSMC, except that the time for making claims by the Subcontractor or Supplier to the General Contractor for extra cost is five days; and
- (4) The Subcontractor and Supplier agrees, upon completion of his work, to promptly pay all labor, material suppliers, vendors, subcontractors and others, to permit simultaneous final payment by the Contractor.

C. The Contractor shall not be relieved of any obligation to HSMC under the Contract by any action, inaction, delay, default, breach, omission, or neglect, on the part of Contractor's Subcontractors and Suppliers at any tier or by any effect in their materials, whether the Subcontractors, Suppliers, or materials were selected or specified by HSMC or by the Contractor.

D. The Contractor also agrees:

- (1) To pay the Subcontractors, upon the payment of certificates, if issued under the schedule of values described in Section 8 of these General Conditions, the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's or Supplier's interest therein;
- (2) To pay the Subcontractor or Supplier, upon the payment by HSMC , so that all at times the Subcontractor or Supplier total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him;
- (3) To pay the Subcontractor or Supplier promptly to such extent as may be provided by the Contract or the subcontract between the Contractor and Subcontractor or Supplier, if either of these provides for earlier or larger payments than the above;
- (4) To pay the Subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time the certificate should be issued, whether or not payment is made wholly or in part by HSMC, unless HSMC's failure to issue payment is due to the fault or unsatisfactory work or material of the Subcontractor or Supplier;
- (5) To pay the Subcontractor an equitable share of any fire or other insurance money received by the Contractor to which the Subcontractor is rightly due;
- (6) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract; and

- (7) To give the Subcontractor an opportunity to be present and to submit evidence in any matter involving his rights.

E. Every Subcontractor, supplier, or other entity at any tier furnishing any work, labor, services, materials or supplies to or for use in the project, by virtue of furnishing same shall be bound to and does accept and agree to all terms and provisions of the Contract between Contractor and HSMC.

F. The Contractor agrees that no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten days of the calendar month following that in which the claim originated.

G. The Contractor and the Subcontractor agree that nothing in this section shall create any obligation on the part of HSMC to pay to or to see to the payment of any sums to any Subcontractor.

#### **9.05 Construction Safety and Health Standards**

A. It is a condition of the Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any Subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards, and laws and regulations of the locality in which the work is done, the State, and the Federal government.

B. The Contractor shall provide and maintain work environments and procedures which will:

- (1) Safeguard the public, workers on the site, and HSMC students and personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
- (2) Avoid interruptions of HSMC operations, utilities, and delays in project completion dates;

- (3) Control costs in the performance of this Contract; and
- (4) Maintain the work to the highest standards of quality.

C. For these purposes, the Contractor shall:

- (1) Provide appropriate safety barricades, signs, and signal lights;
- (2) Comply with the provisions of the Maryland Occupational Safety and Health Act;
- (3) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
- (4) Comply with all requirements of the Contract and any additional safety measures the Director of Facilities may determine to be reasonably necessary.

Approved this \_\_\_\_\_ day of \_\_\_\_\_ for form and legal sufficiency.

\_\_\_\_\_

Assistant Attorney Gener

**SUPPLEMENTARY**  
**CONDITIONS**  
  
**CONSTRUCTION**

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ENTIRE AGREEMENT

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## **SUPPLEMENTARY**

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### **CONSTRUCTION**

#### **1. MINORITY BUSINESS PARTICIPATION**

There is no MBE subcontractor participation goal for this procurement.

##### **.1 Establishment of Goal and Subgoals:**

An overall MBE subcontractor participation goal of 0 % of the total contract dollar amount has been established for this procurement.

In addition, the following subgoals have been established for this procurement:

- (African-American subgoal percentage) \_\_\_\_% for African-American MBEs,
- (Asian-American subgoal percentage) \_\_\_\_% for Asian-American MBEs,
- (Hispanic-American subgoal percentage) \_\_\_\_% for Hispanic-American MBEs, and
- (Woman-Owned subgoal percentage) \_\_\_\_% for Woman-Owned MBEs.

Notwithstanding any subgoals established above, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

(After completing the MBE Subgoal Worksheet pursuant to the MBE Subgoal Guidance, (i) insert the subgoal amounts for the applicable subgoals above, and (ii) delete an of the above subgoals that do not apply to this solicitation. If after the completion of the MBE Subgoal Worksheet no subgoals are established, then the following sentence should be included instead, in black font :)

There are no MBE subcontractor participation subgoals for this procurement.

