DISTRICT OF COLUMBIA PUBLIC LIBRARY

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The proposed resolution for the District of Columbia Public Library ("DCPL") to receive independent procurement authority was introduced in the D.C. Council ("Council") on April 30, 2007. On July 10, 2007 the Council by Resolution No. 17-263 adopted, amended and approved the procurement rules of the DCPL. Resolution No. 17-263 was published on August 3, 2007 in 54 DCR 007414.

The District of Columbia Public Library Board of Trustee's, pursuant to the authority set forth in An Act To establish and provide for the maintenance of a free public library and reading room in the District of Columbia, approved June 3, 1896, 29 Stat. 244, ch. 315, § 5; April 1, 1926, 44 Stat. 230, ch. 98, § 5; Mar. 3, 1979, D.C. Law 2 – 139, § 3205 (jjj), 25 DCR 5740; Sept. 5, 1985, D.C. Law 6 – 17, § 2, 32 DCR 3582; Apr. 12, 1997, D.C. Law 11-259, § 316, 44 DCR 1423; Oct. 21, 1998, 112 Stat. 2681 – 146, Pub. L. 105 – 277, § 156 (codified at D.C. Official Code section 39-105, 2001 Ed.); 27 DCRR § 2.1, 24 DCR 11011, 11014 (June 30, 1978); as amended by Final Rulemaking published at 38 DCR 1011 (February 8, 1991), hereby gives notice of the amendment of the following regulations to Chapter 43, Title 19 of the D.C. Municipal Regulations ("DCMR"). The newly adopted legislation to Chapter 43 will establish the regulations that shall be used for DCPL procurements.

The emergency rules set forth general guidelines and requirements that establish policies and procedures relating to the procurement, management and control of supplies and services for the care and preservation of the DCPL and the health and safety DCPL's patrons. Thus, adoption of the emergency and proposed rules is necessary to enable procurement of all goods and services to effectively operate the library system and affects the immediate preservation and welfare of the District residents.

The DCPL also gives notice of intent to adopt these proposed rules as final rules in not less than thirty (30) days from the date of publication of this Notice in the D.C. Register.

Chapter 43 of 19 DCMR shall read as follows in its entirety:

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4300 PURPOSE AND APPLICATION

4300.1 The District of Columbia Public Library Procurement Regulations (the "Regulations") issued by the Board of Trustees of the District of Columbia Public Library (the "Board") establish policies, procedures and guidelines relating to the procurement, management, control and disposal of supplies, services and construction, as applicable under the authority of D.C. Official Code 39-105 (a) (1) and (3) et seq.

4300.2 The Executive Director/Chief Librarian of the District of Columbia Public Library (the "Executive Director/Chief Librarian") is vested with the authority to administer operating policies, procedures and regulations adopted by the Board in accordance with D.C. Official Code Section 39-101.

4300.3 This chapter applies only to contracts solicited or entered into after the effective date of these Regulations, unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

4300.4 Any contract totaling two hundred fifty thousand dollars ($250,000) or more shall be approved by the Executive Director/Chief Librarian before it shall be effective.

4300.5 Where any statute or regulations is referred to in this chapter, the reference shall be the most recent version and any amendments or revisions to the statute or regulation.

4300.6 If any provision of this chapter is deemed invalid, void or unenforceable by a court of competent jurisdiction, this chapter shall be construed as though the provision does not appear herein. Any such finding by a court of competent jurisdiction shall not affect the validity of any other section, paragraph or sentence of this chapter.

4301 AUTHORITY AND RESPONSIBILITY OF THE OFFICE OF THE CHIEF CONTRACTING OFFICER

4301.1 The Executive Director/Chief Librarian of the Library shall be the Procurement Executive (PE). The Chief Business Officer of the Library shall be the Chief Contracting Officer ("CCO").

4301.2 The CCO shall serve as the Library's chief procurement officer and shall be responsible for the Library's overall procurement program.

4301.3 Unless otherwise provided herein the CCO may delegate in writing to one or more staff contracting officers any authority conferred on the CCO by these regulations, and the CCO shall include in any such delegation clear written instructions on the limitation of the delegated authority. Such delegation shall remain in effect unless and until the CCO modifies or revokes the delegation in writing. Delegation of contracting authority shall automatically be revoked for staff contracting officers whose employment with the Library is terminated through attrition or other form of termination.

4301.4 Any Library official designated as a contracting officer shall not be delegated contracting authority greater than that of the CCO.

4301.5 Only the CCO or other Library contracting officer is authorized to enter into contracts, terminate contracts or contractually bind the Library. A contracting officer may bind the Library only to the extent of their written delegated authority by the CCO under subsection 4301.3.

4301.6 The CCO shall be responsible for developing all procurement policies and procedures unique to the procurement of supplies, services, materials and construction.

4301.7 The CCO shall develop a procurement manual of internal procedures and instructions which shall conform to this chapter and that governs the internal functions of the Office of the CCO. The procurement manual shall be developed within 120 days of the effective date of these regulations and shall be approved by the Library Board of Trustees before becoming effective.

4301.8 Notwithstanding any other provision of this chapter, the CCO or other library contracting officer may procure supplies, services or construction from District of Columbia or Federal Supply Schedules to the extent permitted by the Schedules.

4302 PUBLICIZING CONTRACT ACTIONS

4302.1 The CCO shall issue a formal written solicitation for all proposed contracts with an estimated price over one hundred thousand dollars ($100,000).

4302.2 The CCO shall publicize each solicitation in excess of the simplified procurement threshold specified in Sections 4305 and Sections 4313 in a newspaper of general circulation and on the Library's web site with an estimated price over one hundred thousand dollars ($100,000) at least five (5) days before issuance of a solicitation.

4302.3 The date set for receipt of quotations for simplified procurements shall not be less than five (5) calendar days after issuance of the solicitation.

4302.4 The date set for bid opening or the closing date for receipt of initial proposals shall not be less than ten (10) calendar days after publicizing the initial solicitation.

4302.5 The requirement to publicize the solicitation set forth in this chapter shall not apply to any of the following procurements:

(a) Sole Source Procurements;

(b) Emergency Procurements; and

(c) Simplified or other small purchases, except as required in Section 4313.

4302.6 Notices of contract awards over one hundred thousand dollars ($100,000) shall be publicized on the Library's web site within ten (10) working days from date of award.

4303 REQUIRED SOURCES OF SUPPLES AND SERVICES

4303.1 The Library may satisfy requirements for supplies, services and construction from one of the following sources:

(a) U.S. General Services Administration (GSA) Federal Supply Schedules;

(b) Existing District of Columbia or Federal contracts;

(c) District of Columbia supply schedules;

(d) Federal Prison Industries (UNICOR);

(e) D.C. Department of Corrections, Industries Division, or other District of Columbia agencies;

(f) Intergovernmental Agreements;

(g) Cooperative Agreements; or

(h) Full and Open Competition

4303.2 The CCO shall follow the procedures required by each source in satisfying Library procurement requirements.

4303.3 The Library may satisfy requirements for supplies and services from other sources through full and open competition, including sources from the District of Columbia government's local, small or disadvantaged business enterprise program in accordance with these regulations.

4304 GOVERNMENT COST ESTIMATE

4304.1 The Library shall develop an independent cost estimate for all requirements for supplies, services and construction totaling in excess of one hundred thousand dollars ($100,000).

4304.2 The government cost estimate shall be realistic based on the requirement and not on the budget and shall not be disclosed to anyone outside the Library.

4305 USE OF SIMPLIFIED PROCUREMENT PROCEDURES

4305.1 The CCO has the authority to use the simplified procurement procedures set forth in this section for the procurement of supplies, services, books and equipment when the total amount of the procurement does not exceed one hundred thousand dollars ($100,000).

4305.5 For each procurement in an amount over three thousand dollars ($3,000) but less than one hundred thousand dollars ($100,000) the CCO shall solicit quotations from at least three (3) sources to promote competition to the maximum extent practicable and to ensure that the purchase is in the best interests of the Library considering price and other factors (including the administrative cost of the purchase).

4305.6 The CCO may solicit oral price quotations for procurements over three thousand dollars ($3,000) up to twenty-five thousand dollars ($25,000).

4305.7 The CCO shall solicit written price quotations for procurements over twenty-five thousand dollars ($25,000) up to one hundred thousand dollars ($100,000), except as required by Section 4313.

4305.8 The CCO shall maintain records of all oral and written price quotations in the procurement file for each requirement. The records shall include the names of the sources contacted, the price(s) and other terms quoted.

4305.9 If practicable, three (3) sources not included in previous solicitations for similar items shall be requested to furnish quotations.

4305.10 The CCO shall prepare a written justification if it is impractical to solicit more than three (3) sources based on factors set forth in subsection 4305.12.

4305.11 The CCO shall follow the provisions in Section 4320 if quotations are solicited from only one source.

4305.12 The CCO may consider the following factors when deciding how many quotations will be solicited:

(a) The dollar value of the proposed procurement;

(b) The urgency of the proposed procurement; and

(c) Information received in making recent purchases of the same or similar supplies or services.

4305.13 The CCO shall not use simplified procurement procedures when the requirement can be met by using a Library or District-wide requirements contract, a District or Federal Supply Schedule or other required source of supply unless the CCO justifies the rationale in writing.

4305.14 The CCO shall ensure that procurements are not split, parceled, divided or purchased over a period of time to circumvent the dollar limitations for use of simplified procurement procedures.

4305.15 The CCO shall use the simplified procurement procedure that is most suitable, economical and efficient based on the circumstances of each procurement.

4305.16 The CCO shall establish and maintain a simplified procurement procedure source list to include sources for micro-purchases.

4305.17 The CCO shall retain records supporting all oral and written quotations for three (3) years.

4306 NON-COMPETITIVE SIMPLIFIED PROCUREMENTS

4306.1 A procurement for three thousand dollars ($3,000) or less shall be considered a micro-purchase and may be made without obtaining competition if the contracting officer determines the price to be fair and reasonable.

