

**District of Columbia
Public Library**

**STANDARD CONTRACT
PROVISION**

**For
Supply, Service,
Architect/Engineer and Construction
Solicitations and Contracts**

October 2009



DC Public Library

FULL TEXT CLAUSES

The clauses specified herein are required by Title 19 DCMR, Chapter 43, Section 4383. The following clauses/provisions are incorporated into this solicitation and any resultant contract in full text when applicable:

4383-1. DEFINITIONS

"District" as used herein means the District of Columbia, a municipal corporation.

"Mayor" as used herein means the elected head of the District as set forth in Public Law 93-198 dated December 24, 1973, Title 4, Part B, Section 422(1).

"Contracting officer" as used herein means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

"Contract" as used herein means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the District or Library to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications.

"Change order" as used herein means a written order, signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor's consent.

"Chief Procurement Officer" means a senior level procurement official responsible for agency performance of procurement activities and programs created pursuant to the Procurement Practices Act of 1985, as amended.

"Architect-engineer services," as defined in 40 U.S.C. 1102, means:

- (1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;
- (2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- (3) Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

"Bid Sample" as used herein means a product sample required to be submitted by a bidder to show those characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the invitation for bid.

"Construction" as used herein means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include, but are not

limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, terminals, docks, piers, ways, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

"Consent to subcontract" as used herein means the contracting officer's written consent for the prime contractor to enter into a particular subcontract.

"Contractor's managerial personnel" as herein means of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:

(1) All or substantially all of the Contractor's business; (2) All or substantially all of the Contractor's operation at a plant or separate location where the contract is being performed; or (3) A separate and complete major industrial operation connected with performing this contract.

"Descriptive literature," as used in this provision, means information furnished by a bidder, such as cuts, illustrations, drawings, and brochures, that shows a product's characteristics or construction or explains its operation. The term includes only that information required to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

"Issue in controversy" means a material disagreement between the DCPL and the contractor that: (1) May result in a claim; or (2) Is all or part of an existing claim.

"Latent defect" as used herein means a defect that exists at the time of acceptance but cannot be discovered by a reasonable inspection.

"Micro-purchase" as used herein means an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold of \$3,000, except it means:

- (1) For acquisitions of construction subject to the Davis-Bacon Act, \$2,000; and
- (2) For acquisitions of services subject to the Service Contract Act, \$2,500.

"Misrepresentation of fact" means a false statement of substantive fact, or any conduct which leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

"Organizational conflict of interest" as used herein means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the District or Library, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

"Services" as used herein includes services performed, workmanship, and material furnished or used in performing services.

"Shop drawings" as used herein means drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail either or both of the following:

- (1) The proposed fabrication and assembly of structural elements.
- (2) The installation (*i.e.*, form, fit, and attachment details) of materials or equipment.

"State and local taxes" means taxes levied by the States, the District of Columbia, outlying areas of the United States, or their political subdivisions.

"Supplies" as used herein includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

"Termination for convenience" as used herein means the exercise of the DCPL's right to completely or partially terminate performance of work under a contract when it is in the DCPL's interest.

“Termination for default” as used herein means the exercise of the DCPL’s right to completely or partially terminate a contract because of the contractor’s actual or anticipated failure to perform its contractual obligations.

“Warranty” as used herein means a promise or affirmation given by a contractor to the DCPL regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract.

“Work” as used herein, includes, but is not limited to, materials, workmanship and manufacture and fabrication of components.

4383-2. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of the District of Columbia and all applicable Federal laws. The D.C. Public Library Procurement Regulations are incorporated by reference and made a part of this contract and any applicable solicitation. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor shall, without additional cost to the District and the Library, pay any necessary fees and charges, obtain any necessary licenses and permits and comply with applicable federal and District laws, codes and regulations. For purposes of litigation involving this contract, except for contract disputes discussed in the Disputes Clause below, exclusive venue and jurisdiction must be in the District of Columbia Superior Court.

(End of clause)

4383-3. GRATUITIES

The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative:

- (1) Offered or gave a gratuity (E.G., an entertainment or gift) to an officer, official, or employee of the DCPL; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

If this contract is terminated under paragraph (a) of this clause, the DCPL is entitled to pursue the same remedies as in a breach of the contract.

The rights and remedies of the DCPL 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.

(End of clause)

4383-4. INCONSISTENT PROVISIONS

Notwithstanding any provisions to the contract in any contract terms or conditions supplied by the contractor, these Standard Contract Provisions supersedes the contractor’s terms and conditions, in the event of any inconsistency.

(End of clause)

4383-5. ACCURATE INFORMATION

The offeror/contractor certifies that all information the offeror/contractor has provided or will provide to the DCPL is true and correct with respect to this contract including resolving claims and disputes. Any false or misleading information constitutes a reason for the DCPL to terminate this contract default and to pursue all appropriate remedies.

(End of clause)

4383-6. ACCOUNTING SYSTEM AND AUDIT

The DCPL may examine the contractor's and any first-tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first-tier subcontractor must grant the DCPL access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contractor is supported to any extent with federal or District funds, the appropriate federal or District authorities may also examine these records. The contractor must include the language of this paragraph in all first-tier subcontracts.

(End of clause)

4383-7. AMERICANS WITH DISABILITIES ACT

The contractor agrees to comply with nondiscrimination requirements of Titles II and III, and other provisions of the Americans With Disabilities Act of 1990, Pub Law 101-336, as amended, currently promulgated at 42 U.S.C. § 12101, et seq.

(End of clause)

4383-8. ASSIGNMENTS

The contractor shall not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the DCPL Chief Procurement Officer nor without the written acceptance by the surety on the performance and payment bond securing the Contract of the assignee as the Contractor and the principal on such bond; and any attempted transfer or assignment not authorized by this Clause shall constitute a breach of the Contract and the DCPL may for such cause terminate the right of the Contractor to proceed in the same manner as provided in the Termination Clause herein, and the Contractor and his sureties shall be liable to the DCPL for any excess cost incurred the DCPL thereby. Unless performance is separately and expressly waived in writing by the DCPL Chief Procurement Officer, an assignment does not release the contractor from responsibility for performance of this contract.

(End of clause)

4383-9. DISPUTES

This contract is subject to the Procurement Practices Act of 1985, as amended (Section 1-1189-4 and Title 19 DCMR, Section 4380).

Except as provided in the Act and Title 19, all disputes arising under or relating to this contract shall be resolved under this clause.

"Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under Title 19 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under Title 19. The submission may be converted to a claim under Title 19, Section 4380 by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 3 years after accrual of the claim to the Contracting officer for a written decision. A claim by the DCPL against the Contractor shall be subject to a written decision by the Contracting officer.

The Contractor shall provide the certification specified in this clause when submitting any claim exceeding \$100,000. The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim. The certification shall state as

follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the DCPL is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

The Contracting officer's decision shall be final unless the Contractor requests reconsideration from the D.C. Library's Contracts Review Committee.

Contractor claims against the DCPL and DCPL claims against the Contractor, by mutual consent, may agree to use alternative dispute resolution (ADR).

The DCPL shall pay interest on the amount found due on claims decided in the contractor's favor from (1) the date that the Contracting officer receives the claim (certified, if required) until the date of payment. With regard to claims having defective certifications, as defined in Title 19 DCMR, interest shall be paid from the date that the Contracting officer initially receives the claim. Interest shall accrue at the rate established by the District of Columbia Council pursuant to the D.C. code #23-3302, as amended.

The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting officer.