**.2 Attachments \_-1 to \_-5.** The following Minority Business Enterprise participation instruction and forms are provided to assist Bidders/Offerors:

Attachment _-1A	MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule <b>(MUST BE SUBMITTED WITH BID/PROPOSAL)</b>
Attachment _-1B	Waiver Guidance
Attachment _-1C	Good Faith Efforts Documentation to Support Waiver Request
Attachment _-2	Outreach Efforts Compliance Statement
Attachment _-3A	MBE Subcontractor Project Participation Certification
Attachment _-3B	MBE Prime Project Participation Certification
Attachment _-4A	Prime Contractor Paid/Unpaid MBE Invoice Report
Attachment _-4B	MBE Prime Contractor Report
Attachment _-5	Subcontractor/Contractor Unpaid MBE Invoice Report

**.3** A Bidder/Offeror shall include with its Bid/Proposal a completed MBE Utilization and Fair Solicitation Affidavit **(Attachment No. \_1A)** whereby:

(a) The Bidder/Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and

(b) The Bidder/Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.

(c) A Bidder/Offeror requesting a waiver should review Attachment No. \_1B (Waiver Guidance) and \_1C (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request. ***If a Bidder/Offeror fails to submit a completed Attachment No. \_1A with the Bid/Proposal as required, the Procurement Officer shall determine that the Bid is non-responsive or the Proposal is not reasonably susceptible to being selected for award.***

.4 Bidders/Offerors are responsible for verifying that each of the MBE(s) (including any MBE primes and/or MBE primes participating in a joint venture), selected to meet the goal and any subgoals and subsequently identified in **Attachment \_1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

.5 Within ten (10) Working Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Bidder/Offeror must provide the following documentation to the Procurement Officer.

(a) Outreach Efforts Compliance Statement (**Attachment No. \_-2**);

(b) MBE Prime/Subcontractor Project Participation Certification (**Attachment No. \_-3A/3B**);

(c) If the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

(d) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

***If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the Contract has already been awarded, the award is voidable.***

**.6** A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, MD 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.state.md.us/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT certified MBEs may be used to meet the MBE subcontracting goals.**

**.7** The Contractor, once awarded a Contract, will be responsible for submitting or requiring its subcontractor(s) to submit the following forms to provide the state with ongoing monitoring of MBE Participation:

- (a) **Attachment No. \_-4A** (Prime Contractor Paid/Unpaid MBE Invoice Report);
- (b) **Attachment No. \_-4B** (MBE Prime Contractor Report);
- (c) **Attachment No. \_-5** (MBE) Subcontractor/Contractor Unpaid MBE Invoice Report).

**.8** A Bidder/Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (Attachment No. \_-1C) and all documentation within ten (10) working days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in **COMAR 21.11.03.11.**

**.9** All documents, including the MBE Utilization and Fair Solicitation Affidavit \* MBE Participation Schedule (**Attachment No. \_1A**), completed and submitted by the Bidder/Offeror in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Bid/Proposal for order of precedence purposes (See Contract – **Attachment** \_\_, Section \_\_\_\_).



**.10** The Bidder/Offeror is advised that liquidated damages will apply in the event that Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions (See Clause No. \_\_\_\_ of the Supplementary Conditions).

**.11** As set forth in COMAR 21.11.03.12-I(D) when a certified MBE firm participates on a contract as a prime contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract.

In order to receive credit for self-performance, an MBE prime must list its firm in Section 4A of the MBE Participation Schedule (Attachment No. \_\_-1A) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the sub-goals, the MBE prime must also identify other certified MBE subcontractors (see Section 4B of the MBE Participation Schedule (Attachment No. \_\_11A)) used to meet those goals. If dually-certified, the MBE prime can be designated as only one of the MBE classifications but can self-perform up to 100% of the stated sub-goal.

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract.

**.12** With respect to Contract administration, the Contractor shall:

(a) Submit by the 20<sup>th</sup> of each month to the Agency's designated representative:

(i) A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment No. \_\_-4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and

(ii) If Applicable) An MBE Prime Contractor Report (Attachment No. \_\_-4B) identifying an MBE prime's self-performing work to be counted towards the MBE participation goals.

