

SEP 29 2014

LAC-2014-06

MEMORANDUM FOR REGIONAL COMMISSIONERS, PBS
REGIONAL LEASING DIRECTORS
REGIONAL LEASING SERVICES OFFICERS

FROM: JAMES C. WISNER
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OFFICE OF LEASING – PR

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OFFICE OF THE CHIEF ARCHITECT – PCA

SUBJECT: Lease Requirements for Protection of Environmental,
Archeological and Historic Resources

1. Purpose. This Lease Acquisition Circular (LAC) issues additional leasing policy to address the federal requirements for the protection of environmental, archeological and historic resources under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 *et seq.* (NEPA), and the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470 *et seq.* (NHPA). Attached are guidance and Request for Lease Proposals (RLP) and Lease provisions to facilitate compliance with NEPA and section 106 of the NHPA (Section 106). This LAC supplements existing guidance in the Leasing Desk Guide and focuses on activities for which more detailed guidance is needed to improve agency consistency with NEPA and Section 106 compliance and promote timely project completion. Delays and post-award cost increases often can be avoided by informing Offerors early in the process of these requirements that are specific to federal space actions.

2. Background.

a. National Environmental Policy Act. NEPA requires federal agencies to consider the effects of their actions, including real estate activities such as leasing, design and construction, on the human environment and alternatives that have the potential to reduce the impacts of those actions, and to prepare detailed statements for public and federal agency review where significant impacts may occur. In particular, NEPA requires federal agencies to conduct an assessment of the environmental impact of

"major Federal actions significantly affecting the quality of the human environment" (42 U.S.C. § 4332(2)(C)). This typically requires the preparation of documentation to confirm that this analysis has been performed, whether in the form of a Categorical Exclusion, an Environmental Assessment or an Environmental Impact Statement. The Council on Environmental Quality's implementing regulations can be found at 40 C.F.R. parts 1500-1508, and GSA's implementing instructions can be found in the PBS NEPA Desk Guide (October 1999), as such documents may be revised from time to time, and, for lease projects, additional information is contained in the Leasing Desk Guide.

b. National Historic Preservation Act. Section 106 of the NHPA requires federal agencies to consider the effects of their actions, including real estate activities such as leasing, design and construction, on historic properties prior to expending any federal funds on the undertaking. The Advisory Council on Historic Preservation's implementing regulations can be found at 36 C.F.R. part 800, and GSA's historic preservation program guidance can be found in GSA Order ADM P 1020.2, *Procedures for Historic Properties* (October 19, 2003), as such documents may be revised from time to time.

c. Executive Order 13006. Executive Order 13006, "Locating Federal Facilities on Historic Properties in Our Nation's Central Cities" (May 21, 1996), requires federal agencies to use and maintain, whenever feasible, historic properties and properties within historic districts. The executive order directs agencies to encourage the location of federal facilities, including leased facilities, in or on historic properties and, to that end, the Leasing Desk Guide outlines a price preference hierarchy for historic properties.

3. Effective Date. This LAC and the accompanying attachments are effective immediately.

4. Applicability. This LAC and the accompanying attachments are mandatory and apply to all U.S. General Services Administration (GSA) real property leasing activities and to activities delegated by GSA to other Federal agencies.

5. Cancellation. None.

6. Instructions and Procedures. See Instructions in Attachment 1.

Attachment 1 – Instructions - Lease Requirements for Protection of Environmental, Archeological and Historic Resources

Attachment 2 – RLP Provisions for Protection of Environmental, Archeological and Historic Resources

**Attachment 3 – Lease Provisions for Protection of Environmental, Archeological and
Historic Resources**

**Attachment 4 – Lease Amendment Provisions for Lease Expansions, Reductions and
Alterations**

Instructions - Lease Requirements for Protection of Environmental, Archeological and Historic Resources

1. Introduction. Included are guidance and both new and revised Request for Lease Proposals (RLP) and Lease provisions designed to facilitate compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and section 106 of the National Historic Preservation Act of 1966, as amended (Section 106). This guidance is intended to improve agency consistency in implementing NEPA and Section 106 and to promote timely project completion. Delays and post-award cost increases often can be avoided by informing Offerors early in the process of these requirements that are specific to federal space actions.

2. General Policy Guidance.

A. NATIONAL ENVIRONMENTAL POLICY ACT

The National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 *et seq.*, Public Law 91-190 (NEPA), establishes the basis for the national environmental policy in the United States. NEPA is far-reaching in its coverage; it promotes the protection of the human environment, including both the natural and physical environments. Issues covered under NEPA include socio-economic impacts, cultural-archeological resources, traffic patterns, wildlife migratory patterns, coastal zone management, storm water management, and Superfund sites.

NEPA requires federal agencies to consider the effects of their actions, including real estate activities such as leasing, design and construction, on the human environment and alternatives that have the potential to reduce the impacts of those actions, and to prepare detailed statements for public and federal agency review where significant impacts may occur. In particular, NEPA requires federal agencies to conduct an assessment of the environmental impact of "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(c). This typically requires the preparation of documentation to confirm that this analysis has been performed, whether in the form of a Categorical Exclusion (CATEX), an Environmental Assessment (EA) or an Environmental Impact Statement (EIS).