(End of clause)

4838-10. DISPUTES CONCERNING LABOR STANDARDS

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the DCPL, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

4383-11. CHANGES

The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes—

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the DCPL-furnished property or services; or
- (4) Directing acceleration in the performance of the work.

Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating—

- (1) The date, circumstances, and source of the order; and
- (2) That the Contractor regards the order as a change order.

Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective

specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the DCPL is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (1) of this clause or (2) the furnishing of a written notice under paragraph (2) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the DCPL. The statement of proposal for adjustment may be included in the notice under paragraph (2) of this clause.

No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of clause)

4383-12. ENTIRE AGREEMENT

There are no promises, terms, conditions or obligations other than those specified in this contract. This contract supersedes all communications, representations or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the DCPL to enter into the contract.

(End of clause)

4383-13. CONTRACT NOT AFFECTED BY ORAL AGREEMENT

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Contracting officer.

(End of clause)

4383-14. CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall—

- (1) Have a written code of business ethics and conduct; and
- (2) Make a copy of the code available to each employee engaged in performance of the contract.

The Contractor shall—

- (1) Exercise due diligence to prevent and detect criminal conduct; and
- (2) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

The Contractor shall timely disclose, in writing, to the DCPL Chief Procurement Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

- (1) A violation of District or Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code.

The DCPL, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the DCPL to the public pursuant to a D.C. Freedom of Information Act request without prior notification to the Contractor. The DCPL may transfer documents provided by the Contractor to any District agency if the information relates to matters within the organization's jurisdiction.

(End of clause)

4383-15. BRAND NAME OR EQUAL

If an item in this solicitation is identified as "brand name or equal," the purchase description reflects the characteristics and level of quality that will satisfy the DCPL's needs. The salient physical, functional, or performance characteristics that "equal" products must meet are specified in the solicitation.

To be considered for award, offers of "equal" products, including "equal" products of the brand name manufacturer, must—

(1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

The Contracting Officer will evaluate "equal" products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

Unless the offeror clearly indicates in its offer that the product being offered is an "equal" product, the offeror shall provide the brand name product referenced in the solicitation.
(End of provision)

4383-16. DELIVERY OF EXCESS QUANTITIES

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the DCPL receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The DCPL may retain such excess quantities up to \$250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of \$250 will, at the option of the DCPL, either be returned at the Contractor's expense or retained and paid for by the DCPL at the contract unit price.
(End of clause)

4383-17. AMENDMENTS TO INVITATION FOR BIDS

If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The DCPL must receive the acknowledgment by the time and at the place specified for receipt of bids.
(End of provision)

4383-18. FALSE STATEMENTS IN BIDS

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments.
(End of provision)

4383-19. LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF BIDS

Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the DCPL office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated DCPL office on the date that bids are due.

Any bid, modification, or withdrawal received at the DCPL office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the procurement; and—

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

(2) There is acceptable evidence to establish that it was received at the DCPL office designated for receipt of bids and was under the DCPL's control prior to the time set for receipt of bids.

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

Acceptable evidence to establish the time of receipt at the DCPL office includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of DCPL personnel.

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

Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile or electronic bids, bids may be withdrawn via facsimile or electronic communication received at any time before the exact time set for receipt of bids, subject to the conditions specified in the solicitation. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

4383-20. PERIOD FOR ACCEPTANCE OF BIDS

In compliance with the solicitation, the bidder agrees, if this bid is accepted within _____ calendar days (*60 calendar days unless a different period is inserted by the bidder*) 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 Schedule.

(End of provision)

4383-21. CONTRACT AWARD – SEALED BIDDING

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

The DCPL may—

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

The DCPL may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The DCPL 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.

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

The DCPL may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline 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 DCPL 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)

4383-22. CONTRACT AWARD – SEALED BIDDING - CONSTRUCTION

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

The DCPL may reject any or all bids, and waive informalities or minor irregularities in bids received.

The DCPL may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

The DCPL may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline 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 DCPL 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)

4383-23. BID SAMPLES

Bidders must furnish bid samples as part of the bid. The DCPL must receive the bid samples by the time specified in the invitation for bids. If the bidder fails to submit samples on time, the DCPL will reject the bid, except that the Contracting Officer will consider a late sample sent by mail under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

The DCPL will test or evaluate bid samples to determine compliance with all the characteristics listed for examination in this solicitation. The DCPL will reject the bid when the sample fails to conform to the required characteristics. Products delivered under any resulting contract must conform to—

- (1) The approved sample for the characteristics listed for test or evaluation; and
- (2) The specifications for all other characteristics.

Unless otherwise specified in the solicitation, bid samples shall be—

- (1) Submitted at no expense to the DCPL; and
- (2) Returned at the bidder's request and expense, unless they are destroyed during preaward testing.

(End of provision)

4383-24. BID SAMPLES – (ALTERNATE 1)

At the discretion of the Contracting Officer, the requirement for furnishing bid samples may be waived for a bidder if:

(1) The bid states that the offered product is the same as a product offered by the bidder to the _____ *[identify who same product was offered to]* on a previous procurement; and

(2) The Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those in this solicitation.

(End of provision)

4383-25. BID SAMPLES – (ALTERNATE 2)

At the discretion of the Contracting Officer, the requirements for furnishing bid samples may be waived for a bidder if—

(1) The bid states that the offered product is the same as a product offered by the bidder to the _____ *[identify who same product was offered to]* on a previous acquisition;

(2) The Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those of this solicitation; and

(3) The product offered under this solicitation will be produced under a resulting contract at the same plant in which the previously acquired or tested product was produced.
(End of provision)

4383-26. DESCRIPTIVE LITERATURE

Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements such as:

- (1) Design;
- (2) Materials;
- (3) Components;
- (4) Performance characteristics; and
- (5) Methods of manufacture, assembly, construction, or operation.

Descriptive literature, required elsewhere in this solicitation, shall be:

- (1) Identified to show the item(s) of the offer to which it applies; and
- (2) Received by the time specified in this solicitation.

If the bidder fails to submit descriptive literature on time, the DCPL will reject the bid, except that late descriptive literature sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

If the descriptive literature fails to show that the product offered conforms to the requirements of the solicitation, the DCPL will reject the bid.

(End of provision)

4383-27. ORDER OF PRECEDENCE – SEALED BIDDING

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications);
- (b) Representations and other instructions;
- (c) Contract clauses;
- (d) Other documents, exhibits, and attachments; and
- (e) The specifications.

(End of clause)

4383-28. SUBMISSION OF BIDS IN THE ENGLISH LANGUAGE

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

4383-29. SUBMISSION OF OFFERS IN U.S. CURRENCY

Offers submitted in response to this solicitation shall be in terms of U.S. dollars.
Offers received in other than U.S. dollars shall be rejected.

(End of provision)

4383.30. REQUEST FOR INFORMATION OR SOLICITATION FOR PLANNING PURPOSES

The DCPL does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as an allowable cost under other contracts as provided in the DCPL Procurement Regulations.

Although "proposal" and "offeror" are used in this Request for Information, your response will be treated as information only. It shall not be used as a proposal.

This solicitation is issued for the purpose of: *[state purpose]*.

(End of provision)

4383-31. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because:

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

Any reduction in the contract price as specified in this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which:

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

If the Contracting Officer determines that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(1) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(2) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(3) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(4) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

Except as prohibited by this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if:

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

An offset shall not be allowed if:

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The DCPL proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the DCPL at the time such overpayment is repaid:

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the DCPL is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Chief Financial Officer; and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

4383-32. SUBCONTRACTOR COST OR PRICING DATA

Before awarding any subcontract expected to exceed the threshold at DCPL Procurement Regulations Section _____, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at DCPL Procurement Regulations Section _____, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing) unless an exception at DCPL Procurement Regulations Section _____ applies.