(b) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit by the 20<sup>th</sup> of each month to HSMC's designated representative an MBE Subcontractor Paid/Unpaid Invoice Report (Attachment No. \_-5) that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding thirty (30) days, as well as any outstanding invoices, and the amounts of those invoices.

(c) Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.

(d) Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.

(e) Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

## **2. MBE LIQUIDATED DAMAGES**

The Contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise ("MBE") Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur economic damages and losses, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and pertinent MBE Contract provision. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult or impossible to ascertain with precision and that liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

.1 Upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or pertinent MBE Contract provisions and without the State being required to present any evidence of the amount or character of actual damages sustained, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The Contractor expressly agrees that the State may withhold payment on any invoices as an offset against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed-upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of each violation.

.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): **\$6.49** per day until the monthly report is submitted as required.

.2 Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): **\$22.71** per week per MBE subcontractor.

.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling or changing the scope or work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm of the Contract.

.4 Failure to meet the Contractor's total MBE participation goal and sub-goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

.5 Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: **\$22.71** per day until the undisputed amount due to the MBE subcontractor is paid.

.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and to exercise any and all other rights or remedies which may be available under the Contract or which otherwise may be available at law or in equity.

### **3. IDENTIFICATION OF CONTRACT DELIVERABLES**

Unless otherwise specified, all documents prepared and submitted by the Contractor for HSMC under this contract shall include the following information on the cover page of each document:

- (a) Name and business address of the contractor;
- (b) Contract Number
- (c) Point of Contact
- (d) Date of transmittal

### **4. NOTICES**

All notices to HSMC shall be sent by first class mail to:

Douglas Hunter  
Director of Finance  
Historic St. Mary's City  
PO Box 39  
St. Mary's City, MD 20686

All notices for the Contractor will be sent to:

Notice as required under this Agreement shall be sent via first class mail.

## **5. TAX EXEMPTION**

HSMC is generally exempt from federal Excise Taxes, Maryland Sales and Use Taxes, District of Columbia Sales Taxes and Transportation Taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install materials in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply. Tax exemption number for Historic St. Mary's City Commission are:

Maryland State Tax Exempt No. 30042627

## **6. PROCUREMENT OFFICER**

Upon award of contract HSMC shall designate someone to serve as Procurement Officer for this Agreement. All contact between HSMC and Contractor regarding all matters relative to this Agreement after award shall be coordinated through the Procurement Officer.

## **7. MUSEUM SECURITY PROVISIONS**

All security requirements established by HSMC for its facilities shall become a part of these specifications, and it shall be the vendor's responsibility to comply with these security provisions.

#### **8. PRE-EXISTING REGULATIONS**

The regulations set forth in HSMC Procurement Policies and Procedures in effect on the date of execution of this Contract are applicable to this Contract.

#### **9. MUSEUM POLICIES, RULES AND REGULATIONS**

The Contractor agrees to abide by all museum policies, rules and regulations in effect for all Museum policies, rules and regulations in effect for all Historic St. Mary's City Commission employees while working on the campus and/or dealing with any students off the campus in furtherance of the contractor's obligations under this contract.

#### **10. EMPLOYEE CONDUCT**

The Contractor is responsible for all employees and their actions while on the campus and HSMC reserves the right to remove from the premises any employee of the Contractor who in any way acts in a manner which is considered unacceptable by HSMC.

#### **11. RETENTION OF RECORDS**

The Contractor shall retain and maintain all records and documents relating to this Contract for three (3) years after final payment by HSMC hereunder or any applicable statute of limitation, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State of Maryland, including the procurement officer or designee, at all reasonable times.

## **12. DISSEMINATION OF INFORMATION**

Contractor may not release any information related to the services or performance of the services under this Contract nor publish any final reports or documents without the prior written approval of HSMC. Contractor shall indemnify the State and HSMC, their officials, agents, and employees, from any liability that may be incurred by reason of dissemination, publication, distribution, or circulation, of any information, or materials pertaining to this Contract by Contractor, its agents, or employees.

## **13. BANKRUPTCY**

Upon the filing of any bankruptcy proceeding by or against Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, Contractor must notify HSMC immediately. Upon learning of the actions herein identified, HSMC reserves the right at its sole discretion either to cancel the contract or to affirm the Contract, and to hold contractor responsible for damages.