4306.2 Micro-purchase requirements shall be reserved for local, small or disadvantaged businesses to the maximum extent practicable.

4306.3 Micro-purchase requirements shall be spread equitably among suppliers to ensure usage of as many suppliers as possible and to provide procurement opportunities to as many suppliers as possible.

4306.4 Micro-purchase requirements shall be processed and paid for utilizing the Library's purchase card to the maximum extent practicable and upon implementation of the Library's purchase card program.

4307 DETERMINATION OF PRICE REASONABLENESS AND AWARD

4307.1 The CCO shall determine that the price to be paid to the successful offeror is fair and reasonable for all simplified procurement transactions.

4307.2 Generally, competition shall determine price reasonableness. However, the determination that a proposed price is fair and reasonable may also be based on any of the following:

(a) Historical prices;

(b) Current price lists;

(c) Advertisements;

(d) Catalog prices;

(e) Comparison prices with similar items;

(f) Best value analysis;

(g) The contracting officer's knowledge of the item being procured; or

(h) Other reasonable comparisons.

4308 BLANKET PURCHASE AGREEMENTS

4308.1 A Blanket Purchase Agreement (BPA) may be used as a simplified method of filling anticipated repetitive needs for supplies, services, books or other items by establishing charge accounts with suppliers.

4308.2 A BPA shall not exceed the simplified procurement limitation of one hundred thousand dollars ($100,000).

4308.3 The CCO may establish a BPA if one (1) or more of the following criteria apply:

(a) There are a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities and delivery requirements are not known in advance and may vary considerably.

(b) The administrative cost of issuing numerous purchase orders can be reduced through the use of this procedure.

4308.4 A BPA shall not be used for any supply, service, books or equipment for which a requirements type contract has been issued by the Library.

4308.5 The CCO shall not use a BPA to authorize procurements that are not otherwise authorized by law and shall not procure from a BPA to avoid the simplified procurement limitation.

4308.6 A BPA shall be considered terminated when the procurements under it are equal to its total dollar limitation or when the stated time period expires.

4309 PURCHASE ORDERS

4309.1 Purchase orders shall be on a form approved by the CCO.

4309.2 Except as provided in Section 4306.3, the CCO shall issue each purchase order only on a fixed-price basis.

4309.3 Each purchase order shall include any trade and prompt payment discounts that are offered.

4309.4 Each purchase order shall contain a definite calendar date for delivery of supplies or performance of services.

4309.5 If the CCO wants to secure a binding contract between the offeror and the Library before delivery or performance, the CCO shall require the contractor's written acceptance of the purchase order.

4310 UNPRICED PURCHASE ORDERS

4310.1 The CCO shall issue an unpriced purchase order only under the following circumstances:

(a) When the transaction will not exceed the Library's simplified procurement limit;

(b) When it is impractical to obtain pricing in advance of issuance of the purchase order; and

(c) When the purchase is for repairs to equipment requiring disassembly to determine the extent of repairs required, material available from only one (1) source and for which cost cannot be readily determined, or supplies or services for which prices are known to be competitive but exact prices are unknown.

(d) Services that must begin before the extent of the scope of work is known to include estimated hourly rates and an estimate of the total hours to complete the work to be performed.

(e) Supplies needed from a catalog that may not be current, when there is not enough time to verify current prices before ordering.

4310.2 The CCO shall issue each unpriced purchase order by using a written purchase order form with a realistic price ceiling. The price ceiling shall be an obligation subject to adjustment when the firm price is provided.

4311 MODIFICATION OF PURCHASE ODERS

4311.1 A purchase order may be modified by using a form approved by the CCO. Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

4311.2 The CCO may obtain a contractor's written acceptance of a purchase order modification if the written acceptance is determined by the CCO to be necessary to ensure the contractor's compliance and acceptance of the purchase order as modified.

4312 TERMINATION AND CANCELLATION OF PURCHASE ORDERS

4312.1 If a purchase order is terminated or cancelled, the CCO shall notify the contractor in writing that the purchase order has been terminated or cancelled, request the contractor's written acceptance of the termination or cancellation and proceed in accordance with the provisions of Sections 4312 and 4312.3.

4312.2 If the contractor accepts the termination or cancellation and does not claim that costs were incurred as a result of starting performance, no further action shall be required and the purchase order shall be considered terminated or cancelled.

4312.3 If the contractor does not accept the termination or cancellation or claims that costs were incurred as a result of starting performance, the CCO shall treat the action as a termination for default or convenience.

4312.4 The CCO shall terminate or cancel purchase orders in writing by formal letter, electronic mail or by written modification.

4313 SPECIAL SIMPLIFIED PROCUREMENT PROCEDURES

4313.1 The CCO may use the simplified procurement procedures set forth in Section 4305 for procurement of commercial items (supplies and services), except for the requirements specified in Sections 4334 for construction and architect-engineer services, up to five million dollars ($5,000,000), including options.

4313.2 The Library shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustments for the procurement of commercial items.

4313.3 The CCO shall publicize requirements utilizing these procedures for requirements in excess of the simplified procurement threshold of one hundred thousand dollars ($100,000).

4313.4 The CCO shall use the procedures in Section 4305 to solicit, evaluate and award commercial items utilizing simplified procurement procedures.

4313.5 This process shall allow the CCO to maximize efficiency and economy and reduce the administrative costs to the Library and industry in the award of commercial items utilizing this simplified procurement procedure.

4313.6 The CCO shall utilize the special simplified procedure for competitive commercial supplies or services, to include books, periodicals, and publications.

4313.7 The CCO shall not utilize this special procedure for non-commercial items or for construction and architect-engineer services specified in Section 4334.

4313.8 The CCO shall ensure all the necessary approvals are obtained for contracts awarded utilizing the simplified procurement procedures outlined in this section.

4313.9 The CCO shall ensure all appropriate clauses, provisions, representations and certifications are included in solicitations and contracts awarded utilizing the simplified procurement procedures outlined in this section.

4314 SPECIFICATIONS, STATEMENTS OF WORK, PURCHASE DESCRIPTIONS

4314.1 The CCO shall provide specifications, statements of work or purchase descriptions in a manner designed to promote competition to the maximum extent possible.

4314.2 Specifications, statements of work or purchase descriptions shall reflect the minimum needs of the Library. Specifications and purchase descriptions may be stated in terms of the following:

(a) Function, so that a variety of supplies or services may qualify;

(b) Performance, including the range of acceptable characteristics or the minimum acceptable standards; or

(c) Design requirements, providing exact dimensions, materials or characteristics.

4314.3 Performance specifications or statements of work shall be the preferred description for Library procurements to encourage offerors to propose innovative solutions and approaches.

4314.4 Brand name or equal purchase descriptions shall include the brand name, along with the salient physical, functional or performance characteristics of the brand name item that the equal item must meet to be acceptable for award.

4314.5 The CCO shall not develop agency requirements to favor a particular brand name product or a feature of a brand name product specific to one manufacturer, unless the specific brand name product or feature is necessary to the Library's requirements and market research of other products or features do not meet or cannot be modified to meet the Library's needs.

4315 COMPETITIVE SEALED BIDDING

4315.1 The CCO has the discretion to determine which method of procurement to utilize in the purchase of supplies, services or construction.

4315.2 Competitive sealed bidding shall be the Library's preferred method of contracting when the following conditions exist:

(a) Award will be made solely on the basis of price and price-related factors and conformance to specifications;

(b) It will not be necessary to conduct discussions with the bidders responding to the solicitation; and

(c) There is reasonable expectation of receiving more than on sealed bid.

4315.3 Each Invitation for Bid (IFB) shall be publicized in accordance with section 4302.

4315.4 A pre-bid conference may be held after a solicitation has been issued, but before bids are submitted, to explain the solicitation. The conference shall be announced to all prospective bidders known to have received the solicitation.

4315.5 Nothing stated or discussed at the pre-bid conference shall change the IFB unless the CCO issues a written amendment.

4315.6 Each amendment shall identify the part of the IFB that was amended.

4315.7 To be considered for award, a bid shall be required to comply with all the requirements of the solicitation.

4315.8 The CCO shall evaluate bids without discussions with bidders when the competitive sealed bidding method of procurement is utilized.

4315.9 The CCO shall prescribe the manner in which bids shall be submitted:

(a) Typewritten in hard copy and mailed via U.S. mail; or

(b) Typewritten in electronic copy.

4315.10 Bids shall be submitted so they will be received in the office designated in the solicitation not later than the exact date and time set for receipt of bids.

4315.11 Bids received at the place designated in the solicitation after the time and date set for receipt of bids shall be considered late.

4315.12 Bids shall not be sent via registered or certified mail.

4315.13 Bids sent in hard copy via U.S. mail or via any overnight mail carrier are mailed at the risk of the bidder. Bids sent in soft copy via an electronic process shall be determined timely based on the time bids are received by the Library's electronic mail system.

4315.14 A bidder may modify or withdraw its bid by submitting a written notice to the CCO. The notice must be received in the office designated in the solicitation before contract award.

4315.15 Prior to bid opening, the CCO may cancel the IFB if the CCO determines that cancellation is in the best interest of the Library.

4315.16 If a solicitation is canceled under section 4315.15, the CCO shall send a notice to all bidders who received the solicitation.

4315.17 All bids, withdrawals and modifications shall be opened publicly in the presence of one or more persons at the time, date and place specified in the solicitation. The name of the bidder, price, and other relevant information shall be read aloud and recorded on a bid summary.

4315.18 The CCO shall examine each bid for mistakes after the bid opening.

4315.19 The CCO shall have the discretion to waive minor mistakes, minor informalities or minor irregularities in bids if waiver is in the best interest of the Library.