In October 1999, GSA issued the PBS NEPA Desk Guide, which provides guidance for NEPA compliance and promotes a uniform approach to NEPA implementation for projects under GSA's jurisdiction. At GSA, NEPA compliance is administered by a regional expert, referred to as the Regional Environmental Quality Advisor (REQA) or the Regional NEPA Expert. REQAs and Regional NEPA Experts determine the appropriate level of environmental analysis for a proposed action and prepare the NEPA

compliance documentation for the lease contract file. Leasing specialists and Lease Contracting Officers (LCOs) must be aware of these NEPA requirements and are ultimately responsible for documenting NEPA compliance in the lease file.

In accordance with section 2.15.4.A (Additional Services Outside of PBS Fee, Environmental Studies) of the PBS Pricing Desk Guide (4th edition, revised October 3, 2011), environmental studies related to NEPA, such as an EA or EIS, for projects in leased facilities are funded by the customer agency through a reimbursable work authorization (RWA). Moreover, the section regarding Due Diligence/NEPA in chapter 14 (Lease Construction) of the PBS Leasing Desk Guide (revised April 29, 2011) reiterates that the customer agency pays for NEPA-related studies, including pre-award archeological investigations and other cultural resource surveys, as necessary, with an RWA for actions in leased facilities (see page 14-22).

NEPA compliance must be completed prior to the due date for final proposal revisions so that Offerors can take into account the associated costs of compliance in their proposals. NEPA compliance is the responsibility of the Government. The Offeror's pre-award responsibility with regard to NEPA is limited to providing access to the Property for GSA staff and contractors, providing information about the Property, such as a Phase I or, potentially, a Phase II Environmental Site Assessment (ESA), when requested, and addressing any mitigation issues noted during the compliance process.

B. ENVIRONMENTAL DUE DILIGENCE

Environmental due diligence refers to activities taken to confirm that the property interest being acquired does not entail being exposed to significant or insurmountable liabilities associated with management or cleanup of past or current hazardous substance contamination on the Property.

Due diligence studies, often referred to as ESAs, review the historical use of the site, interview past and current owners and examine records associated with the Property (to name but a few due diligence activities), but do not meet the requirements of NEPA, where the focus is on the broader topic of the environmental impacts of proposed federal actions. The level of assessment will vary depending on many factors, including the nature and type of property under consideration, the historical use of the Property, the type of transaction, the proposed use of the Property, and any other information obtained in the course of performing the assessment. Based on the information developed during the ESA, the Offeror may be required to perform additional cleanup (either before or after lease award) or provide special assurances to GSA that the Offeror will maintain any cleanup remedies in place (e.g., a cap on a landfill), or

environmental regulators may impose restrictions on the full use of the Property, or any combination of these or other mitigation measures.

The Offeror must complete environmental due diligence as part of its submission. The leasing specialist must forward the documentation to the REQA or the Regional NEPA Expert for review and comment and must include the compliance documentation in the lease file.

C. SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470f, requires federal agencies to consider the effects of their actions, including real estate activities such as leasing, design and construction, on historic properties prior to expending any federal funds on the undertaking. Regulations governing the Section 106 consultation process are available at 36 C.F.R. part 800. LCOs may direct Offerors that have questions regarding the consultation process to the Advisory Council on Historic Preservation's *Citizen's Guide to Section 106 Review*, which is available at <http://www.achp.gov/docs/CitizenGuide.pdf>.

The Section 106 process consists of four steps, which are described in greater detail immediately below. GSA's Regional Historic Preservation Officer (RHPO) is responsible for coordinating the consultation process.

1. The first step is Initiation, where the Area of Potential Effects (APE) for the leasing action is determined. The APE consists of the area that could be affected by the leasing action. These effects can be direct, such as ground disturbance or interior alterations in an existing building, or indirect, such as the area from which a newly constructed building or exterior alterations to an existing building could be visible.
2. The second step is Identification of historic properties that could be affected by the leasing action. If no historic properties are identified in the APE, Section 106 is complete.
3. If historic properties are identified in the APE, the third step is Assessment, where effects to identified historic properties are assessed. Effects are either adverse or not adverse, depending on the level of impact they will have on the historic property. If historic properties are identified in the APE but the effects to those properties are not adverse, Section 106 is complete.

4. If adverse effects are identified, the final step in the Section 106 process is Resolution, where steps to avoid, minimize or mitigate the adverse effects are agreed upon by the consulting parties (defined in the third succeeding paragraph below). This step, when required, usually culminates in a Memorandum of Agreement (MOA) that memorializes any mitigation that will be required of the Lessor following lease award.

In the case of leasing actions, potentially affected historic properties could include both above-grade (*i.e.*, buildings and historic districts) and below-grade (*i.e.*, archeological sites) resources. Any leasing action that involves ground disturbance, whether new construction, an alteration to an existing leased building for an addition or other ground disturbing activity involving excavation, has the potential to affect below-grade historic properties.