The Contractor shall require the subcontractor to certify that, to the best of its knowledge and belief, the data submitted as required by this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(End of clause)

4383-33. INTEGRITY OF UNIT PRICES

Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

The Contractor shall insert the substance of this clause, less the above paragraph, in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in DCPL

Procurement Regulations Section 4305; construction or architect-engineer services under DCPL
Procurement Regulations Section 4344; services where supplies are not required; and
commercial items.

(End of clause)

4383-34. NOTIFICATION OF OWNERSHIP CHANGE

The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Contracting Officer (CO) within 30 days.

(2) The Contractor shall also notify the CO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

The Contractor shall:

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the CO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(End of clause)

4383-35. PERFORMANCE OF WORK BY THE CONTRACTOR.

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

(End of clause)

4383-36. STATE AND LOCAL TAXES

The contract price includes all applicable Federal, State, and local taxes and duties. The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise. The contract price shall be decreased by the amount of any after-relieved Federal tax. The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting officer.

The Contractor shall promptly notify the Contracting officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting officer directs.

The DCPL shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

4383-37. PAYMENT BY DCPL TO THE CONTRACTOR

In _____ [insert "full" if Alternate I is used; otherwise insert "partial"]
consideration of the performance of the work called for in the Schedule, the DCPL will pay to the Contractor _____ [fill in amount].

The DCPL shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting officer, on estimates approved by the Contracting officer. Except as provided in paragraph (c) of this clause, in making progress payments the Contracting officer shall retain 10 percent of the estimated payment until final completion and acceptance of the contract work. However, if the Contracting officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting officer may authorize such payment in full, without retaining a percentage. Also, on completion and acceptance of each unit or division for which the price is stated separately, the Contracting officer may authorize full payment for that unit or division without retaining a percentage.

When the work is substantially completed, the Contracting officer shall retain an amount considered adequate for the protection of the DCPL and, at the Contracting officer's discretion, may release all or a portion of any excess amount.

In further consideration of performance, the Contractor shall receive title to all property to be dismantled or demolished that is not specifically designated as being retained by the DCPL. The title shall vest in the Contractor immediately upon the DCPL's issuing the notice of award, or if a performance bond is to be furnished after award, upon the DCPL's issuance of a notice to proceed with the work. The DCPL shall not be responsible for the condition of, or any loss or damage to, the property. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition to the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

Upon completion and acceptance of all work and receipt of a properly executed voucher, the DCPL shall make final payment of the amount due the Contractor under this contract. If requested, the Contractor shall release all claims against the DCPL arising under this contract, other than any claims the Contractor specifically excepts, in stated amounts, from operation of this release.

(End of clause)

4383-38. PAYMENT BY THIRD PARTY

The Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the DCPL, in accordance with the terms of this clause. The third party and, if applicable, the particular DCPL commercial purchase card to be used are identified elsewhere in this contract.

In accordance with those clauses of this contract that authorize the Contractor to submit invoices, other payment requests, or as provided in other clauses providing for payment to the Contractor, the Contractor shall make such payment requests through a charge to the DCPL account with the third party, at the time and for the amount due in accordance with the terms of this contract.

The Contractor and the third party shall agree that payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments

made by the DCPL and are not subject to the Quick Payment Act or any implementation thereof in this contract.

Documentation of each charge against the DCPL's account shall be provided to the Contracting Officer upon request.

Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract. The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request that is not provided in the third party agreement referenced herein, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

(End of clause)

4383-39. CONTINUITY OF SERVICES

The Contractor recognizes that the services under this contract are vital to the DCPL and must be continued without interruption and that, upon contract expiration, a successor, either the DCPL or another contractor, may continue them. The Contractor agrees to:

- (1) Furnish phase-in training; and
- (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

The Contractor shall, upon the Contracting officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of clause)

4383-40. SUSPENSION OF WORK

The Contracting officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting officer determines appropriate for the convenience of the DCPL.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting officer in the administration of this contract, or (2) by the Contracting officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the 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 that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

A claim under this clause shall not be allowed:

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

(End of clause)

4383-41. STOP-WORK ORDER

The Contracting officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause.

Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting officer shall either:

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the DCPL, clause of this contract.

If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if:

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting officer decides the facts justify the action, the Contracting officer may receive and act upon the claim submitted at any time before final payment under this contract.

If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the DCPL, the Contracting officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(End of clause)

4383-42. INSPECTION OF SERVICES – FIXED PRICE

The Contractor shall provide and maintain an inspection system acceptable to the DCPL covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the DCPL during contract performance and for as long afterwards as the contract requires.

The DCPL has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The DCPL shall perform inspections and tests in a manner that will not unduly delay the work.

If the DCPL performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

If any of the services do not conform with contract requirements, the DCPL may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract price. When the defects in services cannot be corrected by reperformance, the DCPL may—

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce the contract price to reflect the reduced value of the services performed.

If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the DCPL may—

(1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the DCPL that is directly related to the performance of such service; or

(2) Terminate the contract for default.

(End of clause)

4383-43. INSPECTION OF SUPPLIES – FIXED PRICE

The Contractor shall provide and maintain an inspection system acceptable to the DCPL covering supplies under this contract and shall tender to the DCPL for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the DCPL during contract performance and for as long afterwards as the contract requires. The DCPL may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

The DCPL has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The DCPL shall perform inspections and tests in a manner that will not unduly delay the work. The DCPL assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

If the DCPL performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the DCPL shall bear the expense of DCPL inspections or tests made at other than the Contractor's or subcontractor's premises; provided, that in case of rejection, the DCPL shall not be liable for any reduction in the value of inspection or test samples.

When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting officer may charge to the Contractor the additional cost of inspection or test. The Contracting officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

The DCPL has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are

otherwise not in conformity with contract requirements. The DCPL may reject nonconforming supplies with or without disposition instructions.

The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the DCPL may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

The DCPL shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. DCPL failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the DCPL, for nonconforming supplies.

Inspections and tests by the DCPL do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

If acceptance is not conclusive for any of the reasons specified above, the DCPL, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting officer; provided, that the Contracting officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required by this clause and does not cure such failure within a period of 10 days (or such longer period as the Contracting officer may authorize in writing) after receipt of notice from the Contracting officer specifying such failure, the DCPL shall have the right by contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the DCPL thereby.

(End of clause)

4383-44. INSPECTION OF SERVICES – COST REIMBURSEMENT

The Contractor shall provide and maintain an inspection system acceptable to the DCPL covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the DCPL during contract performance and for as long afterwards as the contract requires.

The DCPL has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The DCPL shall perform inspections and tests in a manner that will not unduly delay the work.

If any of the services performed do not conform with contract requirements, the DCPL may require the Contractor to perform the services again in conformity with contract

requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the DCPL may:

- (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
- (2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.

If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the DCPL may:

- (1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or
- (2) Terminate the contract for default.

(End of clause)

4383-45. INSPECTION OF SUPPLIES – COST REIMBURSEMENT

The Contractor shall provide and maintain an inspection system acceptable to the DCPL covering the supplies, fabricating methods, and special tooling under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the DCPL during contract performance and for as long afterwards as the contract requires.