4315.20 If the CCO has reason to believe that a mistake has been made, the CCO shall request the bidder to verify the bid and the suspected mistake.

4315.21 If the bidder confirms a mistake has been made or if a bidder alleges a mistake, the matter shall be processed before award in accordance with the following:

(a) If the bidder submits a written notice of the alleged mistake within five business days of notification by the CCO or within five business days from when the bidder discovers a mistake;

(b) The authority to permit corrections of bids is limited to bids that, as submitted, are responsive to the solicitation and shall not be used to permit correction of bids to make them responsive;

(c) Correction of an apparent clerical mistake may be permitted before award; and

(d) A bidder may be permitted to withdraw a low bid in either of the following circumstances:

(1) If a mistake is clearly evident on the face of the bid document but the intended bid is not similarly evident; or

(2) If the bidder submits evidence which clearly and convincingly demonstrate that a mistake was made.

4315.22 When a bid is corrected or withdrawn, or when the CCO denies the correction or withdrawal, the CCO shall prepare a determination showing that the relief was granted or denied.

4315.23 If a mistake in bid is not discovered until after award, the mistake may be corrected by contract modification if correcting the mistake would be favorable to the Library without changing the essential requirements of the specifications

4315.24 In addition to the circumstances contemplated in this section, or as otherwise authorized by law, if a mistake in a bid is not discovered until after award, one (1) of the following determinations shall be made:

(a) To reform the contract to delete the items involved in the mistake or to reform the contract to increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original bid;

(b) That no change shall be made in the contract as awarded: or

(c) To terminate the contract.

4315.25 Determinations under this section shall be made only on the basis of clear and convincing evidence that a mistake was made by the contractor, and was so apparent as to have given the contracting officer notice of the probability of the mistake.

4315.26 The CCO shall make a contract award by written or electronic notice to the responsive offeror whose bid, conforming to the IFB, will be most advantageous to the Library, considering only price or price-related factors specified in the IFB.

4315.27 The CCO shall include in the contract file a record of each determination made in accordance with this section, the facts involved, and the action taken.

4316 RESERVED

4317 COMPETITIVE SEALED PROPOSALS

4317.1 If the CCO determines competitive sealed bidding is not appropriate, requirements shall be solicited utilizing the competitive sealed proposal (CSP) method of procurement.

4317.2 A Request for Proposals (RFP) shall be used to solicit offers when the competitive sealed proposal method of procurement is utilized.

4317.3 Each RFP shall be publicized in accordance with Section 4302.

4317.4 The CCO may conduct a pre-proposal conference to brief prospective offerors after a solicitation has been issued and before proposals are submitted. The conference shall be announced to all prospective offerors known to have received a solicitation.

4317.5 The CCO shall inform the pre-proposal conference attendees of the following:

(a) That remarks and explanations at the conference do not qualify or amend the terms of the solicitation; and

(b) That the solicitation and specifications remain unchanged unless the solicitation is amended in writing.

4317.6 The CCO shall distribute each amendment to all prospective offerors within a reasonable time to allow consideration of the information before submitting their offers.

4317.7 If a change to a solicitation is significant that it warrants complete revision, the CCO shall cancel the original solicitation and issue a new one, irrespective of the stage of the procurement. If the solicitation is reissued, it shall be publicized in accordance with Section 4302.

4317.7 All proposals received in response to the RFP shall be received by the exact date and time specified in the solicitation.

4317.8 Each solicitation shall include all of the evaluation factors for award, including price, and the relative importance of each factor. The solicitation shall include a statement that the CCO may conduct discussions with all offerors within the competitive range, but that the Library reserves the right to evaluate initial proposals and make award without discussions.

4317.9 The competitive range shall be determined based on cost or price and other evaluation factors stated in the solicitation, and shall include all proposals that have a reasonable chance of being selected for award. Cost or price shall always be an evaluation factor.

4317.10 If discussions are held, the CCO shall hold such discussions with all offerors with proposals in the competitive range and do the following:

(a) Lead and control all discussions;

(b) Advise offerors of any deficiencies in their proposal;

(c) Resolve any suspected mistakes without disclosing information concerning other proposals received or the evaluation process; and

(d) Provide offerors a reasonable opportunity to submit revisions to their proposal that may result from the discussions.

4317.11 The CCO shall not assist an offeror in any way to revise its proposal to the level of other proposals. The CCO shall not disclose any information from other proposals that would result in improvement of a competing proposal.

4317.12 Proposal evaluations shall be based on the evaluation factors outlined in the solicitation. Numerical, adjectival or color rating systems may be used by the Library in proposal evaluations. Factors not specified in the solicitation shall not be considered or utilized.

4317.13 The CCO shall utilize discussions to correct any minor informalities or irregularities. If the CCO determines that award will be made without discussions, the procedures outlined in Section 4315.21 shall be used to correct any minor informalities or irregularities.

4317.14 Communication with offerors to resolve minor informalities or irregularities shall be only for clarification, not for discussions.

4317.15 Upon completion of negotiation, the CCO shall issue to all offerors in the competitive range a request for best and final offers. Best and final offers shall be submitted as prescribed by the CCO with a common date and time for receipt.

4317.16 Offers submitted as best and final offers shall be considered complete and not subject to any additional negotiation, unless the CCO determines it is in the best interest of the Library to reopen negotiations.

4317.17 The CCO has the right to reject all proposals in whole or in part when it is determined to be in the best interest of the Library.

4317.18 The CCO shall award the contract to the offeror whose proposals offers the best value to the Library, based solely on the evaluation factors contained in the solicitation.

4318 COST OR PRICING DATA

4318.1 The CCO may require the submission of cost or pricing data for contracts estimated in excess of five hundred fifty thousand dollars ($550,000).

4318.2 The CCO shall develop procedures for the submission and evaluation of cost or pricing data in the Library procurement manual.

4319 PRICE ANALYSIS AND COST ANALYSIS

4319.1 The CCO shall conduct price analysis and cost analysis when appropriate and shall outline instructions for both price analysis and cost analysis in the Library Procurement Manual.

4320 SOLE SOURCE PROCUREMENT

4320.1 The CCO shall take reasonable steps to avoid using sole source procurement except in circumstances when it is both necessary and in the best interest of the Library.

4320.2 The CCO shall publicize sole source procurements awarded in excess of one hundred thousand dollars ($100,000).

4320.3 The CCO shall determine the format used to request a proposal for a sole source procurement.

4320.4 The CCO shall take action, whenever possible, to avoid the need to continue to procure the same supply, service or construction without competition.

4320.5 The CCO shall not award a contract on a sole source basis when the justification is based on lack of sufficient time to complete the competitive process through the competitive sealed bidding or competitive sealed proposal method of procurement, unless a legitimate emergency, as defined Section 4321 exists.

4320.6 The CCO shall ensure that each sole source procurement is reviewed and approved by the Library's Procurement Executive in accordance with Section 4320.7.

4320.7 When a sole source procurement is proposed, the CCO shall prepare a written determination and findings (D&F) that justifies the sole source procurement. The Library's Procurement Executive shall approve all D&Fs in excess of fifty thousand ($50,000) before issuance of a solicitation.

4320.8 Each D&F shall include the following:

(a) Designation that the requirement is a sole source D&F;

(b) A description of the requirement, including the estimated cost;

(c) A description of the factors that qualify the requirement as a sole source procurement such that the requirement is available from one source or only one supplier with unique capabilities;

(d) A discussion of the proposed contractor's unique qualifications that

qualify the proposed contractor for a sole source award;

(e) A statement that the anticipated costs to the Library will be fair and reasonable; and

(f) Any other relevant facts to support the use of a sole source procurement.

4320.10 The CCO shall ensure that each sole source contract contains all of the required clauses, provisions, representations and certifications.

4321 EMERGENCY PROCUREMENTS

4321.1 The CCO may approve a procurement on an emergency basis if the requirement is essential to the Library's mission to handle an existing emergency situation.

4321.2 The CCO shall have the authority to award contracts on an emergency basis for requirements that are essential to the mission of the Library when an emergency condition exists.

4321.3 Emergency procurement procedures shall not be used for long-term contract requirements and the performance of which shall not exceed ninety (90) days.

4321.4 The CCO shall not be required to publicize emergency solicitations or contract awards for emergency requirements.

4321.5 The CCO shall take steps to maximize competition by soliciting bids or proposals from as many potential offerors as possible.

4321.6 The CCO shall not award emergency contracts on a sole source basis unless the CCO prepares a sole source D&F to justify the sole source in accordance with Section 4320.

4321.7 The CCO shall prepare a written D&F to justify emergency procurements. Each emergency D&F shall include the following:

(a) The description of the proposed procurement action;

(b) A description of the emergency;

(c) The estimated value or cost;

(d) A description of the efforts made to ensure that bids or proposals are received from as many potential sources as possible.

(e) A determination that the anticipated costs to the Library will be fair and reasonable; and

(f) Any other relevant facts that support the emergency justification.

4321.8 The CCO shall determine the appropriate format to solicit bids or proposals on an emergency basis.

4321.9 The CCO shall ensure that each contract awarded under emergency procurement procedures contain clauses, provisions, representations and certifications required by law and these regulations.

4322 DELIVERY AND PERFORMANCE

4322.1 Time of delivery and performance is an essential solicitation and contract element and shall be clearly stated in each solicitation and contract award.

4322.2 The CCO shall ensure that a delivery or performance schedule is realistic and meets the requirements of the procurement.

4322.3 Time of delivery or performance shall be considered in the evaluation of bids and proposals and shall be included in all solicitations.

4322.4 When establishing delivery or performance schedules, the CCO shall consider the following factors:

(a) Urgency of need;

(b) Market conditions;

(c) Transportation time;

(d) Production time; and

(e) Transition time from the incumbent contractor to the successor contractor.