The Section 106 consultation must be completed prior to the due date for final proposal revision so that Offerors can take into account the associated costs of mitigation, if any, in their proposals. The Section 106 consultation steps of Initiation, Identification, Assessment, and Resolution are the sole responsibility of the Government. RHPOs conduct the Section 106 consultation and prepare the appropriate compliance documentation for the lease contract file. Leasing specialists and LCOs must be aware of these Section 106 requirements and are ultimately responsible for documenting Section 106 compliance in the lease file. The Offeror's pre-award responsibility with regard to Section 106 is limited to providing access to the Property for GSA staff and contractors, providing information about the Property, when requested, and addressing any design issues or other mitigation measures noted during the consultation process.

The Section 106 consultation process also requires the input of parties other than the Offeror and the Government. These parties are referred to as "consulting parties" and include the appropriate State Historic Preservation Officer (SHPO), the Tribal Historic Preservation Officer (THPO), if applicable, any local Historic Preservation or Landmarks Commission, and other interested parties, if applicable. Any party that assumes responsibilities under the MOA must be a consulting party. Direct correspondence with the consulting parties is the sole responsibility of the Government. Within GSA, the RHPO is the agency official solely responsible for corresponding with the consulting parties.

If the Government determines that, in connection with a planned leasing action for an offered Property or post-occupancy following execution of a Lease, alterations (either interior or exterior) or new construction could affect a historic property, the Offeror or Lessor, as applicable, will be required to retain, at their sole cost and expense, the

services of a preservation architect who meets or exceeds the *Secretary of the Interior's Professional Qualifications Standards for Historic Architecture*, as amended and annotated and previously published in the Code of Federal Regulations, 36 C.F.R. part 61, and the *GSA Qualifications Standards for Preservation Architects*. These standards are available at: <http://www.gsa.gov/historicpreservation>>Project Management Tools>Qualification Requirements for Preservation Architects. The preservation architect will be responsible for developing preservation design solutions and project documentation required for review by the Government, the SHPO, the THPO, if applicable, and other consulting parties in accordance with Section 106. For Tenant Improvements and other tenant-driven alterations within an existing historic building, the preservation architect must develop context-sensitive design options consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. Where new construction or exterior alterations, or both, are located within a historic district, may be visible from historic properties or may affect archeological resources, compliance may require tailoring the design of the improvements to be compatible with the surrounding area. Design review may require multiple revised submissions, depending on the complexity of the project and potential for adverse effects to historic properties, to respond to comments from the Government and the other consulting parties. Within GSA, the RHPO is solely responsible for corresponding with the SHPO, the THPO, if applicable, and any other consulting party. All design costs and expenses relating to satisfying the requirements of Section 106 are to be borne by the Offeror or Lessor, as applicable.

If the planned leasing action for an offered property results in adverse effects that will require mitigation, as memorialized in an MOA or other official correspondence, implementing the mitigation measures becomes a post-award responsibility of Lessor. The RHPO, in consultation with the SHPO and other interested parties, is responsible for identifying measures to mitigate adverse effects **and the leasing specialist must incorporate the agreed-upon mitigation measures into the Lease**. For example, if construction will unavoidably disturb an archeological site determined to be historic, mitigation typically will include data recovery. In this case, identifying the archeological site and assessing the possible effects on the site from the proposed construction would occur pre-award and would be the responsibility of the Government. Following Lease award, an archeologist retained by Lessor would fully excavate the archeological site, and Lessor would be responsible for recovering all of the artifacts (data) contained therein. Any archeologist conducting the work will be required to meet or exceed the *Secretary of the Interior's Archeology and Historic Preservation Professional Qualifications Standards* and the reports produced by the archaeologist must be reviewed and accepted by the RHPO prior to their submission to the SHPO and any other consulting party. Within GSA, the RHPO is solely responsible for corresponding with the SHPO and any other consulting party.

3. Request for Lease Proposals.

Attachment 2 includes both new and modified provisions in the Request for Lease Proposals (RLP) that address an Offeror's responsibilities with respect to environmental due diligence, NEPA and Section 106 compliance. Inclusion of these provisions will be project specific, depending upon whether the Government anticipates receiving offers that involve ground disturbing activity (*e.g.*, excavation) or otherwise affect historic property or properties. This can be determined through a market survey in consultation with the REQA or the Regional NEPA Expert and the RHPO. These provisions identify an Offeror's submittal responsibilities (for example, Phase I due diligence reports), authorize Government access to the sites and provide for the Government to take into account effects of the proposed lease action on the environment and historic properties in the selection process.

New RLP paragraphs

- a. DUE DILIGENCE AND NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS – RLP (SEP 2014).
- b. NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - RLP (SEP 2014).

Modified RLP paragraphs

- a. PROPOSAL CONTENT FOR SIMPLIFIED LEASES (SEP 2014).
- b. ADDITIONAL SUBMITTALS (STREAMLINED) (SEP 2014).
- c. ADDITIONAL SUBMITTALS (SUCCEEDING/SUPERSEDING) (SEP 2014).
- d. ADDITIONAL SUBMITTALS (STANDARD) (SEP 2014).
- e. ADDITIONAL SUBMITTALS (WAREHOUSE) (SEP 2014)

4. Lease.

Attachment 3 includes new lease provisions that address Lessor's responsibilities with respect to environmental due diligence, NEPA and Section 106 compliance. Inclusion of these provisions will be project specific, depending upon whether the Government anticipates receiving offers that involve ground disturbing activity (*e.g.*, excavation) or otherwise affect historic property or properties. These provisions identify Lessor's post-award obligations, including environmental remediation, implementing agreed-upon mitigation measures and design submissions.