The DCPL has the right to inspect and test the contract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The DCPL may also inspect the plant or plants of the Contractor or any subcontractor engaged in the contract performance. The DCPL shall perform inspections and tests in a manner that will not unduly delay the work.

If the DCPL performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

Unless otherwise specified in the contract, the DCPL shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 30 days after delivery, unless accepted earlier.

At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the DCPL may require the Contractor to replace or correct any supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Except as otherwise provided in this clause, the cost of replacement or correction shall be included in allowable cost, determined as provided in the **Allowable Cost and Payment clause**, but no additional fee shall be paid. The Contractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the DCPL may:

- (1) By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract;
- (2) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the contract; or
- (3) Terminate the contract for default.

Failure to agree on the amount of increased cost to be charged to the Contractor or to the reduction in the fixed fee shall be a dispute.

Notwithstanding paragraphs of this clause, the DCPL may at any time require the Contractor to correct or replace, without cost to the DCPL, nonconforming supplies, if the nonconformances are due to:

- (1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
- (2) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.

The Contractor shall have no obligation or liability under this contract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the contract.

Except as otherwise specified in the contract, the Contractor's obligation to correct or replace DCPL or District-furnished property shall be governed by the clause pertaining to DCPL or District property.

(End of clause)

4383-46. WARRANTY OF SERVICES

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

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

- (1) That the Contractor shall correct or reperform any defective or nonconforming services; or
- (2) That the DCPL does not require correction or reperformance.

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

If the DCPL does not require correction or reperformance, the Contracting officer shall make an equitable adjustment in the contract price.

(End of clause)

4383-47. PAYMENT BY DCPL TO THE CONTRACTOR (Alternate)

If the contracting officer determines that the DCPL shall retain all material resulting from the dismantling or demolition work, delete paragraph 4 from the basic clause.

(End of clause)

4383-48. PAYMENT BY CONTRACTOR TO THE DCPL

The Contractor shall receive title to all property to be dismantled, demolished, or removed under this contract and not specifically designated as being retained by the DCPL. The title shall vest in the Contractor immediately upon contract award, or if a performance bond is to be furnished, upon the DCPL's issuing a notice to proceed with the work. The DCPL shall not be responsible for the condition of, or any loss or damage to, the property.

The Contractor shall promptly remove from the site all property acquired by the Contractor. The DCPL shall not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

The Contractor shall perform the work called for under this contract and within the specified period of performance and before proceeding with the work, shall pay _____ [fill in amount]. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting officer.

(End of clause)

4383-49. DAVIS-BACON ACT

All laborers and mechanics employed or working upon the work site will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part of, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

The wage determination (including any additional classifications and wage rates conformed under this clause and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

The Contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting officer shall approve an additional classification and wage rate and fringe benefits only when all the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination.
- (2) The classification is utilized in the area by the construction industry.
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting officer or will notify the Contracting officer within the 30-day period that additional time is necessary.

In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting officer or will notify the Contracting officer within the 30-day period that additional time is necessary.

The wage rate (including fringe benefits, where appropriate) determined pursuant to the requirements of this clause shall be paid to all workers performing work in the classifications under this contract from the first day on which work is performed in the classification.

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

4383-50. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES

If 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, including all relevant information, to the Contracting Officer.

(End of clause)

4383-51. WITHHOLDING OF FUNDS

The Contracting officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

4383-52. SUBCONTRACTS (LABOR STANDARDS)

The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction for the DCPL including the applicable contract clauses.

(End of clause)

4383-53. COMPLIANCE WITH DAVIS-BACON ACT REGULATIONS

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

(End of clause)

4383-54. CERTIFICATION OF ELIGIBILITY

By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded DCPL contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

No part of this contract shall be subcontracted to any person or firm ineligible for award of a DCPL contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of clause)

4383-55. APPROVAL OF WAGE RATES

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted in advance for approval in writing by the DCPL Chief Procurement Officer if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the DCPL approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the DCPL.

(End of clause)

4383-56. PAYMENT FOR OVERTIME PREMIUMS

The use of overtime is authorized under this contract if the overtime premium does not exceed fifty percent or the overtime premium is paid for work:

- (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
- (2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
- (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
- (4) That will result in lower overall costs to the DCPL.

Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall—

- (1) Identify the work unit; *e.g.*, department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting officer to evaluate the necessity for the overtime;
- (2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;
- (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other DCPL contracts, together with identification of each affected contract; and
- (4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

(End of clause)

4383-57. DIFFERING SITE CONDITIONS

The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting officer of: (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

The Contracting officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required in the time period required by the Contracting officer.

No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of clause)

4383-58. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to: (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground;

and (5) the character of equipment and facilities needed preliminary to and during work performance.

The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the DCPL, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the DCPL.

The DCPL assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the DCPL. Nor does the DCPL assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

(End of clause)

4383-59. PHYSICAL DATA

Data and information furnished or referred to herein is for the Contractor's information. The DCPL shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor. The indications of physical conditions on the drawings and in the specifications are the result of site investigations by _____ [insert a description of investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels].

(End of clause)

4383-60. MATERIAL AND WORKMANSHIP

All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

The Contractor shall obtain the Contracting officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting officer, the Contractor shall also obtain the Contracting officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting officer may require, in writing, that the Contractor remove from the work any employee the Contracting officer deems incompetent, careless, or otherwise objectionable.

(End of clause)

4383-61. PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to the DCPL, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occurs as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)

4383-62. OTHER CONTRACTS

The DCPL may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with DCPL employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by DCPL employees.

(End of clause)

4383-63. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES AND IMPROVEMENTS

The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting officer.

The Contractor shall protect from damage all existing improvements and utilities: (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting officer may have the necessary work performed and charge the cost to the Contractor.

(End of clause)

4383-64. OPERATIONS AND STORAGE AREAS

The Contractor shall confine all operations (including storage of materials) on DCPL premises to areas authorized or approved by the Contracting officer. The Contractor shall hold and save the DCPL, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting officer and shall be built with labor and materials furnished by the Contractor without expense to the DCPL. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting officer, the buildings and utilities may be abandoned and need not be removed.

The Contractor shall, under regulations prescribed by the Contracting officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

(End of clause)

4383-65. USE AND POSSESSION PRIOR TO COMPLETION

The DCPL shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the DCPL intends to take possession of or use. However, failure of the Contracting officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The DCPL's possession or use shall not be deemed an acceptance of any work under the contract.

While the DCPL has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the DCPL's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the DCPL delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

(End of clause)

4383-66. CLEANING UP

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the DCPL. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting officer.

(End of clause)

4383-67. ACCIDENT PREVENTION

The Contractor shall provide and maintain work environments and procedures which will: (1) Safeguard the public and DCPL personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities; (2) Avoid interruptions of DCPL operations and delays in project completion dates; and (3) Control costs in the performance of this contract.

For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall: (1) Provide appropriate safety barricades, signs, and signal lights; (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and (3) Ensure that any additional measures the Contracting officer determines to be reasonably necessary for the purposes are taken.

Whenever the Contracting officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or DCPL personnel, the Contracting officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting officer may issue an order stopping all or part

of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

Before commencing the work, the Contractor shall: (1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and (2) Meet with representatives of the Contracting officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(End of clause)

4383-68. ACCIDENT PREVENTION (Alternate)

If the contract will involve (a) work of a long duration or hazardous nature, or (b) performance on a DCPL facility that on the advice of technical representatives involves hazardous materials or operations that might endanger the safety of the public and/or DCPL or other District personnel or property, add the following paragraph to the basic clause:

Before commencing the work, the Contractor shall:

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and (2) Meet with representatives of the Contracting officer to discuss and develop a mutual understanding relative to administration of the overall safety program that shall be in effect through the contract period of performance.