## **14. ETHICS**

This Contract is cancellable in the event of a violation of the Maryland Public Ethics Law by the Contractor or any Museum employee or official in connection with this procurement.

## **15. QUALIFICATIONS**

By submitting a bid, the vendor certifies and affirms that it has the knowledge, experience, skills, equipment and other resources to satisfactorily perform the nature and magnitude of work necessary to complete the project.

**17. ELECTRONIC TRANSACTIONS**

Electronic transactions are not permitted in connection with this Agreement unless authorized by the Contracting Officer.

**18. SUBCONTRACTING, ASSIGNMENT**

Contractor may not, during the term of this Agreement or any renewals or extensions of the Agreement, assign or subcontract all or any part of the Agreement without the prior written approval of the Procurement Officer. Any approved subcontract or assignment is subject to all terms and conditions that the State deems necessary. HSMC is not responsible for Contractor's obligations to its subcontractors.

**19. NON-EXCLUSIVE CONTRACT AND NO ASSURANCES OF WORK**

The parties acknowledge and agree that this Contract is not exclusive and that HSMC may purchase the same or similar goods and services from other vendors. Further, the Contractor acknowledges that it has received no assurances of any minimum amount or type of work or any minimum amount of compensation under this contract.

**20. QUALIFICATION TO DO BUSINESS IN THE STATE OF MARYLAND**

Any out of state entity not already registered with the Maryland State Department of Assessments and Taxation to do business in Maryland shall be required to do so prior to entering into a contract with HSMC.

**21. ARREARAGES**



By submitting a response to this solicitation, a vendor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract if selected for contract award.

## **22. PAYMENT OF STATE OBLIGATIONS**

Payments to the contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

All payment under this contract shall be made via Electronic Fund Transfers (EFT).

Invoices shall contain the following information: Contract Number, Purchase Order Number and Contractor's Federal ID number or Social Security Number, and other information as specified by the Procurement Officer. Each contract line item number (CLIN) will have assigned to it a Purchase Order Number. Invoices **MUST** show the correct Purchase Order number for the items being billed. Failure to provide proper Purchase Order number will cause delays in the payment process and is cause for rejection of invoice. Invoices shall be mailed to:

Accounts Payable

Historic St. Mary's City Commission

PO Box 39

St. Mary's City, MD 20686

For information regarding billing please call (240) 895-4970

Accounts Payable Fax Number: (240) 895-4968

## **23. INDEMNIFICATION**

.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless HSMC and the Architect and their agents, employees, officers and their agents, employees, officers, and trustees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage or loss or expense (1) is attributable to actual or threatened bodily injury, sickness, disease or death, or to actual or threatened injury to or destruction of tangible property including the loss of use resulting therefrom, and including but not limited to purely economic loss, and (2) is caused in whole or in part by any failure by the Contractor or its Subcontractors or Suppliers at any tier to perform any requirement of the Contractor by any negligent act or omission on the part of the Contractor, its Subcontractors or Suppliers at any tier, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Clause.

.2 In any and all claims against HSMC or the Architect or any of their agents, employees, officers, or trustees by any employee of the Contractor, any Subcontractor or supplier at any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them are liable, the indemnification obligation under this Clause shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor or supplier under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

.3 HSMC has no obligation to provide legal counsel or defense to the Contractor or its Subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its Subcontractors as a result of or relating to the contractors obligations under this Contract. HSMC has no obligation for the payment of any judgments or the settlement of any claims against the contractor or its Subcontractors as a result of or relating to the Contractor's obligations under this contract. The Contractor shall immediately notify the Purchasing Agent by phone with a follow-up in writing within two days of any claim or suit made or filed against the Contractor or its Subcontractors regarding any matter resulting from or relating to the contractor's obligations under the Contract. The contractor will cooperate, assist, and consult with HSMC in the defense or investigation of any claim, suit, or action made or filed against HSMC as a result of or relating to the Contractor's performance under this Contract.

## **24. COMPLIANCE WITH LAWS**

The Contractor hereby represents and warrants that:

.1 It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

.2 It is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

.3 It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

.4 IT shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **25. CONTINGENT FEE PROHIBITION**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the contractor, architect, or engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.