New Lease Provisions (Applicable to all Lease Models):

- a. DUE DILIGENCE AND NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS – LEASE (SEP 2014).
- b. NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - LEASE (SEP 2014).

5. Lease Amendments.

Attachment 4 includes new provisions to be added, as applicable, by Lease Amendment for Lease Expansions, Reductions and Alterations that affect historic properties. The Section 106 consultation must be completed prior to executing the Lease Amendment so that Lessors can take into account the associated costs of Section 106 compliance in their proposals. These provisions are set forth in the following clause:

NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS FOR ACTIONS AFFECTING HISTORIC PROPERTIES (SEP 2014).

6. Online Tools. The Technical Procedures database and the GSA Technical Preservation Guidelines, both of which are available at [www.gsa.gov/historicpreservation>technical resources](http://www.gsa.gov/historicpreservation>technical_resources), may be helpful to Offerors exploring alternatives for complying with Section 106.

RLP Provisions for Protection of Environmental, Archeological and Historic Resources

FOR STANDARD, SIMPLIFIED, STREAMLINED, SUCCEEDING/SUPERSEDING, AND WAREHOUSE MODELS:

INCLUDE THE FOLLOWING PARAGRAPH, IN CONSULTATION WITH THE REGIONAL ENVIRONMENTAL QUALITY ADVISOR OR THE REGIONAL NEPA EXPERT. APPLICABLE SITUATIONS INCLUDE:

- OFFERS INVOLVING NEW CONSTRUCTION OR GROUND DISTURBING ACTIVITY (THIS REFERS TO EXCAVATION AND DOES NOT INCLUDE BUILDING MAINTENANCE ACTIVITIES SUCH AS LANDSCAPING).
- SUBSTANTIAL CHANGE IN BUILDING USE THAT WOULD AFFECT NEIGHBORHOOD TRAFFIC PATTERNS.
- PRIOR USE OF SPACE WAS NOT GENERAL PURPOSE OFFICE-TYPE OCCUPANCY AND THERE WAS A POTENTIAL FOR THE PRESENCE OF HAZARDOUS SUBSTANCES.

OTHERWISE, DELETE.

DUE DILIGENCE AND NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS - RLP (SEP 2014)

A. Environmental Due Diligence

1. At the direction of the LCO, the Offeror must provide, at the Offeror's sole cost and expense, a current Phase I Environmental Site Assessment (ESA), using the American Society for Testing and Materials (ASTM) Standard E1527-13 and timeline, as such standard may be revised from time to time. In accordance with ASTM standards, the study must be performed by an environmental professional with qualifications that meet ASTM standards. This Phase I ESA must be prepared with a focus on the Government being the "user" of the Phase I, as the term "user" is defined in E1527-13. Failure to submit the required study may result in dismissal from consideration.

2. If the Phase I ESA identifies any recognized environmental conditions (RECs), the Offeror will be responsible for addressing such RECs, at its sole cost and expense, including performing any necessary Phase II ESA (using ASTM Standard E1903-11), performing any necessary cleanup actions in accordance with federal and state standards and requirements and submitting a proposed schedule for complying with

these obligations. The Government will evaluate whether the nature of any of the RECs, the results of the Phase II, any completed cleanup, and the proposed schedule meet the Government's needs.

B. National Environmental Policy Act

1. While the Offeror is responsible for performing all environmental due diligence studies of the offered Property, the Government is responsible for compliance with NEPA, whether in whole or in part, on its own or with the assistance of the Offerors. NEPA requires federal agencies to consider the effects of their actions on the quality of the human environment as part of the federal decision making process and, to that end, the Government's obligations may, and in some cases will, be augmented by the Offerors as described in greater detail in the RLP.

2. The Government may either request information from the Offerors to help it meet its obligations under NEPA or share information provided in response to this provision with federal, state and local regulatory agencies as part of its compliance responsibilities under NEPA and other applicable federal, state and local environmental laws and regulations. Further consultation with these regulatory agencies may be necessary as part of the NEPA process.

3. The Offerors are advised that the Government may be required to release the location of each offered site and other building specific information in public hearings or in public NEPA documents. By submitting an offer in response to this RLP and without the need for any further documentation, the Offeror acknowledges and consents to such release.

4. The Government reserves the right to reject any offer where (i) the NEPA-related documentation provided by the Offeror for the offered Property is inadequate, (ii) the offer entails unacceptably adverse impacts on the human environment, (iii) the identified adverse impacts cannot be readily mitigated, or (iv) the level of NEPA analysis is more extensive than is acceptable to the Government (*e.g.*, offers must be of a nature that would allow NEPA to be satisfied by preparation of a Categorical Exclusion (CATEX) NEPA study or an Environmental Assessment (EA) with or without mandatory mitigation).