4323 TYPES OF CONTRACTS

4323.1 The CCO shall utilize the types of contract described in this section that is most appropriate to each procurement.

4323.2 When the competitive sealed bidding method of procurement is utilized, the CCO shall utilize either a firm-fixed-price or a fixed-price with economic price adjustment type contract.

4323.3 The CCO shall determine the type of contract to be used prior to solicitation. Solicitations shall inform bidders of the type of contract that will be used.

4323.4 The CCO may use any type of contract allowed by these regulations, or a combination of types, except when the procurement is by competitive sealed bids. For sealed bids, only firm-fixed-price or fixed-price with economic price adjustment contracts shall be used.

4323.5 The CCO shall use a firm-fixed-price contract when the requirement is clearly defined and can be priced on a firm-fixed-price basis and when the risk involved is minimal to the Library.

4323.6 The CCO shall give preference to selecting contract types in the following order:

(a) Fixed-price type;

(b) Cost-reimbursement;

(c) Time and materials;

(d) Labor hour; and

(e) Other types.

4324 FIXED-PRICE CONTRACTS

4324.1 Fixed-price contracts may provide for a firm price or, in appropriate circumstances, an adjustable price.

4324.2 Fixed-price contracts with an adjustable price shall include a ceiling price, a target price or both. The adjustment in ceiling price or target price shall be adjusted only by inclusion of a clause, approved by the Procurement Executive that authorizes an equitable adjustment of the contract price under specific and stated circumstances.

4324.3 A firm-fixed-price contract shall provide for a price that does not allow any adjustment in price on the basis of a contractor's cost experience during contract performance.

4324.4 A firm-fixed-price contract shall be used for acquiring commercial products or services and shall be based on detailed specifications, definitive statements of work and when the CCO anticipates there will be adequate price competition.

4325 FIXED-PRICE CONTRACTS WITH ECONOMIC PRICE ADJUSTMENTS

4325.1 The CCO shall use a fixed-price contract with economic price adjustment when it is necessary to protect the Library and the contractor when fluctuations in labor and material costs may occur during contractor performance.

4325.2 A fixed-price contract with economic price adjustment shall provide for an upward or downward revision of the contract price based on certain contingencies that are specifically stated in the contract.

4325.3 An economic price adjustment may be one (1) of the following general types:

(a) Adjustment based on increases or decreases in specified costs of labor or material that the contactor actually experiences during contract performance; or

(b) Adjustment based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

4325.4 The CCO may use a fixed-price contract with economic price adjustment when the following factors are applicable:

(a) Stability of market or labor conditions are anticipated during contract performance; and

(b) Contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract.

4325.5 Price adjustments based on labor and material costs shall be limited to contingencies beyond the contractor's control and approved by the CCO.

4325.6 The CCO shall ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under the economic price adjustment clause.

4326 COST-REIMBURSEMENT CONTRACTS

4326.1 The CCO shall use a cost-reimbursement contract only when the requirement cannot be fully defined and costs cannot be estimated with sufficient accuracy to use any type of fixed-price contract.

4326.2 The CCO shall justify the use of a cost-reimbursement contract in writing.

4326.3 When a cost-reimbursement contract is utilized, the CCO shall take steps to minimize cost over-runs.

4326.4 Each cost-reimbursement contract shall include a specified ceiling that a contractor shall not exceed.

4326.5 The CCO may use a cost-reimbursement contract only when each of the following circumstances applies:

(a) The contractor's accounting system is adequate for determining costs applicable to the contract; and

(b) There is reasonable assurance that efficient methods of surveillance and effective cost controls by the Library will be used.

4326.6 The CCO shall incorporate the appropriate clauses in each solicitation and contract when a cost-reimbursement type contract is utilized.

4326.7 The CCO shall not use a cost-plus-incentive fee or cost-plus-award fee type contract.

4326.8 The CCO may use a cost-sharing contract when the contractor agrees to absorb an equal portion of the costs and no fee.

4326.9 The CCO may use a cost reimbursement contract which allows for a contractor to be reimbursed based on actual costs only and no fee.

4326.10 The CCO may use a cost-plus-fixed-fee contract that provides for payment to the contractor of a negotiated fee in a fixed amount at the inception of the contract. The fixed fee does not vary with actual costs.

4326.11 A cost-plus-fixed-fee contract may be in either a completion form or level-of-effort form. The completion form shall be the preferred form. A completion form requires the contractor to provide a concrete end product based on a definite goal or target specified in the statement of work. The level-of-effort form calls for the contractor's services (time and effort) rather than a concrete end product. The level-of-effort form reimburses the contractor's incurred costs (within a specified ceiling) and is paid a fixed fee based on satisfactory performance.

4327 TIME AND MATERIALS CONTRACT

4327.1 The CCO shall use a time and materials contract only when it is not possible to estimate accurately the extent or duration of the work or the anticipated costs with any degree of confidence.

4327.2 A time and materials contract shall include direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, profit and materials required at cost.

4327.3 The CCO shall ensure supervision of contractor performance when a time and materials contract is used.

4328 LABOR-HOUR CONTRACTS

4328.1 The CCO may use a labor-hour contract when materials are not required.

4328.2 A labor-hour contract is a variation of a time and materials contract and may be used when a contractor's hourly rates are fixed.

4329 LETTER CONTRACTS

4329.1 The CCO shall use a letter contract when contract work must begin immediately and awarding a definitive contract is not immediately possible.

4329.2 The CCO shall ensure that each letter contract is as definitive and complete as possible under the circumstances and shall include clauses applicable to letter contracts to protect the Library's interests.

4329.3 Each letter contract shall include a price ceiling that the contractor shall not exceed.

4329.4 The CCO shall not enter into a letter contract without competition, except as provided in Section 4320.

4329.5 When a letter contract is utilized, the maximum liability of the Library shall not exceed fifty percent (50%) of the estimated cost for the term of the definitive contract, unless approved in advance by the CCO.

4329.6 The CCO shall execute a definitive contract within ninety (90) days after the date of execution of the letter contract or before completion of fifty percent (50%) of the work to be performed, whichever occurs first.

4329.7 The CCO shall ensure that funds are obligated in the amount of the maximum Library liability for the term of the letter contract prior to executing a letter contract.

4330 DEFINITE QUANTITY CONTRACTS

4330.1 The CCO may use a definite quantity contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered. Quantities ordered under a definite quantity contract shall be limited to the quantity stated in the contract, unless the contract contains an increased quantity option.

4331 MULTIPLE AWARD CONTRACTS

4331.1 The CCO may use a multiple award contract when more than one contractor is to be awarded a contract for specific supplies or services.

4332 LOCAL, SMALL, DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

4332.1 The CCO shall include in all Library solicitations and contracts totaling two hundred fifty thousand dollars ($250,000) or more a mandatory thirty-five percent (35%) local, small, disadvantaged business enterprise (LSDBE) participation for certified LSDBE firms.

4332.2 Firms and individuals shall be certified by the D.C. Department of Small and Local Business Development in order to participate in the Library's LSDBE set-aside program.

4332.3 The CCO may set-aside certain Library procurement opportunities for certified LSDBE firms.

4332.4 The CCO shall post all procurement opportunities set-aside for certified LSDBE firms on the Library website and shall publicize all solicitations for competitive set-aside procurements in accordance with Section 4302, except when the requirement is a for sole source award in accordance with Section 4320.

4332.5 The CCO shall establish procedures for the utilization of LSDBE firms in Library procurement opportunities in the Library procurement manual.

4333 MENTOR-PROTÉGÉ PROGRAM

4333.1 The CCO shall establish a mentor-protégé program designed to match prime contractors with local, small, disadvantaged business enterprises certified by the D.C. Department of Small and Local Business Development for participation in Library procurement opportunities.

4333.2 The program shall allow approved prime contractors, serving as mentors, to provide assistance to certified local, small, disadvantaged business enterprise firms, serving as protégés, to improve their ability to successfully compete for Library contracts.

4333.3 Approved prime contractors who team with protégés shall be given a maximum of five (5) preference points when the competitive sealed proposal method of procurement is utilized.

4333.4 Approved prime contractors who team with protégés shall have their total evaluated bid price reduced by five percent (5%) when the competitive sealed bidding method of procurement is utilized.

4333.5 Mentor-protégé relationships shall last for a maximum of three (3) years and may be terminated under the following circumstances:

(a) Mentors are no longer in good financial condition;

(b) Mentors or protégés are delinquent in District taxes or any District debt;

(c) A protégé is removed from or no longer is a participant in the District's local, small, disadvantaged business enterprise program;

(d) The mentor-protégé relationship has expired; and

(e) Other relevant reasons.

4333.6 Firms participating in Library procurement opportunities shall clearly identify mentor-protégé relationships by submitting the appropriate documentation with bids or proposals in order to receive preference points or percentages outlined in this section. The appropriate documentation shall be identified in the Library's mentor-protégé program.

4333.7 The CCO shall establish the Library's mentor-protégé program within 12 months from issuance of these regulations.

4334 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

4334.1 The CCO shall award construction contracts in accordance with the guidelines of this section.

4334.2 The CCO shall award architect-engineer contracts in accordance with the guidelines of Section 4304.

4334.3 In any instance where the provisions of this section are inconsistent with other sections of these regulations, the applicable sections of this chapter shall take precedence and control the process of the award of a construction or architect-engineer contract.

4334.4 Competitive sealed bidding shall be the preferred method of procurement for the solicitation and award of construction contracts, except as provided in Section 4346

4335 ESTIMATE OF CONSTRUCTION COSTS

4335.1 An estimate of construction costs shall be prepared by the Library's program staff for each proposed contract and for each proposed contract modification estimated to exceed twenty-five thousand dollars ($25,000).

4335.2 The estimate shall be prepared in as much detail as though the Library was competing for award.

4335.3 Access to information concerning the Library estimate shall be limited to Library personnel whose official duties require knowledge of the estimate.