## **26. NON-DISCRIMINATION IN EMPLOYMENT**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

## **27. COMMERCIAL NON-DISCRIMINATION CLAUSE**

As a condition of entering into this Agreement, contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated code of Maryland. As part of such compliance, contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, material status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

As a condition of entering into this Agreement, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

## **28. NON-HIRING OF EMPLOYEES**

No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this contract, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof.

## **29. DRUG FREE AND ALCOHOL FREE WORKPLACE**

The contractor warrants that the Contractor shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace and that the Contractor shall remain in compliance throughout the term of the Contract.

## **30. CORPORATE REGISTRATION**

Pursuant to 7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations and other legal entities not incorporated or formed in the State of Maryland shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, MD 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

## **31. FINANCIAL DISCLOSURE**

Contractor shall comply with the provisions of Section 13-221 et seq. of the State Finance and Procurement Article, Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

## **32. POLITICAL CONTRIBUTION DISCLOSURE**

The Contractor shall comply with the provisions of Section 14-101 et seq. of the Election Law Article of the Annotated code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland or a political subdivision of the State, including its agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administration board of Election Laws a statement disclosing certain campaign or political contributions in excess of \$500.

### **33. FEDERAL LOBBYING PROHIBITION**

In accordance with 31 U.S. C. § 1352, HSMC and Contractor, and any subcontractors are prohibited from using any federal funds for the purpose of lobbying Congress or any federal agency in connection with the awarding of a particular contract, grant, cooperative agreement, or loan. Any recipient of federal funds that received over \$100,000 in federal monies must also file a "Disclosure of Lobby Activities" from (Federal Form SF LLL). Contractor hereby specifically agrees to abide by all applicable requirements of 31 U.S.C. § 1352.

### **34. MARYLAND LAW PREVAILS**

The laws of Maryland shall govern the interpretation and enforcement of this Contract.

### **35. REPRESENTATION**

Each party to this agreement represents and warrants to the other that it has full right, power, and authority to execute this Contract.

### **36. COMPLIANCE WITH ADA**

Contractor shall comply with the Americans with Disabilities Act (ADA), 42, U.S.C. § § 12101 et seq. and applicable regulations. To the extent required by the ADA, Contractor's facilities, services, and programs shall be accessible to persons with disabilities. Contractor shall bear sole responsibility for assuring that its activities under this Agreement conform to the ADA. Contractor shall indemnify the State in any action

brought pursuant to the ADA for all damages, attorney fees, litigation expenses, and costs, if such action or proceeding arises from the acts of Contractor, or of Contractor's employees, agents, or subcontractors.

### **37. LICENSES, REGISTRATION AND QUALIFICATIONS**

The Contractor must be licensed as required by the laws of the State of Maryland as applicable to the performance of work under this Contract. See, e.g., Md. Bus. Reg. code Ann., title 8 and Title 17, subtitle 6. All work performed by the Contractor shall conform to all State and local codes and ordinances and such other statutory provisions that pertain to this class of work. Such codes, rules, regulations and local ordinances are to be considered part of these specifications. HSMC reserves the right to require that the Contractor demonstrate that it has the skills, equipment and other resources to satisfactorily perform the nature and magnitude of work necessary to complete the project. HSMC has the option of requiring all personnel working on this contract to have copies of their license/registration forms on file with the Purchasing Agent at HSMC.

### **38. ANTI-BRIBERY**

The Contractor warrants that neither it nor any of its officers, directors or partners, nor any employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any state or the federal government.

### **39. SET-OFF**

The State may deduct from and set off against any amounts due and payable to Contractor any back-charges, penalties, or damages sustained by the State, by virtue of any breach of this Contract by Contractor or as otherwise permitted by law. Nothing herein shall be construed to relieve Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.

### **40. BID/PROPOSAL AFFIDAVIT BY CONTRACTOR**

All terms and conditions of the Bid/Proposal Affidavit, are made a part of this contract.

#### **41. INCORPORATION BY REFERENCE**

The General Conditions of the Contract between Historic St. Mary's City Commission and the Contractor, all terms and conditions of this solicitation, any appendices and amendments thereto, and the Contract/Bid Affidavits signed by the Vendor and returned with the bid are all incorporated by reference into any contract, and subsequent purchase orders resulting from this IFB.