5. An Offeror must allow the Government access to the offered Property to conduct studies in furtherance of NEPA compliance. This requires research and field surveys to assess the potential impacts to the natural, social and cultural environments. Any recent studies previously conducted by the Offeror may be submitted to be included in the NEPA process.

6. The Government will not proceed with Lease award until the NEPA process is complete as evidenced by the Government's issuance of a completed CATEX, EA or Environmental Impact Statement. Upon Lease award, any mitigation measures, whether optional or mandatory, identified and adopted by the Government will become Lease obligations. All costs and expenses for development of design alternatives, mitigation measures and review submittals for work to be performed under the Lease will be the sole responsibility of Lessor.

FOR STANDARD, SIMPLIFIED, STREAMLINED, SUCCEEDING/SUPERSEDING, AND WAREHOUSE MODELS:

INCLUDE THE FOLLOWING PARAGRAPH, IN CONSULTATION WITH THE REGIONAL HISTORIC PRESERVATION OFFICER, WHEN ANTICIPATING OFFERS THAT COULD EITHER AFFECT HISTORIC PROPERTIES (FOR EXAMPLE, ANY LEASE IN A HISTORIC BUILDING OR DISTRICT) OR INVOLVE GROUND DISTURBING ACTIVITY (FOR EXAMPLE, EXCAVATION). OTHERWISE, DELETE.

NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - RLP (SEP 2014)

A. The Government is responsible for complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470f (Section 106). Section 106 requires federal agencies to consider the effects of their actions on historic properties prior to expending any federal funds on the undertaking. The Government is responsible for identifying whether any historic properties exist in, on, under, or near the offered Property that could be affected by the leasing action. Historic properties include both above-grade (*i.e.*, buildings and historic districts) and below-grade (*i.e.*, archeological sites) resources. The Government is responsible for assessing effects to identified historic properties and for consulting with the State Historic Preservation Officer (SHPO), the Tribal Historic Preservation Officer (THPO), if applicable, any local Historic Preservation or Landmarks Commission, and other interested parties, if applicable, in accordance with the implementing regulations set forth at 36 C.F.R. part 800 (Protection of Historic Properties).

B. An Offeror must allow the Government access to the offered Property to conduct studies in furtherance of the Section 106 compliance. This requires research and field surveys to assess the potential presence of historic properties that may be affected by construction activity, both above- and below-grade. Compliance also may require below-grade testing to determine the presence of archeological resources and possible artifact recovery, recordation and interpretation mitigation measures.

C. Demolition or destruction of a historic property by an Offeror in anticipation of an award of a Government lease may disqualify the Offeror from further consideration.

D. The Government reserves the right to reject any offer where documentation for the offered Property is inadequate or otherwise indicates preservation concerns or adverse effects to historic properties that cannot be reasonably mitigated.

E. If the Government determines that the leasing action could affect historic property, the Offeror of any Property that the Government determines could affect historic property will be required to retain, at its sole cost and expense, the services of a preservation architect who meets or exceeds the *Secretary of the Interior's Professional Qualifications Standards for Historic Architecture*, as amended and annotated and previously published in the Code of Federal Regulations, 36 C.F.R. part 61, and the *GSA Qualifications Standards for Preservation Architects*. These standards are available at: <http://www.gsa.gov/historicpreservation>>Project Management Tools>Qualification Requirements for Preservation Architects. The preservation architect will be responsible for developing preservation design solutions and project documentation required for review by the Government, the SHPO, the THPO, if applicable, and other consulting parties in accordance with Section 106. For Tenant Improvements and other tenant-driven alterations within an existing historic building, the preservation architect must develop context-sensitive design options consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. Where new construction or exterior alterations, or both, are located within a historic district, may be visible from historic properties or may affect archeological resources, compliance may require tailoring the design of the improvements to be compatible with the surrounding area. Design review may require multiple revised submissions, depending on the complexity of the project and potential for adverse effects to historic properties, to respond to comments from the Government and the other consulting parties. Within GSA, the Regional Historic Preservation Officer is solely responsible for corresponding with the SHPO, the THPO, if applicable, and any other consulting party. All design costs and expenses relating to satisfying the requirements of this paragraph will be borne solely by the Offeror.

SIMPLIFIED MODEL

3.03 PROPOSAL CONTENT FOR SIMPLIFIED LEASES (SEP 2014)

Add the following entry to the table entitled "DOCUMENT NAME OR DESCRIPTION":

....Information required under paragraph entitled "NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - RLP."

STREAMLINED MODEL

3.05 ADDITIONAL SUBMITTALS (STREAMLINED) (SEP 2014)

The Offeror also must submit with its offer the following:

INCLUDE THE FOLLOWING SUB-PARAGRAPH, IN CONSULTATION WITH THE REGIONAL HISTORIC PRESERVATION OFFICER, WHEN ANTICIPATING OFFERS THAT COULD EITHER AFFECT HISTORIC PROPERTIES (FOR EXAMPLE, ANY LEASE IN A HISTORIC BUILDING OR DISTRICT) OR INVOLVE GROUND DISTURBING ACTIVITY (FOR EXAMPLE, EXCAVATION). OTHERWISE, DELETE.