4335.4 The amount of the Library estimate shall not be disclosed, except as otherwise permitted by these regulations.

4335.5 Contracts for construction shall not be awarded at cost to the Library.

4336 NOTICE OF THE SCOPE OF CONSTRUCTION PROJECTS

4336.1 All pre-solicitation notices and each solicitation shall state the approximate scope of the construction requirement in terms of physical characteristics and estimated price.

4336.2 In no event shall the scope of a project disclose the Library's estimate of costs.

4336.3 The CCO shall describe the estimated price in terms of the following ranges:

(a) Less than $25,000; or

(b) Between $25,000 and $100,000

(c) Between $100,000 and $250,000;

(d) Between $250,000 and $500,000;

(e) Between $500,000 and $1,000,000; or

(f) Over $1,000,000.

4337 LIQUIDATED DAMAGES IN CONSTRUCTION CONTRACTS

4337.1 The CCO shall determine the need for liquidated damages in construction contracts.

4337.2 In construction contracts estimated to exceed twenty-five thousand dollars ($25,000), the CCO may include a liquidated damages clause.

4337.3 If liquidated damages are used in a contract, the CCO shall include an appropriate, reasonable rate or rates of liquidated damages.

4337.4 The provisions of this section shall apply to all liquidated damages clauses included in construction contracts.

4337.5 When liquidated damages clauses are required or used, if different completion periods for separate parts or stages of the work are specified in the contract, the CCO shall include a provision, providing for liquidated damages for delay of a failure to perform each separate part or stage of the work compensating the Library for damages incurred.

4337.6 The CCO shall base the minimum amount of liquidated damages on the estimated cost of inspection and superintendence for each day of delay in completion.

4337.7 Whenever the Library would suffer other specific losses due to failure of the contractor to complete the work on time, the CCO shall also include in the contract the amount of these specific losses.

4338 PRICING CONSTRUCTION CONTRACTS

4338.1 The CCO shall use firm-fixed-price contracts to procure construction.

4338.2 A contract may be priced on a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work), on a unit-price basis (when a unit price is paid for a specified quantity of work units), or a combination of both methods.

4338.3 The CCO shall use lump-sum pricing in preference to unit pricing except when any one (1) of the following circumstances exist:

(a) Large quantities of work (such as excavation, grading, paving, building outside utilities, or site preparation) are involved which cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;

(b) Estimated quantities of work required may change significantly during construction; or

(c) Bidders would have to expend unusual effort to develop adequate estimates.

4338.4 The CCO may not use fixed-price contracts with economic price adjustments when an economic price adjustment provision would preclude a significant number of firms from submitting bids or would result in bidders including unwarranted contingencies in proposed prices.

4339 CONSTRUCTION CONTRACTS WITH ARCHITECT-ENGINEER FIRMS

4339.1 Except as provided in Section 4339.2, the CCO shall not award a contract for the construction of a project to the firm that designed the project or its subsidiaries or affiliates without the prior written approval of the Procurement Executive.

4339.2 If a proposed construction contract will use a design build method of construction, the CCO may award the construction contract to an affiliate of the architect-engineer firm that designed the project without prior approval of the Procurement executive.

4340 DESIGN-BUILD PROCEDURES

4340 If the CCO uses a design-build process, two-phase design-build selection procedures shall be utilized.

4340.1 The CCO shall only use the two-phase design-build selection procedures when three or more offers are anticipated.

4340.2 The CCO may use one solicitation covering both phases, or the CCO may issue two solicitations in sequence.

4340.3 The CCO shall issue a solicitation utilizing the competitive sealed proposals method of procurement. The solicitation shall state the maximum number of offerors that will be selected to submit phase-two proposals.

4340.4 The maximum number specified shall not exceed five unless the CCO determines, for that particular solicitation, that a number greater than five is in the Library's interest and is consistent with the purposes and objectives of two-phase design-build contracting.

4340.5 After evaluating phase-one proposals, the CCO shall select the most highly qualified offerors, not to exceed the maximum number specified in the solicitation in accordance with Section 4340.4, and request that only those offerors submit phase-two proposals.

4341 INSPECTION AND SITE EXAMINATION

4341.1 The CCO shall make appropriate arrangements for prospective bidders to inspect the work site and to have the opportunity to examine data available to the Library which may provide information concerning the performance of the work. The CCO shall assemble the data in a single place and make it available for examination.

4341.2 The solicitation shall notify bidders of the time and place for the site inspection and date of examination.

4341.3 The CCO shall make available to all prospective bidders in the same manner significant site information and the work performance data, including information regarding any utilities to be furnished during construction.

4341.4 The CCO shall keep a record of the identity and affiliation of each prospective bidder's representative who inspects the site or examines the data.

4342 COMPETITIVE SEALED BIDS FOR CONSTRUCTION

4342.1 An IFB for construction shall allow a reasonable time for bidders to prepare and submit their bids, but in no event less than ten (10) days after the initial solicitation is issued and publicized.

4342.2 The CCO shall publicize the IFB in accordance with Section 4302.

4342.3 In determining what is a reasonable time, the CCO shall consider the construction industry and the time necessary for bidders to inspect the site, obtain subcontract agreements, examine data concerning the work and prepare estimates based on plans and specifications.

4342.4 The CCO shall ensure that each IFB includes the following information when applicable:

(a) The appropriate wage determination as issued by the U.S. Department of Labor;

(b) The scope of the proposed construction project;

(c) The period of performance;

(d) Information concerning any facilities, such as utilities, office space, and warehouse space, to be furnished during the construction period;

(e) Arrangements for bidders to inspect the site and examine the data concerning performance of the work;

(f) Any special qualifications or experience requirements that will be considered;

(g) Any special instructions concerning bids, alternate bids, and award; and

(h) Any instructions concerning reporting requirements.

4342.5 The CCO shall send IFB's to prospective bidders upon request.

4343 NOTICE OF INTENT TO AWARD

4343.1 Each notice of intent to award shall include the following:

(a) The identity of the IFB;

(b) The identity of the prospective contractor;

(c) The award price;

(d) A statement notifying the prospective contractor that all required performance and payment bonds must be properly executed by the prospective contractor and sureties and returned to the CCO by the prospective contractor within the time specified in the IFB, or, if no time period is specified in the IFB, within ten (10) days after the bond forms as presented by the Library to the prospective contractor for signature.

(e) A statement that a notice to proceed will be issued, contingent upon the CCO's receipt of executed performance and payment bonds and executed contracts form that is in compliance with the requirements of the IFB and this title.

(f) A statement that the Library may rescind the notice of intent to award at any time prior to approval of a formal written contract signed by the prospective contractor and the CCO or other Library official.

4344 PRE-CONSTRUCTION CONFERENCE

4344.1 The CCO may conduct a pre-construction conference to inform the contractor about the labor standards requirements, permits, subcontracting and other relevant pre-construction matters deemed appropriate by the CCO.

4345 EVALUATION OF CONTRACTOR PERFORMANCE

4345.1 The CCO or designee shall evaluate contractor performance and prepare a performance report for each construction contract over one hundred thousand dollars ($100,000) in the following circumstances:

(a) When any element of performance was either unsatisfactory or outstanding;

(b) When the contract was terminated for default; or

(c) When the contract was terminated for the convenience of the Library.

4345.2 The CCO or designee shall prepare the evaluation performance report at the time of final acceptance of the work, at the time of contract termination, or at other times determined appropriate by the CCO.

4345.3 If the CCO concludes that a contractor's overall performance was unsatisfactory, the CCO shall advise the contractor in writing that an unsatisfactory performance report is being prepared and shall state the basis for the report.

4345.4 If, after receiving the CCO or designee's report, the contractor submits any written comments, the CCO or designee shall include them in the report, consider them in resolving any alleged factual discrepancies, and make any appropriate changes in the report. The CCO shall include the performance report in the contract file.

4346 ARCHITECT-ENGINEER SERVICES

4346.1 The CCO shall publicize all requirements for architect-engineer services in accordance with Section 4302.

4346.2 The CCO shall negotiate contracts for these services based on demonstrated competence and qualifications of prospective contractors to perform the services required at fair and reasonable prices.

4346.3 The CCO shall select a contractor for architect-engineer services in accordance with the provisions of this section rather than the solicitation procedures specified elsewhere in these regulations.

4346.4 Compliance with the provisions of Sections 4346 through 4355 of these regulations shall constitute a competitive procedure of the procurement of architect-engineer services.

4346.5 The CCO shall evaluate each potential contractor based on the following criteria:

(a) Professional qualifications necessary for satisfactory performance of the required services;

(b) Specialized experience and technical competence in the type of work required;

(c) Capacity to accomplish the work in the required time;

(d) Acceptability under other appropriate evaluation criteria.

4346.6 When design competition is used by the Library, the CCO may evaluate firms on the basis of their conceptual design of the project.

4346.7 Design competition may be used in the following circumstances:

(a) When unique situations exist involving prestigious projects, such as the design of memorials or structures of unusual national or local significance;

(b) When sufficient time is available for the production and evaluation of conceptual designs; and

(c) When the design competition, with its costs, will substantially benefit the project.

4347 ARCHITECT-ENGINEER QUALIFICATIONS

4347.1 To be considered for an architect-engineer contract, a firm shall file an appropriate architect-engineer qualification data form with the CCO.

4347.2 The CCO shall classify the qualification data files for each firm with respect to the following:

(a) Location;

(b) Specialized experience;

(c) Professional capabilities; and

(d) Capacity with respect to the scope of work that the firm can undertake.

4347.3 The CCO shall review and update the qualification data files at least once each year. The process shall include the following:

(a) Publicizing a notice encouraging firms to submit annually an updated statement of qualifications;

(b) Reviewing and updating each firm's classification;

(c) Recording any contract awards made to each firm in the preceding year;

(d) Ensuring that the file contains a copy of each performance evaluation report;

(e) Discard any material that has not been updated within the previous three (3) years; and

(f) Posting the date of the review file.