(End of clause)

4383-69. AVAILABILITY AND USE OF UTILITY SERVICES

The DCPL shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. The Contractor shall carefully conserve any utilities furnished without charge. The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the

amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the DCPL, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of clause)

4383-70. SCHEDULES FOR CONSTRUCTION CONTRACTS

The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting officer, prepare and submit to the Contracting officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting officer may withhold approval of progress payments until the Contractor submits the required schedule.

The Contractor shall enter the actual progress on the chart as directed by the Contracting officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting officer. If, in the opinion of the Contracting officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting officer, without additional cost to the DCPL. In this circumstance, the Contracting officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting officer deems necessary to demonstrate how the approved rate of progress will be regained.

Failure of the Contractor to comply with the requirements of the Contracting officer under this clause shall be grounds for a determination by the Contracting officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

4383-71. LAYOUT OF WORK

The Contractor shall lay out its work from DCPL established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

(End of clause)

4383-72. ORGANIZATION AND DIRECTION OF THE WORK

When this contract is executed, the Contractor shall submit to the Contracting officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under this contract, and their respective duties. The Contractor shall keep the data furnished current by supplementing it as additional information becomes available.

Work performance under this contract shall be under the full-time resident direction of (1) the Contractor, if the Contractor is an individual; (2) one or more principal partners, if the Contractor is a partnership; or (3) one or more senior officers, if Contractor is a corporation, association, or similar legal entity. However, if the Contracting officer approves, the Contractor may be represented in the direction of the work by a specific person or persons holding positions other than those identified in this paragraph.

(End of clause)

4383-73. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the Contracting officer is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the Contracting officer, unless otherwise expressly stated.

Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."

Shop drawings means drawings, submitted to the DCPL by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements; and (2) the installation (*i.e.*, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The DCPL may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the DCPL's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval

by the Contracting officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) of this clause.

If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting officer approves any such variation, the Contracting officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

The Contractor shall submit to the Contracting officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting officer and one set will be returned to the Contractor.

Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

(End of clause)

4383-74. DESIGN WITHIN FUNDING LIMITATIONS

The Contractor shall accomplish the design services required under this contract so as to permit the award of a contract, using standard D.C. Procurement Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph © of this clause. When bids or proposals for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Contractor shall not be required to perform such additional services at no cost to the DCPL if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

The Contractor will promptly advise the Contracting officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting officer will review the Contractor's revised estimate of construction cost. The DCPL may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) of this clause, or the DCPL may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, the DCPL shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

The estimated construction contract price for the project described in this contract is \$_____.

(End of clause)

4383-75. RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR

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

Neither the DCPL's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to the DCPL in accordance with applicable law for all damages to the DCPL caused by the Contractor's negligent performance of any of the services furnished under this contract.

The rights and remedies of the DCPL provided for under this contract are in addition to any other rights and remedies provided by law.

If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(End of clause)

4383-76. WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS

The extent and character of the work to be done by the Contractor shall be subject to the general oversight, supervision, direction, control, and approval of the Contracting officer.

(End of clause)

4383-77. REQUIREMENTS FOR REGISTRATION OF DESIGNERS

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

(End of clause)

4383-78. PRECONSTRUCTION CONFERENCE

If the Contracting officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

(End of clause)

4383-79. SITE VISIT (CONSTRUCTION)

The clauses, Differing Site Conditions, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, bidders/offerors are urged and expected to inspect the site where the work will be performed.

(End of clause)

4383-80. SUPERVISION, LABOR OR MATERIALS

The Contractor shall furnish adequate supervision, labor, materials, supplies, and equipment necessary to perform all the services contemplated under this contract in an orderly, timely, and efficient manner.

(End of clause)

4383-81. CONTRACTOR INSPECTION REQUIREMENTS

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any DCPL inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the DCPL.

(End of clause)

4383-83. INSPECTION – DISMANTLING, DEMOLITION OR REMOVAL IMPROVEMENTS

Unless otherwise designated by the specifications, all workmanship performed under the contract is subject to DCPL inspection at all times and places where dismantling or demolition work is being performed. The Contractor shall furnish promptly, and at no increase in contract price, all reasonable facilities, labor, and materials necessary for safe and convenient inspection by the DCPL. The DCPL shall perform inspections in a manner that will not unduly delay the work.

The Contractor is responsible for damage to property caused by defective workmanship. The Contractor shall promptly segregate and remove from the premises any unsatisfactory facilities, materials, and equipment used in contract performance, and promptly replace them with satisfactory items. If the Contractor fails to proceed at once in a workmanlike manner with performance of the work or with the correction of defective workmanship, the DCPL may—

- (1) By contract or otherwise, replace the facilities, materials, and equipment or correct the workmanship and charge the cost to the Contractor; and
- (2) Terminate for default the Contractor's right to proceed. The Contractor and any surety shall be liable, to the extent specified in the contract for any damage or cost of repair or replacement.

(End of clause)

4383-84. WARRANTY OF CONSTRUCTION

In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the DCPL takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the DCPL takes possession.

The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to DCPL-owned or District DCPL-owned or controlled real or personal property, when that damage is the result of—

- (1) The Contractor's failure to conform to contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

The Contracting officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the DCPL shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of the DCPL, if directed by the Contracting officer; and
- (3) Enforce all warranties for the benefit of the DCPL, if directed by the Contracting officer.

In the event the Contractor's warranty under paragraph (b) of this clause has expired, the DCPL may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the DCPL nor for the repair of any damage that results from any defect in DCPL-furnished material or design.

This warranty shall not limit the DCPL's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

4383-85. CERTIFICATE OF CONFORMANCE

When authorized in writing by the contracting officer, the Contractor shall ship with a Certificate of Conformance any supplies for which the contract would otherwise require inspection at source. In no case shall the DCPL's right to inspect supplies under the inspection provisions of this contract be prejudiced. Shipments of such supplies will not be made under this contract until use of the Certificate of Conformance has been authorized in writing by the CO, or inspection and acceptance have occurred.

The Contractor's signed certificate shall be attached to or included on the top copy of the inspection or receiving report distributed to the payment office. In addition, a copy of the signed certificate shall also be attached to or entered on copies of the inspection or receiving report accompanying the shipment.

The DCPL has the right to reject defective supplies or services within a reasonable time after delivery by written notification to the Contractor. The Contractor shall in such event promptly replace, correct, or repair the rejected supplies or services at the Contractor's expense.

The certificate shall read as follows:

I certify that on _____ [insert date], the _____ [insert Contractor's name] furnished the supplies or services called for by Contract No. _____ via _____ [Carrier] on _____ [identify the bill of lading or shipping document] in accordance with all applicable requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document.

DATE OF EXECUTION: _____

SIGNATURE: _____

TITLE: _____

(End of clause)

4383-86. RESPONSIBILITY FOR SUPPLIES

Title to supplies furnished under this contract shall pass to the DCPL upon formal acceptance, regardless of when or where the DCPL takes physical possession, unless the contract specifically provides for earlier passage of title.

Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the DCPL upon—

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Acceptance by the DCPL or delivery of the supplies to the DCPL at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

This clause shall not apply to supplies that fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies

remains with the Contractor until cure or acceptance. After cure or acceptance, of this clause shall apply.

The Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the DCPL acting within the scope of their employment.

(End of clause)

4383-87. BID GUARANTEE

Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids or the closing date for receipt of proposals, may be cause for rejection of the bid.

The bidder shall furnish a bid guarantee in the form of a firm commitment, *e.g.*, bid bond supported by good and sufficient surety or sureties acceptable to the DCPL, postal money order, certified check, cashier's check or irrevocable letter of credit. The Contracting officer will return bid guarantees, other than bid bonds—

- (1) To unsuccessful bidders as soon as practicable after the opening of bids; and
- (2) To the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

The amount of the bid guarantee shall be 5 percent of the bid price or \$_____, whichever is less.

If the successful bidder, upon acceptance of its bid by the DCPL within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting officer may terminate the contract for default.

In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(End of clause)

4383-88. PERFORMANCE AND PAYMENT BONDS – CONSTRUCTION

If the resulting contract price is \$100,000 or more, the successful offeror shall furnish performance and payment bonds as required to the Contracting officer as follows:

Performance bonds (DCPL Form _____). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

Payment Bonds (DCPL Form _____). The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

The DCPL may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

The DCPL may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting officer, but in any event, before starting work.

The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit.

(End of clause)

4383-89. ADDITIONAL BOND SECURITY

The Contractor shall promptly furnish additional security required to protect the DCPL and persons supplying labor or materials under this contract if:

- (1) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the DCPL;
- (2) Any surety fails to furnish reports on its financial condition as required by the DCPL;
- (3) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting officer; or
- (4) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

(End of clause)

4383-90. IRREVOCABLE LETTER OF CREDIT

The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in this clause, and:

- (1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;
- (2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance.

The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

- (1) 90 days following final payment; or
- (2) For performance bonds only, until completion of any warranty period.

Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year

(End of clause)

4383-91. INSURANCE - WORK ON A DCPL FACILITY

The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the contract.

Before commencing work under this contract, the Contractor shall notify the Contracting officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the DCPL's interest shall not be effective:

- (1) For such period as the laws of the District of Columbia where this contract is to be performed prescribe; or
(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting officer, whichever period is longer.

The Contractor shall insert the substance of this clause, including this paragraph, in subcontracts under this contract that require work on a DCPL facility and shall require subcontractors to provide and maintain the insurance required in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting officer upon request.

(End of clause)

4383-92. INSURANCE - LIABILITY TO THIRD PERSONS

Except as provided in this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program, provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

The Contractor shall be reimbursed—

(1) For that portion—

- (i) Of the reasonable cost of insurance allocable to this contract; and
- (ii) Required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the DCPL.

These liabilities are for—

- (i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or
- (ii) Death or bodily injury.

The DCPL's liability under this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)—

- (1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;
- (2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—

- (i) All or substantially all of the Contractor's business;
- (ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or
- (iii) A separate and complete major industrial operation in connection with the performance of this contract.

The provisions of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—

- (1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;
- (2) Authorize DCPL representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
- (3) Authorize DCPL representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the DCPL, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the DCPL representatives in any such claim or litigation.

(End of clause)

4383-93. LIMITATION OF LIABILITY

Except as provided in this clause, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the DCPL (excluding the supplies delivered under this contract) that—

- (1) Occurs after DCPL acceptance of the supplies delivered under this contract; and
- (2) Results from any defects or deficiencies in the supplies.

The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the DCPL's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of this contract.

If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the DCPL through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the DCPL, to the extent of such insurance or reserve, for loss of or damage to property of the DCPL occurring after DCPL acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(End of clause)

4383-94. LIMITATION OF LIABILITY – SERVICES

Except as provided in this clause, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the DCPL that—

- (1) Occurs after DCPL acceptance of services performed under this contract; and
- (2) Results from any defects or deficiencies in the services performed or materials furnished.

The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the DCPL's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of this contract.

If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the DCPL through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the DCPL, to the extent of such insurance or reserve, for loss of or damage to property of the DCPL occurring after DCPL acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(End of clause)

4383-95. LIMITATION OF DCPL LIABILITY

In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding _____ (*insert amount*) dollars.

The maximum amount for which the Government shall be liable if this contract is terminated is _____ (*insert amount*) dollars.

(End of clause)

4383-96. TERMINATION FOR CONVENIENCE OF THE DCPL (FIXED-PRICE CONSTRUCTION)

The DCPL may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting officer determines that a termination is in the DCPL's interest. The Contracting officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

After receipt of a Notice of Termination, and except as directed by the Contracting officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the DCPL, as directed by the Contracting officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the DCPL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

- (5) With approval or ratification to the extent required by the Contracting officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting officer, transfer title and deliver to the DCPL—
- (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the DCPL.
- (7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the DCPL has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting officer, any property of the types referred to in this clause; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the DCPL under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting officer.

The Contractor may submit to the Contracting officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting officer. The Contractor may request the DCPL to remove those items or enter into an agreement for their storage. Within 15 days, the DCPL will accept title to those items and remove them or enter into a storage agreement. The Contracting officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

After termination, the Contractor shall submit a final termination settlement proposal to the Contracting officer in the form and with the certification prescribed by the Contracting officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting officer upon written request of the Contractor within this 1-year period. However, if the Contracting officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

The Contractor and the Contracting officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. If the Contractor and Contracting officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon as specified in this clause:

- (1) For contract work performed before the effective date of termination, the total (without duplication of any items); and
- (2) The reasonable costs of settlement of the work terminated, including—
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting officer in accordance with this clause, except that if the

Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided herein respectively, and failed to request a time extension, there is no right of appeal.

In arriving at the amount due the Contractor under this clause, there shall be deducted—

- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
- (2) Any claim which the DCPL has against the Contractor under this contract; and
- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the DCPL.

If the termination is partial, the Contractor may file a proposal with the Contracting officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting officer.

The DCPL may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the DCPL upon demand, together with interest computed at the rate established by the _____. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting officer because of the circumstances.

Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the DCPL, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

4383-97. TERMINATION (FIXED-PRICE ARCHITECT-ENGINEER)

The DCPL may terminate this contract in whole or, from time to time, in part, for the DCPL's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall—

- (1) Immediately discontinue all services affected (unless the notice directs otherwise); and
- (2) Deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the DCPL, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the DCPL may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the DCPL.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the DCPL.

The rights and remedies of the DCPL provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

4383-98. LIQUIDATED DAMAGES - CONSTRUCTION

If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the DCPL in the amount of _____ [Contracting Officer insert amount] for each calendar day of delay until the work is completed or accepted.

If the DCPL terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

4383-99. TIME EXTENSION

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)

4383-100. NOTICE TO THE DCPL OF LABOR DISPUTES

If 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, including all relevant information, to the Contracting Officer.

(End of clause)

4383-101. INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE

It is expressly agreed and understood that this is a nonpersonal services contract, as defined in _____, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The DCPL may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to indemnify the DCPL with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain during the term of this contract liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: _____ (Contracting officer, insert the dollar value(s) necessary to protect the DCPL's interest).

An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

Evidence of insurance documenting the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract.

The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the DCPL's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If, during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the DCPL will be indemnified to the limits specified in this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

The Contractor shall insert the substance of this clause, including this paragraph in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

4383-102. CONTRACTOR'S FACILITIES

The Contractor, at its expense, unless otherwise provided for in this contract, shall furnish, install, operate, and maintain all facilities required to furnish service hereunder, and measure such service at the point of delivery specified in the Service Specifications. Title to all such facilities shall remain with the Contractor and the Contractor shall be responsible for loss or damage to such facilities, except that the DCPL shall be responsible to the extent that loss or damage has been caused by the DCPL's negligent acts or omissions.