TO BE USED IN CONJUNCTION WITH RLP PARAGRAPH "NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS – RLP."

T. Information required under paragraph entitled "NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - RLP."

SUCCEEDING/SUPERSEDING MODEL

3.04 ADDITIONAL SUBMITTALS (SUCCEEDING/SUPERSEDING) (SEP 2014)

The Offeror also must submit with its offer the following:

INCLUDE THE FOLLOWING SUB-PARAGRAPH, IN CONSULTATION WITH THE REGIONAL HISTORIC PRESERVATION OFFICER, WHEN ANTICIPATING OFFERS THAT COULD EITHER AFFECT HISTORIC PROPERTIES (FOR EXAMPLE, ANY LEASE IN A HISTORIC BUILDING OR DISTRICT) OR INVOLVE GROUND DISTURBING ACTIVITY (FOR EXAMPLE, EXCAVATION). OTHERWISE, DELETE.

TO BE USED IN CONJUNCTION WITH RLP PARAGRAPH "NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - RLP."

K. Information required under paragraph entitled "NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - RLP."

STANDARD MODEL

3.06 ADDITIONAL SUBMITTALS (SEP 2014)

The Offeror also must submit with its offer the following:

INCLUDE THE FOLLOWING PARAGRAPH, IN CONSULTATION WITH THE REGIONAL ENVIRONMENTAL QUALITY ADVISOR OR THE REGIONAL NEPA EXPERT. APPLICABLE SITUATIONS INCLUDE:

- OFFERS INVOLVING NEW CONSTRUCTION OR GROUND DISTURBING ACTIVITY (THIS REFERS TO EXCAVATION AND DOES NOT INCLUDE BUILDING MAINTENANCE ACTIVITIES SUCH AS LANDSCAPING).
- SUBSTANTIAL CHANGE IN BUILDING USE THAT WOULD AFFECT NEIGHBORHOOD TRAFFIC PATTERNS.
- PRIOR USE OF SPACE WAS NOT GENERAL PURPOSE OFFICE-TYPE OCCUPANCY AND THERE WAS A POTENTIAL FOR THE PRESENCE OF HAZARDOUS SUBSTANCES.

OTHERWISE, DELETE.

TO BE USED IN CONJUNCTION WITH RLP PARAGRAPH "DUE DILIGENCE AND NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS - RLP."

W. Information required under paragraph entitled "DUE DILIGENCE AND NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS - RLP."

INCLUDE THE FOLLOWING SUB-PARAGRAPH, IN CONSULTATION WITH THE REGIONAL HISTORIC PRESERVATION OFFICER, WHEN ANTICIPATING OFFERS THAT COULD EITHER AFFECT HISTORIC PROPERTIES (FOR EXAMPLE, ANY LEASE IN A HISTORIC BUILDING OR DISTRICT) OR INVOLVE GROUND DISTURBING ACTIVITY (FOR EXAMPLE, EXCAVATION). OTHERWISE, DELETE.

TO BE USED IN CONJUNCTION WITH RLP PARAGRAPH "NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - RLP."

X. Information required under paragraph entitled "NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - RLP."

WAREHOUSE MODEL

3.06 ADDITIONAL SUBMITTALS (WAREHOUSE) (SEP 2014)

The Offeror also must submit with its offer the following:

INCLUDE THE FOLLOWING PARAGRAPH, IN CONSULTATION WITH THE REGIONAL ENVIRONMENTAL QUALITY ADVISOR OR THE REGIONAL NEPA EXPERT. APPLICABLE SITUATIONS INCLUDE:

- OFFERS INVOLVING NEW CONSTRUCTION OR GROUND DISTURBING ACTIVITY (THIS REFERS TO EXCAVATION AND DOES NOT INCLUDE BUILDING MAINTENANCE ACTIVITIES SUCH AS LANDSCAPING).
- SUBSTANTIAL CHANGE IN BUILDING USE THAT WOULD AFFECT NEIGHBORHOOD TRAFFIC PATTERNS.
- PRIOR USE OF SPACE WAS NOT GENERAL PURPOSE OFFICE-TYPE OCCUPANCY AND THERE WAS A POTENTIAL FOR THE PRESENCE OF HAZARDOUS SUBSTANCES.

OTHERWISE, DELETE.

TO BE USED IN CONJUNCTION WITH RLP PARAGRAPH "DUE DILIGENCE AND NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS - RLP."

R. Information required under paragraph entitled "DUE DILIGENCE AND NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS - RLP."

INCLUDE THE FOLLOWING SUB-PARAGRAPH, IN CONSULTATION WITH THE REGIONAL HISTORIC PRESERVATION OFFICER, WHEN ANTICIPATING OFFERS THAT COULD EITHER AFFECT HISTORIC PROPERTIES (FOR EXAMPLE, ANY LEASE IN A HISTORIC BUILDING OR DISTRICT) OR INVOLVE GROUND DISTURBING ACTIVITY (FOR EXAMPLE, EXCAVATION). OTHERWISE, DELETE.

