District of Columbia
Public Library

STANDARD CONTRACT
PROVISIONS

For

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

October 2009

dc public library
check it out!
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**


(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 a-
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)

4838-11. 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. Any 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—
   a. Brand name, if any; and
   b. 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.
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 I)

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:

1. The Schedule (excluding the specifications);
2. Representations and other instructions;
3. Contract clauses;
4. Other documents, exhibits, and attachments; and
5. 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 order 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

21
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 paragraph)
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 become 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;
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)
ARCHETIC/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.
ATTACHMENT J.2
I. REVISED FIRST SOURCE EMPLOYMENT PLAN

GOVERNMENT-ASSISTED PROJECT/CONTRACT INFORMATION
DISTRICT CONTRACTING AGENCY: 
CONTRACTING OFFICER: 
TELEPHONE NUMBER: 
TOTAL CONTRACT AMOUNT: 
EMPLOYER CONTRACT AMOUNT: 
PROJECT NAME: 
PROJECT ADDRESS: 
CITY: ____________________ STATE: ______ ZIP CODE: 
PROJECT DESCRIPTION OF WORK: 

PROJECT START DATE: ____________ PROJECT END DATE: ____________
EMPLOYER START DATE: ____________ EMPLOYER END DATE: ____________

EMPLOYER INFORMATION
EMPLOYER NAME: 
COMPANY NAME: 
EMPLOYER ADDRESS: 
CITY: ____________________ STATE: ______ ZIP CODE: 
TELEPHONE NUMBER: 
FEDERAL IDENTIFICATION NO.: 
CONTACT PERSON: 
TITLE: 
E-MAIL: 
TELEPHONE NUMBER: 
EMPLOYER DESCRIPTION OF WORK: 

GENERAL CONTRACTOR WILL MEET THE HIRING OR HOURS WORKED PERCENTAGES REQUIREMENTS FOR ENTIRE PROJECT ☐ OR PER EACH SUBCONTRACTOR ☐:

A. EMPLOYMENT HIRING PROJECTIONS

ALL EMPLOYERS:
Please indicate ALL new position(s) you will create as a result of the project. If you WILL NOT be creating any new employment opportunities, please complete the attached justification sheet with an explanation. Attach additional sheets as needed.

<table>
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<tr>
<th>JOB TITLE</th>
<th># OF JOBS</th>
<th>SALARY RANGE</th>
<th>UNION MEMBERSHIP REQUIRED</th>
<th>PROJECTED HIRE DATE</th>
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February 15, 2018
B. JUSTIFICATION SHEET: Please provide a detailed explanation of why the Employer will not have any new hires on the project.

C. EMPLOYMENT PROJECTIONS.

February 15, 2018
I. Provide a timetable outlining the 51% Hiring of District Resident over the life of the project or contract and an associated hiring schedule.

II. Provide descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions.

III. Provide a strategy to fill the 51% hiring of District residents requirement, including a component on communicating these requirements to contractors and subcontractors and a component on potential community outreach partnerships with the University of the District of Columbia, the University of the District of Columbia Community College, the Department of Employment Services, Jointly Funded Apprenticeship Programs, the District of Columbia Workforce Intermediary, or other government-approved, community-based job training providers.
C. EMPLOYMENT PROJECTIONS (Continued)

IV. This strategy should include a remediation strategy to ameliorate any problems associated with meeting these 51% Hiring of District Resident requirements, including any problems encountered with contractors and subcontractors.

V. The designation of a senior official from the Employer who will be responsible for implementing the hiring and reporting requirements.

VI. Provide descriptions of the health and retirement benefits that will be provided to District residents working on the project or contract.

VII. Provide a strategy to ensure that District residents who work on the project or contract receive ongoing employment and training opportunities after they complete work on the job for which they were initially hired and a review of past practices in continuing to employ District residents from one project or contract to the next.
D. **EMPLOYMENT PROJECTIONS (continued)**

VIII. Provide a strategy to hire graduates of District of Columbia Public Schools, District of Columbia Public Charter Schools, community-based job training providers, and hard-to-employ residents.

IX. Please disclose past compliance with the First Source Employment Agreement Act of 1984 or the Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011 and the Davis-Bacon Act, where applicable, and the bidder or offeror's general District-resident hiring practices on projects or contracts completed within the last two (2) years.

X. Please note that EMPLOYERS with construction projects must make payroll records available upon request at job sites to the contracting District of Columbia agency.
**CURRENT EMPLOYEES:** Please list the names, residency status and ward information of all current employees, including apprentices, trainees, and transfers from other projects, who will be employed on the Project. Attach additional sheets as needed.

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<tr>
<th>NAME OF EMPLOYEE</th>
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This page to be completed by Employer

Employer Initials: February 15, 2018