#### **42. COST AND PRICE CERTIFICATION**

The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

.1 A negotiated contract, if the total contract price is expected to exceed \$100,000. or a smaller amount set by the procurement officer; or

.2 A change order or contract modification, expected to exceed \$100,000. or a smaller amount set by the procurement officer.

.3 The price under this Contract and any change order or modification hereunder, including profit or, fee shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

#### **43. BID, PERFORMANCE AND PAYMENT BONDS**

.1 Bid, Performance and Payment bonds are required when the amount of the bid, including base bid and any alternates, is in excess of \$100,000.



.2 Bid bonds shall be in an amount equal to twenty percent (20%) of the total bid amount including base bid and any alternates and must be included with the bid package.

.3 Performance and Payment bonds shall be in the full amount of the contract price. HSMC will provide the contractor with copies of the Performance and Payment Bonds forms which must be executed and returned to HSMC within ten (10) days from date of award of contract.

.4 The premiums for the bonds shall be paid by the Contractor.

.5 At the direction of HSMC, the Contractor may be required to increase the amount of the bonds; for such additions the Contractor will be reimbursed by HSMC for the actual cost of the increased bond premium. Whenever the amount of the contractor's bonds is increased at HSMC's request, HSMC must receive proof of the increase in satisfactory form from the surety. HSMC will not be liable to the Contractor for any increase in bonds not requested by HSMC.

.6 HSMC may reject a bidder as being not responsible if the bidder fails to furnish performance and payment bonds from a surety which HSMC determines has not, in the past, responded diligently and in good faith to bond claims, if any, of the State or of subcontractors and suppliers.

.7 Should HSMC declare the Contractor to be in default, the Surety will be obligated to perform in accordance with the executed performance bond.

.8 If HSMC declares the Contractor to be in default, the surety has no right to require HSMC to contract with a Contractor of the surety's choosing. The surety must either (1), complete the project or cure the default or (2), allow HSMC to complete the project or cure or remedy the default, with the surety to remain liable to HSMC for excess completion costs and other damages.

.9 Performance Bonds secure, for the benefit of HSMC, proper performance of all obligations of the contractor to HSMC under the contract. Performance Bonds do not secure subcontractors or suppliers at any tier against nonpayment by the Contractor or others.

#### **44. CONTRACTOR'S REQUIRED INSURANCE**

**.1** The contractor shall secure, pay the premiums for, and keep in force until the expirations of this Contract, and any renewal thereof, adequate insurance as provided below, such insurance to specifically include liability assumed by the Contractor under this Contract.

**.1** Commercial General Liability Insurance including all extensions:

\$1,000,000. each occurrence;

\$2,000,000 personal injury;

\$2,000,000 personal injury;

\$2,000,000 products/completed operations;

\$2,000,000 general aggregated

**.2** Workmen's Compensation Insurance and Unemployment Insurance as required by the Laws of the State of Maryland.

**.3** Owner's Landlord's and Tenant's and contractor's bodily injury liability insurance, with limits of not less than \$500,000 for each person and \$2,000,000 for each accident.

**.4** Property damage liability insurance with a limit of not less than \$2,000,000 for each accident.

**.5** If automotive equipment is used in the operation, automobile bodily injury liability insurance with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 for each accident.

.6 Food projects liability insurance, if not included in the Comprehensive, with limits of not less than \$1,000,00 for each person and \$2,000,000 for each accident.

.2 All policies for liability protection, bodily injury or property damage must specifically name on its face, Historic St. Mary's City Commission **AND** the State of Maryland as additionally named insured as respects to operations under the contract and premises occupied by the Contractor provided, however, with respect to the Contractor's liability for bodily injury or property damage under items 1.1 through 1.6 above, such insurance shall cover and not exclude Contractor's liability for injury to the property of HSMC and to the persons or property of employees, students, faculty members, agents, officers, trustees, invitees or guests of HSMC.

.3 Each insurance policy shall contain the following endorsements: ***"It is understood and agreed that the Insurance Company shall notify in writing the Procurement Officer forty-five (45) days in advance of the effective date of any reduction in or cancellation of this policy."*** A certificate of each policy of insurance shall be furnished to the Procurement Officer. With the exception of Workmen's Compensation, upon the request of the Procurement Officer a certified true copy of each policy of insurance, including the above endorsement manually countersigned by an authorized representative of the insurance company, shall be furnished to the Procurement Officer. A certificate of insurance for Workmen's Compensation together with a properly executed endorsement for cancellation notice shall also be furnished. Following the notice of Contract award, the requested Certificates and Policies shall be delivered to the Procurement Officer within ten (10) days of award of contract. Notices of policy changes shall be furnished to the Procurement Officer.