TO BE USED IN CONJUNCTION WITH RLP PARAGRAPH "NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - RLP."

S. Information required under paragraph entitled "NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - RLP."

Lease Provisions for Protection of Environmental, Archaeological and Historic Resources

FOR STANDARD, SIMPLIFIED, STREAMLINED, SUCCEEDING/SUPERSEDING, AND WAREHOUSE MODELS:

AT RLP ISSUANCE STAGE

INCLUDE THE FOLLOWING PARAGRAPH, IN CONSULTATION WITH THE REGIONAL ENVIRONMENTAL QUALITY ADVISOR OR THE REGIONAL NEPA EXPERT. APPLICABLE SITUATIONS INCLUDE:

- OFFERS INVOLVING NEW CONSTRUCTION OR GROUND DISTURBING ACTIVITY (THIS REFERS TO EXCAVATION AND DOES NOT INCLUDE BUILDING MAINTENANCE ACTIVITIES SUCH AS LANDSCAPING).
- SUBSTANTIAL CHANGE IN BUILDING USE THAT WOULD AFFECT NEIGHBORHOOD TRAFFIC PATTERNS.
- PRIOR USE OF SPACE WAS NOT GENERAL PURPOSE OFFICE-TYPE OCCUPANCY AND THERE WAS A POTENTIAL FOR THE PRESENCE OF HAZARDOUS SUBSTANCES.

OTHERWISE, DELETE.

TO BE USED IN CONJUNCTION WITH RLP PARAGRAPH "DUE DILIGENCE AND NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS – RLP."

AT AWARD STAGE WHEN DRAFTING FINAL LEASE

MAY BE DELETED IF N/A FOR SUCCESSFUL OFFEROR.

DUE DILIGENCE AND NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS – LEASE (SEP 2014)

ACTION REQUIRED: INSERT EXHIBIT NUMBER FOR OFFEROR'S SCHEDULE OF CORRECTIVE ACTIONS.

A. Environmental Due Diligence

Lessor is responsible for performing all necessary "response" actions (as that term is defined at 42 U.S.C. § 9601(25) of the Comprehensive Environmental Response,

Compensation and Liability Act (CERCLA)) with regard to all "recognized environmental conditions," as that term is defined in ASTM Standard E1527-13, as such standard may be revised from time to time. This obligation extends to any contamination of the Property where such contamination is not attributable to the Government. Lessor must provide the Government with a summary report demonstrating completion of all required response actions prior to Substantial Completion. Any remediation performed by or on behalf of Lessor must be undertaken in strict compliance with all applicable federal, state and local laws and regulations.

B. National Environmental Policy Act

The National Environmental Policy Act regulations provide for analyzing proposed major federal actions to determine if there are ways to mitigate the impact of the proposed actions to avoid, minimize, rectify, reduce, or compensate for environmental impacts associated with such actions. Where the Government has determined that any or all of these mitigation measures should be or must be adopted to lessen the impact of these proposed actions, Lessor must incorporate all mitigation measures identified and adopted by the Government in the design and construction drawings and specifications. All costs and expenses for development of design alternatives, mitigation measures and review submittals for work to be performed under the Lease are the sole responsibility of Lessor.

FOR STANDARD, SIMPLIFIED, STREAMLINED, SUCCEEDING/SUPERSEDING, AND WAREHOUSE, MODELS:

AT RLP ISSUANCE STAGE

INCLUDE THE FOLLOWING PARAGRAPH, IN CONSULTATION WITH THE REGIONAL HISTORIC PRESERVATION OFFICER, WHEN ANTICIPATING OFFERS THAT COULD EITHER AFFECT HISTORIC PROPERTIES (FOR EXAMPLE, ANY LEASE IN A HISTORIC BUILDING OR DISTRICT) OR INVOLVE GROUND DISTURBING ACTIVITY (FOR EXAMPLE, EXCAVATION). OTHERWISE, DELETE.

TO BE USED IN CONJUNCTION WITH RLP PARAGRAPH "NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - RLP."

AT AWARD STAGE WHEN DRAFTING FINAL LEASE

MAY BE DELETED IF N/A FOR SUCCESSFUL OFFEROR.

NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS - LEASE (SEP 2014)

A. Where a Memorandum of Agreement or other pre-award agreement concluding the Section 106 consultation includes mitigation, design review or other continuing responsibilities of the Government, Lessor must allow the Government access to the Property to carry out compliance activities. Compliance may require excavation for artifact recovery, recordation and interpretation. For Tenant Improvements and other tenant-driven alterations within an existing historic building, new construction or exterior alterations that could affect historic properties, compliance also may require on-going design review. In these instances, Lessor will be required to retain, at its sole cost and expense, the services of a preservation architect who meets or exceeds the *Secretary of the Interior's Professional Qualifications Standards for Historic Architecture*, as amended and annotated and previously published in the Code of Federal Regulations, 36 C.F.R. part 61, and the *GSA Qualifications Standards for Preservation Architects*. These standards are available at: <http://www.gsa.gov/historicpreservation>>Project Management Tools> Qualification Requirements for Preservation Architects. The preservation architect will be responsible for developing preservation design solutions and project documentation required for review by the Government, the State Historic Preservation Officer (SHPO), the Tribal Historic Preservation Officer (THPO), if applicable, and other consulting parties in accordance with Section 106. For Tenant Improvements and other tenant-driven alterations within an existing historic building, the preservation architect must develop context-sensitive design options consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. Where new construction or exterior alterations, or both, are located within a historic district, may be visible from historic properties or may affect archeological resources, compliance may require tailoring the design of the improvements to be compatible with the surrounding area. Design review may require multiple revised submissions, depending on the complexity of the project and potential for adverse effects to historic properties. GSA is responsible for corresponding with the SHPO, the THPO, if applicable, and any other consulting party.