Notwithstanding any terms expressed in this clause, the Contractor shall obtain approval from the Contracting Officer prior to any equipment installation, construction, or removal. The DCPL hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract. This permit or license includes use of the site or sites agreed upon by the parties hereto for the installation, operation, maintenance, and repair of the facilities of the Contractor required to be located upon DCPL or District DCPL premises. All applicable taxes and other charges in connection therewith, together with all liability of the Contractor in construction, operation, maintenance and repair of such facilities, shall be the obligation of the Contractor.

Authorized representatives of the Contractor will be allowed access to the facilities on DCPL premises at reasonable times to perform the obligations of the Contractor regarding such facilities. It is expressly understood that the DCPL may limit or restrict the right of access herein granted in any manner considered necessary (e.g., national security, public safety).

Unless otherwise specified in this contract, the Contractor shall, at its expense, remove such facilities and restore DCPL or District DCPL premises to their original condition as near as practicable within a reasonable time after the DCPL terminates this contract. In the event such termination of this contract is due to the fault of the Contractor, such facilities may be retained in place at the option of the DCPL for a reasonable time while the DCPL attempts to obtain service elsewhere comparable to that provided for hereunder.

(End of clause)

4383-103. SUBCONTRACTS

The Contractor shall notify the Contracting officer reasonably in advance of placing any subcontract or modification thereof for which consent is required as specified in this clause, including the following information:

- (1) A description of the supplies or services to be subcontracted.
- (2) Identification of the type of subcontract to be used.
- (3) Identification of the proposed subcontractor.
- (4) The proposed subcontract price.
- (5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
- (6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
- (7) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
- (8) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
- (9) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

The Contractor is not required to notify the Contracting officer in advance of entering into any subcontract for which consent is not required as specified in this clause.

Unless the consent or approval specifically provides otherwise, neither consent by the Contracting officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination—

- (1) Of the acceptability of any subcontract terms or conditions;
- (2) Of the allowability of any cost under this contract; or
- (3) To relieve the Contractor of any responsibility for performing this contract.

No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in the DCPL Procurement Regulations. The Contractor shall give the Contracting officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the DCPL.

(End of clause)

4383-104. SUBCONTRACTORS AND OUTSIDE CONSULTANTS (ARCHITECT/ENGINEER SERVICES)

Any subcontractors and outside consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

4383-105. LIMITATIONS ON SUBCONTRACTING

This clause does not apply to the CBE partial or total set-aside requirements.

By submission of an offer and execution of a contract, the Offeror/Contractor agrees

that in performance of the contract in the case of a contract for:

(1) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the CBE.

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies)*. The CBE shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) *General construction*. The CBE will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) *Construction by special trade contractors*. The CBE will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees

(End of clause)

4383-106. COMPETITION IN SUBCONTRACTING

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

If the Contractor is an approved mentor under the DCPL Pilot Mentor-Protégé Program, the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégé firms that are certified CBEs.

(End of clause)

4383-107. DEFAULT (FIXED-PRICE CONSTRUCTION)

If the Contractor refuses or fails to perform the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the DCPL may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the DCPL may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the DCPL resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the DCPL in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include—

(i) Acts of God or of the public enemy,

(ii) Acts of the DCPL in either its sovereign or contractual capacity,

(iii) Acts of another Contractor in the performance of a contract with the DCPL,

(iv) Fires,

(v) Floods,

(vi) Epidemics,

(vii) Quarantine restrictions,

(viii) Strikes,

(ix) Freight embargoes,

(x) Unusually severe weather, or

(xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the DCPL.

The rights and remedies of the DCPL in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

4383-108. DEFAULT (FIXED-PRICE CONSTRUCTION (Alternate)

If the contract is for dismantling, demolition, or removal of improvements, substitute the following paragraph 1 below for paragraph 1 of the basic clause:

If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the DCPL may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the DCPL may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

If title to property is vested in the Contractor under this contract, it shall revert in the DCPL regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

The Contractor and its sureties shall be liable for any damage to the DCPL resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the DCPL in completing the work.

(End of clause)

4383-109. CONTRACTOR LIABILITY FOR PERSONAL INJURY AND/OR PROPERTY DAMAGE

The Contractor assumes responsibility for all damage or injury to persons or property occasioned through the use, maintenance, and operation of the Contractor's vehicles or other equipment by, or the action of, the Contractor or the Contractor's employees and agents.

The Contractor, at the Contractor's expense, shall maintain adequate public liability and property damage insurance during this contract, insuring the Contractor against all claims for injury or damage.

The Contractor shall maintain Workers' Compensation and other legally required insurance with respect to the Contractor's own employees and agents.

The DCPL shall in no event be liable or responsible for damage or injury to any person or property occasioned through the use, maintenance, or operation of any vehicle or other equipment by, or the action of, the Contractor or the Contractor's employees and agents in performing under this contract, and the DCPL shall be indemnified and saved harmless against claims for damage or injury in such cases.

(End of clause)

4383-110. VEHICULAR GENERAL PUBLIC LIABILITY INSURANCE

The Contractor, at the Contractor's expense, agrees to maintain, during the continuance of this contract, vehicular liability and general public liability insurance with limits of liability for:

Bodily injury of not less than \$_____ for each person and \$_____ for each occurrence; and Property damage of not less than \$_____ for each accident and \$_____ in the aggregate.

The Contractor also agrees to maintain workers' compensation and other legally required insurance with respect to the Contractor's own employees and agents.

(End of clause)

4383-111. ASSIGNMENT OF CLAIMS

The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any District or Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

Any assignment or reassignment authorized under this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of clause)

4383-112. CHANGES – FIXED PRICE

The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the DCPL in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

4383-113. CHANGES – COST REIMBURSEMENT

The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the—

- (1) Estimated cost, delivery or completion schedule, or both;
- (2) Amount of any fixed fee; and
- (3) Other affected terms and shall modify the contract accordingly.

The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

Notwithstanding the terms and conditions of paragraphs (a) and (b) of this clause the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

(End of clause)

4383-114. CHANGES – TIME AND MATERIALS OR LABOR HOUR

The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the DCPL in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.
- (7) Amount of DCPL-furnished property.

If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer will make an equitable adjustment in any one or more of the following and will modify the contract accordingly:

- (1) Ceiling price.
- (2) Hourly rates.

- (3) Delivery schedule.
- (4) Other affected terms.

The Contractor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed.

(End of clause)

4383-115. CHANGES

The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes—

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the DCPL-furnished property or services; or
- (4) Directing acceleration in the performance of the work.

Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contracting Officer written notice stating—

- (1) The date, circumstances, and source of the order; and
- (2) That the Contractor regards the order as a change order.

Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the DCPL is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order in accordance with this clause or (2) the furnishing of a written notice in accordance with this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the DCPL. The statement of proposal for adjustment may be included in the notice under paragraph (b) of this clause.

No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of clause)

4383-116. AVAILABILITY OF FUNDS

Funds are not presently available for this contract. The DCPL's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the DCPL for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

4383-117. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds are not presently available for performance under this contract beyond the current fiscal year. The DCPL's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the DCPL for any payment may arise for performance under this contract beyond the current fiscal year until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

4383-118. LIMITATION OF COST

The parties estimate that performance of this contract, exclusive of any fee, will not cost the DCPL more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the DCPL's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the DCPL's and the Contractor's share of the cost.