#### **45. OWNERSHIP OF DOCUMENTS, EQUIPMENT AND MATERIALS**

.1 Ownership, Contractor agrees that all documents, equipment, and materials including but not limited to reports, drawings, studies, specifications, estimates, maps, software, photographs, designs, graphics, mechanical, artwork, and computations prepared by or for, or purchased by or for, Contractor because of this Contract shall at any time during the term of the contract be available to HSMC and shall become and remain the exclusive property of HSMC upon termination or completion of the services. HSMC shall have the right to use same without restriction and without compensation to Contractor other than that provided in this Contract. HSMC shall be the owner for purposes of copyright, patent, or trademark registration, and Contractor hereby transfers to HSMC any rights it may have in the work produced pursuant to this contract. Contractor agrees that at all times during the term of this Contract and thereafter, the works created and services performed shall be "works made for hire" as that term is

interpreted under copyright law. To the extent that any products created under this Contract are not HSMC works for hire, contractor hereby transfers and assigns to HSMC all if its rights, title and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with HSMC in effectuating and registering any necessary assignment.

.2 Third party: Indemnification. If Contractor obtains or uses for purposes of this Contract or any subcontracts any design, device, material, process, or work covered by patent, copyright, or trademark, Contractor shall ensure HSMC is licensed to possess and to use such design, device, material, process, or work. Contractor shall indemnify the State, HSMC, their officials, agents, and employees with respect to any claim, action, cost, or judgment for patent, trademark, or copyright infringement, arising out of the possession or use of any design, device, material, process, supplies, equipment, services or other work covered by this Contract.

#### **46. RESPONSIBILITY OF CONTRACTOR**

Contractor shall perform the services with that standard of care, skill, and diligence normally provide by a contractor in the performance of similar services. If contractor fails to perform the Services, and such Failure is made known to Contractor within two years after expiration of this Agreement, it shall, if required by HSMC, perform at its own expense and without additional cost to HSMC, those services necessary for the Correction of any deficiencies or damage resulting from Contractor's failure. This obligation is in addition to and not in substitution for any other remedy available to HSMC.

#### **47. DISPUTES**

.1 Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this Disputes clause and in accordance with HSMC Procurement Policies and Procedures, Section 8, "Protest and Appeals."

.2 As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted

is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.

**.3** Prior to filing a contract claim, the contractor shall contact the Procurement Officer and attempt, in good faith, to resolve by mutual agreement any disputes or disagreements that arise in connection with the Contract. When a dispute cannot be resolved by mutual agreement, the contractor shall submit a written contract claim to the Procurement Officer for a decision, made in consultation with the Office of the Attorney General. The claim shall be filed with the Procurement Officer within thirty (30) days of when the basis of the claim was known or should have been known, whichever is earlier.

**.4** The Procurement Officer's decision shall be final and conclusive unless the contractor mails or otherwise files a written appeal as provided by HSMC Procurement Policies and Procedures, Section 8, "Protest and Claims" within 30 days of receipt of the decision.

**.5** Pending resolution of a claim, the contractor shall proceed diligently with the performance of the contract in accordance with the Procurement Officer's decision.

#### **F.30 EPA COMPLIANCE**

Materials, supplies, equipment or services shall comply in all respects with the Federal Noise Act of 1972, where applicable.

#### **F.31 OCCUPATIONAL SAFETY AND HEALTH ACT (O.S.H.A.)**

All materials, supplies, equipment or services supplied as a result of this contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

#### **53. LIQUIDATED DAMAGES**

As detailed in Section 7.12 of the General Conditions of the Contract between the Contractor and St. Mary's Museum of Maryland, for each day that the work shall be uncompleted after the contract completion date, as may be extended through a Change Order, the Contractor shall be liable for **liquidated damages in the amount of**

**200.00 per day**

#### **56. ENTIRE AGREEMENT**

This Agreement, together with the Exhibits and other documents incorporated by reference, represents the complete and final understanding of the parties. No other understanding, oral or written, regarding the subject matter of this Agreement, may be deemed to exist or to bind the parties at the time of execution.