4348 ARCHITECT-ENGINEER SELECTION

4348.1 The CCO, with the advice of the appropriate technical and staff representatives, will make the final selection.

4348.2 The final selection shall be a listing, in order of preference, of the firms considered most highly qualified to perform the work.

4348.3 The CCO shall document the contract file with a written explanation of the reasons for the selection. All firms on the final selection list shall be the firms with which the CCO may negotiate.

4349 COST ESTIMATE FOR ARCHITECT-ENGINEEER CONTRACTS

4349.1 An independent Library estimate of the cost of architect-engineer services shall be prepared by or under the direction of the CCO before commencing negotiations in accordance with Section 4304 for each proposed contract or contract modification estimated to exceed one hundred thousand dollars ($100,000).

4349.2 Access to information concerning the Library estimate shall be limited to Library personnel whose official duties require knowledge of the estimate. The overall amount of the Library's estimate shall not be disclosed except as permitted by this section.

4350 NEGOTIATIONS OF ARCHITECT-ENGINEER CONTRACTS

4350.1 The CCO shall first attempt to negotiate a contract with the highest rated qualified firm for the required services at a price which the CCO determines in writing to be fair and reasonable to the Library.

4350.2 The CCO shall inform the firm that no construction contract may be awarded to the firm that designed the project, except as provided in Section 4339

4350.3 The CCO shall ensure that the firm has a clear understanding of the scope of work, specifically, the essential requirements involved in providing the required services, and shall determine whether the firm will make available the necessary personnel and facilities to perform the services within the required time.

4350.4 The CCO shall limit the firm's subcontracting to firms agreed upon during negotiations or through a formal contract modification.

4350.5 If a mutually satisfactory contract cannot be negotiated, the CCO shall notify the firm in writing that negotiations are terminated. The CCO shall then initiate negotiations with the next rated qualified firm on the list. This procedure shall continue until a mutually satisfactory contract has been negotiated.

4351 RELEASE OF INFORMATION

4351.1 After final selection has taken place under Section 4350 the CCO may release information identifying the highest rated architect-engineer firm with which a contract will be negotiated.

4351.2 If negotiations are terminated without awarding a contract to the highest rated firm, the CCO may release that information and state that negotiations will be undertaken with another named architect-engineer.

4351.3 Awards made for architect-engineer services shall be publicized in accordance with Section 4302.

4352 LIABILITY FOR DESIGN ERRORS OR DEFICIENCIES

4352.1 The architect-engineer firm shall be responsible for the professional quality, technical accuracy, and coordination of all services required under its contract. The firm shall be liable to the Library for costs resulting from errors or deficiencies in designs furnished under its contract.

4352.2 When modification of a construction contract is required because of an error or deficiency in the services provided under an architect-engineer contract, the CCO shall determine the extent to which the architect-engineer may be liable.

4352.3 If the CCO determines that the firm is liable, and the recoverable cost will exceed the administrative cost involved or collection is otherwise in the best interests of the Library, the CCO shall initiate procedures to collect the amount due.

4352.4 The CCO shall prepare a written statement of the reasons for the decision whether or not to recover costs from the firm and place in the contract file.

4353 DESIGN WITHIN FUNDING LIMITATION

4353.1 The Library may require the architect-engineer contractor to design the project so that construction will not exceed a contractually specified dollar limit. The amount of the construction funding shall be established during negotiations between the firm and the CCO.

4353.2 In negotiating the funding limitation amount, the CCO shall make available to the firm the information upon which the Library has based its initial construction estimate and subsequently acquired information that may affect the construction costs.

4353.3 If the price of construction proposed in response to a Library solicitation exceeds the construction specified dollar funding limit in the architect-engineer contract, the firm shall be solely responsible for redesigning the project within the funding limitation.

4353.4 Any redesign services required by Section 4354 shall be performed at no increase in price of the architect-engineer (A/E) contract, unless the cost of proposed construction is based on circumstances beyond the A/E firm's reasonable control.

4353.5 If an architect-engineer firm's design fails to meet the contractual limitation on construction cost and the CCO determines that the firm should not redesign the project, the CCO shall place a written statement of the reasons for that determination in the contract file.

4354 REDESIGN RESPONSIBILITY FOR DESIGN ERRORS OR DEFICIENCIES

4354.1 The architect-engineer firm shall make necessary corrections at no cost to the Library if the designs, drawings, specifications, or other items or services furnished by the firm contain any errors, deficiencies, or inadequacies.

4354.2 If the CCO does not require a firm to correct errors, the CCO shall include a written statement of the reasons for that decision in the contract file.

4355 ARCHITECT-ENGINEER PERFORMANCE EVALUATION

4355.1 The CCO shall prepare an architect-engineer performance evaluation report for contracts of more than twenty-five thousand dollars ($25,000) and may prepare a report for contracts less than twenty-five thousand dollars ($25,000).

4355.2 The CCO shall prepare a performance report after final acceptance of the work or after contract termination.

4355.3 If the CCO concludes that a firm's overall performance is unsatisfactory, the CCO shall advise the firm in writing that a report of unsatisfactory performance is being prepared and shall state the basis for the report.

4355.4 If, after receiving the CCO's report, the firm responds with any written comments, the CCO shall include them in the report, and consider them in resolving any alleged factual discrepancies, and make any appropriate changes in the report.

4355.5 The CCO shall review each performance report for accuracy and reasonableness.

4355.6 The CCO shall include the performance evaluation report in the contract file for at least three (3) years after the date of the report.

4356 CONTRACTING FOR SERVICES

4356.1 The Library may obtain services from professional, non-professional, expert and consulting personnel on an individual or organizational basis when essential to the Library's operations or when the services would achieve maximum effectiveness of operations.

4356.2 The contracting officer shall ensure that the applicable provisions of the Service Contract Act of 1965 (41 U.S.C. §§351-358) and any applicable wage determinations are incorporated in accordance with federal regulations into all solicitations for services, to include services required by Section 4305 for simplified procurements.

4356.3 Contracting for services shall not apply to the following:

(a) Personnel appointments and advisory committees;

(b) Personal service contracts;

(c) Construction or architect-engineer services;

(d) Interagency governmental or cooperative agreements where the work is being performed by District, Federal or State employees or employees through cooperative agreements.

(e) Services obtained under contracts below the simplified procurement threshold and services incidental to supply contracts also are excluded from the requirements of this section, except where the Service Contract Act of 1965 (41 U.S.C. §§351-358) and any applicable wage determinations are required.

4356.4 The Library shall ensure good management practices and contract administration techniques are used regardless of the contracting method.

4356.5 The CCO shall ensure the following:

(a) Requirements for services are clearly defined and appropriate performance standards are developed so that the agency's requirements can be understood by potential offerors and that performance in accordance with contract terms and conditions will meet the agency's requirements;

(b) Service contracts are awarded and administered in a manner that will provide the Library its supplies and services within budget and in a timely manner; and

(c) Specific procedures are in place before contracting for services to ensure that inherently governmental functions are performed by District personnel.

4356.6 The CCO shall develop policies and procedures for procuring services for performance-based contracting within 12 months from the date these rules are finalized.

4357 BONDS, INSURANCE AND OTHER FINANCIAL PROTECTIONS

4357.1 The CCO has the discretion to require any types of security specified in this section for any solicitation or contract including the following:

(a) Bid bonds or proposal bonds;

(b) Performance or payment bonds for construction;

(c) Performance or payment bonds or other security for non-construction contracts;

4357.2 The CCO shall consider the following factors in non-construction contracts:

(a) Whether Library property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (such as retention of salvaged material);

(b) When a contractor sells assets to or merges with another business entity, whether the Library (after recognizing the other entity as the successor in interest) needs assurance that it is financially capable;

(c) Whether substantial progress payments are to be made before delivery of end items starts;

(d) Whether the contract is for dismantling, demolition, or removal of improvements; or

(e) Any other factors which might favor the use of security instruments to protect the best interests of the Library.

4357.3 A payment security shall be required only when a performance security is required and the use of the payment security is in the best interests of the Library.

4357.4 When a security is required by the Library, the CCO may accept any of the following types of security:

(a) A bond provided by a surety in accordance with Section 4358;

(b) A certified check or irrevocable letter of credit issued by an insured financial institution in the equivalent amount of the security; or

(c) United States government securities that are assigned to the Library which pledge the full faith and credit of the United States.

4357.5 The CCO shall determine a contractor's responsibility even though security has been or can be obtained.

4358 BID BONDS, PROPOSAL BONDS, AND OTHER SECURITY

4358.1 The CCO may require bid bonds, proposal bonds, and other security in connection with any solicitation, regardless of whether any payment or performance security will be required under the contract.

4358.2 When the Library's independent cost estimate for a construction contract is over one hundred thousand dollars ($100,000), the CCO shall require a Security Bond in the Invitation for Bids.

4358.3 The CCO may require a Security Bond when the Library's independent cost estimate for a construction project is less than one hundred thousand dollars ($100,000).

4358.4 When a Security Bond is required, the solicitation shall contain the following:

(a) A statement that a Security Bond is required;

(b) A statement that the Security Bond shall be effective for as long as the bid is required to remain effective;
(c) Instructions to allow bidders to determine the amount of the required Security Bond.

4358.5 If a solicitation is cancelled, or if a bidder is permitted to withdraw a bid prior to award due to a mistake in the bid, the CCO shall take no action against the Security Bond.

4358.6 Security bonds shall be required in circumstances when only one bid or proposal is received, or when sole source procedures are utilized.