B. Compliance requirements under Section 106 apply to all historic property alterations and new construction, regardless of the magnitude, complexity or cost of the proposed scope of work.

C. The costs for development of design alternatives and review submittals for work

required under the Lease are the sole responsibility of Lessor. In addition, building shell costs relating to such design alternatives are the sole responsibility of Lessor and must be included in the shell rent. Such costs may be offset by federal, state or local preservation tax benefits. Lessor is encouraged to seek independent financial and legal advice concerning the availability of these tax benefits.

Lease Amendment Provisions for Lease Expansions, Reductions and Alterations

IN CONSULTATION WITH THE REGIONAL HISTORIC PRESERVATION OFFICER, INCLUDE THE FOLLOWING CLAUSE IN LEASE AMENDMENTS FOR LEASE EXPANSIONS, REDUCTIONS OR LEASE ALTERATIONS, OR ANY COMBINATION, THAT COULD AFFECT HISTORIC PROPERTIES. FOR EXPANSIONS OR REDUCTIONS, BUILDING SHELL COSTS SHOULD BE NEGOTIATED AND INCLUDED AS PART OF THE SHELL RENT. FOR ALTERATIONS, SUCH COSTS MUST BE REIMBURSED BY THE CUSTOMER AGENCY THROUGH A REIMBURSABLE WORK AGREEMENT. IN ALL CASES, SUCH COSTS SHOULD BE ADDRESSED BEFORE FINALIZING ANY LEASE AMENDMENT.

NATIONAL HISTORIC PRESERVATION ACT REQUIREMENTS FOR ACTIONS AFFECTING HISTORIC PROPERTIES (SEP 2014)

A. The Government is responsible for complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470f (Section 106). Section 106 requires federal agencies to consider the effects of their actions on historic properties prior to expending any federal funds on the undertaking. The Government is responsible for identifying whether any historic properties exist in, on, under, or near the Property that could be affected by the leasing action. Historic properties include both above-grade (*i.e.*, buildings and historic districts) and below-grade (*i.e.*, archaeological sites) resources. The Government is responsible for assessing effects to identified historic properties and for consulting with the State Historic Preservation Officer (SHPO), the Tribal Historic Preservation Officer (THPO), if applicable, any local Historic Preservation or Landmarks Commission, and other interested parties, if applicable, in accordance with the implementing regulations set forth at 36 C.F.R. part 800 (Protection of Historic Properties).

B. Lessor must allow the Government access to the Property to conduct studies in furtherance of the Section 106 compliance. This requires research and field surveys to assess the potential presence of historic properties that may be affected by construction activity, both above- and below-grade. Compliance also may require below-grade testing to determine the presence of archeological resources and possible artifact recovery, recordation and interpretation mitigation measures.

C. If the Government determines that post-occupancy alterations, either interior or exterior, or new construction could affect historic properties, Lessor will be required to retain, at its sole cost and expense, the services of a preservation architect who meets or exceeds the *Secretary of the Interior's Professional Qualifications Standards for*

Historic Architecture, as amended and annotated and previously published in the Code of Federal Regulations, 36 C.F.R. part 61, and the *GSA Qualifications Standards for Preservation Architects*. These standards are available at:

<http://www.gsa.gov/historicpreservation>>Project Management Tools> Qualification Requirements for Preservation Architects. The preservation architect will be responsible for developing preservation design solutions and project documentation required for review by the Government, the SHPO, the THPO, if applicable, and other consulting parties in accordance with Section 106. For Tenant Improvements and other tenant-driven alterations within an existing historic building, the preservation architect must develop context-sensitive design options consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. Where new construction or exterior alterations, or both, are located within a historic district, may be visible from historic properties or may affect archeological resources, compliance may require tailoring the design of the improvements to be compatible with the surrounding area. Design review may require multiple revised submissions, depending on the complexity of the project and potential for adverse effects to historic properties. GSA is responsible for corresponding with the SHPO, the THPO, if applicable, and any other consulting party.

D. Compliance requirements under Section 106 apply to all historic property alterations and new construction, regardless of the magnitude, complexity or cost of the proposed scope of work.

E. The costs for development of design alternatives and review submittals for work required under the Lease are the sole responsibility of Lessor. In addition, building shell costs relating to such design alternatives are the sole responsibility of Lessor and must be included in the shell rent. Such costs may be offset by federal, state or local preservation tax benefits. Lessor is encouraged to seek independent financial and legal advice concerning the availability of these tax benefits.