The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

(1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The DCPL is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the estimated cost to the DCPL specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

No notice, communication, or representation in any form other than that specified herein or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the DCPL. In the absence of the specified notice, the DCPL is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for

any costs in excess of the estimated cost to the DCPL specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

Change orders shall not be considered an authorization to exceed the estimated cost to the DCPL specified in the Schedule, unless they contain a statement increasing the estimated cost.

If this contract is terminated or the estimated cost is not increased, the DCPL and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(End of clause)

4383-119. LIMITATION OF FUNDS

The parties estimate that performance of this contract will not cost the DCPL more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the DCPL's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the DCPL's and the Contractor's share of the cost.

The Schedule specifies the amount presently available for payment by the DCPL and allotted to this contract, the items covered, the DCPL's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the DCPL will allot additional funds incrementally to the contract up to the full estimated cost to the DCPL specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the DCPL under the contract approximates but does not exceed the total amount actually allotted by the DCPL to the contract.

The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the DCPL or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the DCPL plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

- (1) The DCPL is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the DCPL to this contract; and
- (2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of—

- (i) The amount then allotted to the contract by the DCPL or;
- (ii) If this is a cost-sharing contract, the amount then allotted by the DCPL to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the DCPL has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the DCPL to this contract.

The estimated cost shall be increased to the extent that (1) the amount allotted by the DCPL or, (2) if this is a cost-sharing contract, the amount then allotted by the DCPL to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

No notice, communication, or representation in any form other than that specified in paragraph (f)(2) of this clause, or from any person other than the Contracting Officer, shall affect the amount allotted by the DCPL to this contract. In the absence of the specified notice, the DCPL is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the DCPL to this contract, whether incurred during the course of the contract or as a result of termination.

- (i) When and to the extent that the amount allotted by the DCPL to the contract is increased, any costs the Contractor incurs before the increase that are in excess of—

- (1) The amount previously allotted by the DCPL or;

- (2) If this is a cost-sharing contract, the amount previously allotted by the DCPL to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

Change orders shall not be considered an authorization to exceed the amount allotted by the DCPL specified in the Schedule, unless they contain a statement increasing the amount allotted.

Nothing in this clause shall affect the right of the DCPL to terminate this contract. If this contract is terminated, the DCPL and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

If the DCPL does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this contract.

(End of clause)

ARCHITECT/ENGINEER AND CONSTRUCTION CLAUSE INSTRUCTIONS AND APPLICABILITY

This section provides instructions for using clauses and provisions in full text in solicitations and contracts for (a) architect/engineer; (b) construction and (c) dismantling, demolition, or removal of improvement services, as applicable. Clauses and provisions prescribed elsewhere in the D.C. Library Procurement Regulations, promulgated at Title 19 DCMR shall also be used in such solicitations and contracts when the conditions specified in the prescriptions for the clauses and provisions are applicable.

AMERICANS WITH DISABILITIES

This clause shall be utilized to assure compliance with the Americans With Disabilities Act, the contractor shall be required to comply with the law in all DCPL contracts for construction, architect/engineer, repair and alterations.

PERFORMANCE OF WORK BY THE CONTRACTOR

This clause shall be utilized to assure adequate interest in and supervision of all work involved in larger projects, the contractor shall be required to perform all of the contract work (100%) with its own forces. Specialties such as plumbing, heating, and electrical work are usually subcontracted, and should not normally be considered in establishing the amount of work required to be performed by the contractor.

DIFFERING SITE CONDITIONS

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified procurement threshold. The contracting officer may utilize the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified procurement threshold.

SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified procurement threshold. The contracting officer may utilize the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified procurement threshold.

PHYSICAL DATA

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract is contemplated and physical data (*e.g.*, test borings, hydrographic data, and weather conditions data) will be furnished or made available to contractors.

MATERIAL AND WORKMANSHIP

This clause shall be utilized in solicitations and contracts for construction contracts.

SUPERINTENDENCE BY THE CONTRACTOR

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified procurement threshold. The contracting officer may utilize this clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified procurement threshold.

PERMITS AND RESPONSIBILITIES

This clause shall be utilized in solicitations and contracts when a fixed-price or cost-reimbursement construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is anticipated.

OTHER CONTRACTS

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified procurement threshold. The contracting officer may utilize this clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified procurement threshold.

PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified procurement threshold. The contracting officer may utilize this clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified procurement threshold.

OPERATIONS AND STORAGE AREAS

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified procurement threshold. The contracting officer may utilize this clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified procurement threshold.

USE AND POSSESSION PRIOR TO COMPLETION

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the simplified procurement threshold. This clause may be utilized in solicitations and contracts when the contract amount is expected to be at or below the simplified procurement threshold.

CLEANING UP

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified procurement threshold. The contracting officer may utilize this clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified procurement threshold.

ACCIDENT PREVENTION

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified procurement threshold. The contracting officer may utilize this clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified procurement threshold. The contracting officer should inform the Occupational Safety and Health Administration (OSHA), or other responsible Federal, State, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.

AVAILABILITY AND USE OF UTILITY SERVICES

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated, the contract is to be performed on DCPL sites, and the contracting officer decides (a) that the existing utility system(s) is adequate for the needs of both the DCPL and the contractor, and (b) furnishing it is in the DCPL's interest. When this clause is used, the contracting officer shall list the available utilities in the contract.

SCHEDULES FOR CONSTRUCTION CONTRACTS

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract is anticipated, the contract amount is expected to exceed the simplified procurement threshold, and the period of actual work performance exceeds 60 days. This clause may also be utilized in such solicitations and contracts when work performance is expected to last less than 60 days and an unusual situation exists that warrants imposition of the requirements. This clause should not be used in the same contract with clauses covering other management approaches for ensuring that a contractor makes adequate progress.

QUANTITY SURVEYS

This clause may be utilized in solicitations and contracts when a fixed-price construction contract providing for unit pricing of items and for payment based on quantity surveys is anticipated.

LAYOUT OF WORK

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract is contemplated and use of this clause is appropriate due to a need for accurate work layout and for on-site verification during work performance.

WORK OVERSIGHT IN COST-REIMBURSEMENT CONSTRUCTION CONTRACTS

This clause shall be utilized in Cost-Reimbursement Construction Contracts, in solicitations and contracts when a cost-reimbursement construction contract is anticipated.

ORGANIZATION AND DIRECTION OF THE WORK

This clause shall be utilized in solicitations and contracts when a cost-reimbursement construction contract is anticipated.

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

This clause shall be utilized in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified procurement threshold. This clause may be utilized in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified procurement threshold. When the DCPL needs record drawings, the contracting officer shall—

- (a) Use the clause with its Alternate I, if reproducible shop drawings are needed; or
- (b) Use the clause with its Alternate II, if reproducible shop drawings are not needed.

PRECONSTRUCTION CONFERENCE

If the contracting officer determines it may be desirable to hold a preconstruction conference, the contracting officer shall utilize the clause substantially the same as the clause, Preconstruction Conference, in solicitations and fixed price contracts for construction or for dismantling, demolition or removal of improvements.

SITE VISIT

The contracting officer shall include a provision substantially the same as the provision, Site Visit (Construction), in solicitations which include the clauses, Differing Site Conditions, and Site Investigations and Conditions Affecting the Work. The contracting officer shall tailor the site visit provision when an organized site visit will be conducted.