4359 NONCOMPLIANCE WITH BID OR PROPOSAL SECURITY REQUIREMENTS

4359.1 If a bid or proposal fails to comply with the Security Bond requirements outlined in the solicitation, the CCO shall reject the bid or proposal. However, the CCO may accept the bid or proposal if the CCO determines in writing that both of the following apply:

(a) The bid or proposal meets the criteria set forth in this section; and

(b) Acceptance of he bid or proposal would be in the best interests of the Library.

4359.2 If the amount of the Security Bond submitted by bidders or offerors, although less than that required by the solicitation for the maximum quantity or service, is sufficient for a quantity or service for which the bidder or offeror is otherwise eligible for award, the bid or proposal may be accepted. Any award to the bidder or offeror shall not exceed the quantity covered by the Security Bond.

4359.3 If the Security Bond becomes inadequate as a result of the correction of a mistake, the bid or proposal may be accepted if the bidder or offeror agrees to increase the Security Bond to the level required for the corrected bid or proposal.

4359.4 If the Security Bond is received late, and the receipt is waived in accordance with Subsection 4359.1 of this Section, the bid or proposal may be accepted.

4360 PERFORMANCE AND PAYMENT SECURITY

4360.1 The CCO shall require a contractor to furnish performance and payment bonds or other security on any construction contract when the Library's independent cost estimate exceeds one hundred thousand dollars ($100,000). Performance or payment bonds (or other securities) shall be submitted by the deadline stated in the solicitation.

4360.2 The CCO may require a contractor to furnish a payment or performance bond or other security for any construction or non-construction contract, regardless of amount, when the CCO determines that the security is necessary to protect the Library's interests.

4360.3 The amount of the performance security shall be one hundred percent (100%) of the original contract price, unless the CCO determines that a lesser amount or percentage would be adequate to protect the Library. The bidder or offeror shall furnish the security to the CCO as prescribed by this section.

4360.4 The CCO shall require additional performance security when a contract price is increased. The increase in performance security shall equal one hundred percent (100%) of the increase in the contract price, unless the CCO determines that a lesser amount or percentage is adequate to protect the Library's interests.

4360.5 When a contract is modified pursuant to the changes clause, the CCO may require additional performance security or payment security from the contractor in an amount determined reasonable by the CCO. If no performance or payment security was required, the CCO may require performance or payment security in an amount the CCO determines reasonable.

4360.6 The payment security shall be in an amount of not less than fifty percent (50%) of the total amount of the contract price.

4360.7 When a contract price is increased, the Library may require additional payment security in an amount adequate to protect suppliers of labor material. However, in no event shall the amount of payment security fall below fifty percent (50%) of the increased contract price.

4360.8 When performance or payment security is required, the solicitation shall contain the following:

(a) A statement that security is required;

(b) The amount of the security expressed as a fixed amount or percentage of the contract price; and

(c) The deadline for submitting the required security.

4361 INSURANCE

4361.1 The CCO shall require each contractor to obtain insurance for the risks to which the contractor and the Library are exposed, except when the contract specifically relieves the contractor of liability for loss of damage to Library property.

4361.2 The CCO shall have the right to disapprove the purchase of any insurance coverage not in the best interests of the Library.

4361.3 The CCO shall require insurance coverage from each contractor when the contractor shall have possession of or control of Library property or when conditions of the contract make it necessary for the protection of the Library.

4361.4 When the CCO requires a contractor to provide insurance coverage, the policies shall contain an endorsement that any cancellation or material change in the coverage or terms and conditions of the coverage shall not be effective unless the insurer or the contractor gives 30 days prior written notice of the cancellation or change to the Library in the manner required by the CCO.

4361.5 When the CCO requires or approves insurance to cover loss of or damage to Library property, the contractor shall provide this coverage either by acquiring separate insurance policies or including the existing policies coverage for these specific risks. The policies shall specifically include the Library and the District of Columbia government as additional insurers.

4362 OPTIONS

4362.1 The CCO may include options in solicitations and contracts when it is in the Library's interests.

4362.2 The CCO shall not utilize options in solicitations and contracts if the following exists:

(a) The contractor will incur undue risks;

(b) Market prices for the supplies or services involved are likely to change substantially; or

(c) The option represents known firm requirements for which funds are available unless competition for the option is impracticable once the initial contract is awarded.

4362.3 The CCO shall include option provisions and clauses in solicitations when resulting contracts will provide for the exercise of options

4362.4 The CCO shall state the basis of evaluation in solicitations, either exclusive or inclusive of options.

4362.9 The CCO shall ensure that the contracts with options specify the following:

(a) The contract shall specify limits on the purchase of additional supplies or services, or the overall duration of the term of the contract, including any extension.

(b) The contract shall state the period within which the option may be exercised.

(c) The period shall be set so as to provide the contractor with adequate lead time to ensure continuous production.

4362.10 Library contracts for the basic and option periods shall not exceed five (5) years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. However, statutes

applicable to various contracts (such as the Service Contract Act), may place additional restrictions on the length of such contracts.

4362.11 The CCO shall express options for increased quantities of supplies or services in terms of the following:

(a) Percentage of specific line items; or

(b) Increase in specific line items.

4363 RESERVED

4364 SUBCONTRACTING

4364.1 The CCO may require his or her consent for the contractor to subcontract when the CCO determines that it would be in the best interest of the Library.

4364.2 The requirement for consent to subcontract shall also apply to teaming arrangements and joint ventures.

4364.3 The CCO shall require consent to subcontract in those instances where approval of subcontracts is required by this chapter or this section.

4364.4 When a solicitation contains a requirement for consent to subcontract, before a contractor can enter into a subcontract, the contractor must submit to the CCO a written request for consent to subcontract and the CCO must grant consent in writing.

4364.5 The CCO may require, as part of an invitation for bids (IFB) or request for proposals (RFP), that each bidder or offeror responding to a solicitation include in its response a list of proposed subcontractors, teaming arrangements or joint ventures, a list of tasks or items which the bidder or offeror intends to subcontract, team or joint venture with.

4364.6 In determining whether to require consent to subcontract, the CCO shall consider the following:

(a) The complexity of the work to be done under subcontracts, teaming arrangements or joint ventures;

(b) The value of the subcontract, joint venture, teaming arrangement;

(c) Whether the Library's interests can be adequately protected without requiring consent; and

(d) Any other relevant factors.

4364.7 The CCO shall ensure that any requirements for consent to subcontract are included in the solicitation for the prime contract.

4364.8 After receipt of the contractor's request for consent to subcontract, the CCO shall do the following:

(a) Promptly evaluate the contractor's request for consent to subcontract;

(b) Obtain assistance in the evaluation from audit, pricing, technical, or other specialists as necessary;

(c) Notify the contractor in writing of consent to subcontract or the withholding of consent to subcontract, including any changes or corrections required.

4364.9 The CCO's consent to subcontract shall not constitute a determination of the acceptability of the subcontract terms, price or other allowability of costs unless the consent to subcontract specifies acceptance.

4364.10 The CCO shall not consent to subcontract in any of the following circumstances:

(a) When the fee in a cost-reimbursement subcontract exceeds any applicable fee limitations;

(b) When payment under the subcontract is on a cost-plus-a-percentage-of-cost basis;

(c) When the CCO is obligated to deal directly with the subcontractor;

(d) When the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor are made binding on the Library; or

(e) When the subcontract violates any statute or the provisions of these regulations.

4364.11 Prospective prime contractors shall be responsible for determining the responsibility of their subcontractors to include teaming arrangements and joint ventures.

4364.12 Determinations of prospective subcontractor responsibility may affect the Library's determination of the prospective prime contractor's responsibility.

4364.13 The CCO may require a prospective prime contractor to provide written evidence of a prospective subcontractor's responsibility.

4365 RESERVED

4366 RESERVED

4367 USE OF DISCRETIONARY FUNDING

4367.1 Monetary gifts, endowments, charitable donations and bequests made to the Library from individual or corporate sources shall constitute discretionary funding and shall not be subject to the requirements of these regulations.

4367.2 The CCO shall develop written procedures for the Library's discretionary funding program within 12 months from the date these regulations are promulgated.

4367.3 The CCO shall develop a program for the use of discretionary funding that incorporates sound business decisions in the best interests of the Library and shall be responsible for administering the Library's discretionary funding program.

4368 CONTRACTOR RESPONSIBILITY

4368.1 The CCO shall ensure that purchases are made from and contracts awarded to responsible contractors only.

4368.2 To be determined responsible, a contractor must:

(a) Have adequate financial resources to perform the contract or the ability to obtain them;

(b) Be able to comply with the required delivery or performance schedule;

(c) Have a satisfactory performance record;

(d) Have a satisfactory record of integrity and ethics;

(e) Have the necessary organizational experience, accounting, operational controls, technical skills, or the ability to obtain them;

(f) Have the required production, construction and technical equipment and facilities, or the ability to obtain them; and

(g) Be otherwise qualified and eligible to receive a contract award pursuant to applicable laws and regulations.

4368.3 The CCO shall not determine a prospective contractor or subcontractor responsible or non-responsible solely on the basis of a lack of relevant performance history.

4368.4 The CCO's signing of a contract shall constitute a determination that a prospective contractor is responsible with respect to that contract.

4368.5 The CCO shall place a written determination in the contract file when a contractor is determined to be non-responsible.

4368.6 The CCO (or designee) in his or her sole discretion may enter a contractor's or subcontractor's plant or place of business in order to:

(a) Inspect or test supplies or services for acceptance by the Library based on the terms of he contract;

(b) Audit books or records, where the auditing function will be performed by a District or third-party auditor;

(c) Investigate in connection with an action to debar or suspend an offeror or contractor from consideration of contracts; or

(d) Conduct pre-award surveys or post-award compliance reviews of an offeror or contractor.

4368.7 Inspections and tests by the Library shall 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.

4369 CONTRACT ADMINISTRATION

4369.1 The CCO may delegate contract administration functions to the appropriate program office within the Library.

4369.2 The CCO shall advise the contractor of all delegated contract administration functions by providing the identification and location of the person delegated contract administration responsibilities within each contract.

4369.3 The CCO may delegate the following functions to a contract administration office within the Library:

(a) Determining the allowability, suspension or disapproval of costs;

(b) Approving or disapproving of contractor invoices;

(c) Reviewing and approving or disapproving the contractor's requests for payments under progress payments or performance-based payment structures;

(d) Allowing or disapproving Library property administration;

(e) Monitoring contractor performance to ensure the submission of deliverables; and

(f) Preparing evaluations of contractor performance.

4369.4 The CCO may issue a stop-work order at any time to suspend work pending a decision by the Procurement Executive of the Library.

4369.5 The decision to issue a stop-work order shall be approved by a level higher than the CCO and shall not be used in place of a termination notice after a decision to terminate has been made.

4369.6 Stop-work orders shall include the following:

(a) A description of the work to be suspended:

(b) Guidance to the contractor on any action taken to be taken on any subcontracts; and

(c) Any other suggestions to the contractor to minimize costs.

4369.7 As soon as feasible after a stop-work order is issued, but before its expiration, the CCO shall take appropriate action to do one of the following:

(a) Terminate the contract;

(b) Cancel the stop-work order; or

(c) Extend the period of the stop-work order, if necessary.

4369.8 The CCO shall settle contract claims resulting in interruptions or delay of work caused by acts or failures of the Library.

4369.9 The CCO shall include clauses in solicitations and contracts for Suspension of Work, Stop-Work Orders and Library Delay of Work.

4369.10 At reasonable times and places, the Library or its designated agent may audit the books and records of any contractor, subcontractor, prospective contractor, or prospective subcontractor which is related to any contract with the Library when the Library has reason to believe one of the following circumstances may exist:

(a) A question as to the adequacy of accounting policies or cost systems;

(b) A substantial change in the methods or levels of operation;

(c) Previous unfavorable experience indicating doubtful reliability of estimating, accounting or procurement methods;

(d) A lack of cost experience due to the procurement of a new supply or service; or

(e) Other evidence that an audit is in the Library's best interests as determined by the CCO.

4369.11 Books or records shall be maintained by a contractor or subcontractor for a period of three (3) years from the date of final payment.

4369.12 When the CCO requires an audit of a Library contractor, the Library may procure the services of an independent certified public accountant (CPA) firm to perform the audit or audit review. The audit or audit review shall be conducted in accordance with generally accepted accounting principles, and shall include any tests necessary to render a CPA firm's opinion on the fairness of the contractor's financial presentation.

4370 NOVATION AND CHANGE-OF-NAME AGREEMENTS

4370.1 If a contractor wants the Library to recognize and approve a successor in interest to its contracts or a name change, the contractor shall submit a written request to the CCO, and the CCO shall:

(a) Advise the contractor of the information necessary to evaluate the proposed agreement provided by the Library for recognizing the successor in interest or the name change.

(b) Ensure that the proposed contractor is responsible in accordance with Section 4368.

(c) Consult with legal counsel in determining the legal sufficiency of the information submitted by the contractor before approving the successor in interest or name change.

4370.2 Before a novation or change-of name agreement is approved, the CCO shall ensure that the Library legal counsel has approved them for legal sufficiency.

4370.3 After legal sufficiency approval, the CCO shall:

(a) Forward a signed copy of the executed novation agreement to the transferor and the transferee; and

(b) Retain a copy in the contract file.

(c) Prepare a contract modification to all applicable contracts and incorporate a copy of the novation agreement.

(d) Distribute a copy of the modification to the transferor and the transferee.

4370.4 The Library may, when it is in it's interest, recognize a third party as a successor in interest to a Library contract when the third party's interest results from the transfer of:

(a) All or the contractor's assets; or

(b) The entire portion of the assets involved in performing the contract.

4370.5 A novation agreement is not necessary when there is a change in the ownership of a contractor based on the purchase of stock, with no legal change in the contracting party, and when the contracting party remains in control of the assets and is the party performing the contract.

4370.6 The CCO shall address and consider all issues related to the change in ownership before approving a novation agreement

4370.7 When it is not in the Library's interest to concur in the transfer of a contract from one company to another company, the original contractor shall remain under contractual obligation to the Library, and the contractor may be terminated for default if the original contractor fails to perform.

4370.8 The CCO shall identify and evaluate any organizational conflicts of interest before recognizing and approving a successor in interest to a Library contract.

4370.9 The contractor shall submit any documentation required by the CCO and in a manner determined by the CCO to support the proposed novation agreement to include:

(a) The purchase/sale agreement between the transferor and transferee;

(b) A list of all affected contracts between the transferor and the Library as of the date of the sale or transfer of assets;

(c) Detailed evidence of the transferee's ability to perform; and

(d) Any other relevant information required to protect the Library's interest.

4370.10 The CCO shall provide procedures and a format in the Library Procurement Manual governing novation and change-of-name agreements.

4370.11 When recognizing a successor in interest to a Library contract, the CCO shall execute a novation agreement with the transferor and transferee which shall include a statement that:

(a) The transferee assumes all the transferor's obligations under the contract;

(b) The transferor waives all rights under the contract against the Library;

(c) The transferor guarantees the transferee's performance (a performance bond may be accepted in lieu of a guarantee); and

(d) Nothing in the agreement shall relieve the transferee from compliance with Federal or District law.

4371 RESERVED

4372 CONTRACT TERMINATION

4372.1 The CCO shall terminate contracts for default or convenience only by written notice to the contractor. The CCO shall have the discretion to determine the manner in which the written termination notice is sent to the contractor.

4372.2 The CCO may terminate contracts for default or convenience in whole or in part.

4372.3 The termination notice shall state:

(a) The contract is being terminated for default or for convenience of the Library under the Library's termination clause;

(b) The effective date of the termination;

(c) The extent of the termination; and

(d) Any special instructions to the contractor.

4372.4 The CCO shall have the discretion to amend or cancel a termination when it is in the best interest of the Library.

4372.5 The CCO shall develop clauses for contractor default and Library convenience terminations to be included in all Library solicitations and contracts.

4372.6 The CCO shall develop termination procedures for fixed-price and cost-reimbursement type contracts within 12 months from the date these regulations are promulgated.

4372.7 The CCO shall negotiate and enter into settlement agreements for contracts terminated for convenience.

4372.8 After receipt of the convenience termination notice, the contractor shall:

(a) Stop work immediately on the terminated portion of the contract;

(b) Terminate all subcontracts related to the terminated portion of the contract;

(c) If partial termination, perform the portion of the contract not terminated and promptly submit any request for equitable adjustment of price for the continued portion, supported by any evidence to justify the increase in price, if applicable.

(d) Settle outstanding liabilities resulting from the termination of subcontracts or other commitment related to the terminated portion of the contract; and

(e) Promptly submit the contractor's own settlement proposal with supporting documentation to the CCO.

4372.9 The CCO shall include all termination notices and actions taken as a result of a termination in the contract file.

4372.10 A subcontractor has no priority of contract or contractual rights against the Library upon the termination of a prime contract.

4372.11 When a prime contract is terminated, the prime contractor and each subcontractor are responsible for the prompt settlement of their settlement proposals.

4373 RESERVED

4374 CONTRACT MODIFICATIONS

4374.1 Only the CCO or other Library contracting officer acting within the scope of their authority shall have the authority to modify Library contracts.

4374.2 The CCO or other Library contracting officer shall have the authority to issue only two types of modifications:

(a) Bilateral; or

(b) Unilateral.

4374.3 A bilateral modification (also called a supplemental agreement) requires the signature of the contractor and the contracting officer and is used to:

(a) Make negotiated equitable adjustments resulting from a change order;

(b) Definitize letter contracts; and

(c) Incorporate other agreements of the parties modifying the terms and conditions of the contract.

4374.4 A unilateral modification requires only the signature of the contracting officer and is used to:

(a) Make administrative changes;

(b) Issue change orders;

(c) Make changes other than changes authorized by the changes clause; and

(d) Issue termination notices.

4374.5 The CCO shall not execute a contract modification that causes or will cause an increase in contract funds without first ensuring that funds are obligated and certified unless:

(a) The modification is subject to the availability of funds;

(b) The limitation of funds or limitation of cost clause is applicable.

4374.6 The CCO shall develop clauses for changes, limitation of funds and limitation of costs to be included in all solicitations and contracts when applicable.

4375 CONTRACTS REVIEW COMMITTEE

4375.1 The Contracts Review Committee shall consider protests, disputes, appeals, debarment and suspension decisions made by the CCO.

4375.2 The President of the Board of Library Trustees shall appoint the Chairperson of the Committee. Decisions shall be made by a simple majority vote.

4375.3 The Contracts Review Committee shall consist of five (5) voting members: The Chairperson appointed by the President of the Board of Library Trustees, three (3) Board members appointed by the President, and the Executive Director/Chief Librarian of the Library.

4375.4 The Contracts Review Committee shall review and approve all Library contracts totaling one million dollars ($1,000,000) or more prior to submission to the District of Columbia City Council for approval.

4375.5 The CCO shall prepare and submit to the Board of Library Trustees a quarterly report of all contract awards issued that quarter in excess of five hundred thousand dollars ($500,000). Quarterly reports shall be submitted based on fiscal year quarters.

4375.6 The report shall be submitted to the Board of Library Trustees on the fifth day of the month following the end of each quarter.

4376 DEBARMENT, SUSPENSION AND INELIGIBILITY PROCEDURES

4376.1 Debarment and suspension shall be imposed on Library contractors only when it is in the best interest of the Library and not for punitive purposes and only for the causes set forth in this Section.

4376.2 The CCO shall utilize the excluded parties list of contractors declared ineligible under federal laws and regulations applicable to the District of Columbia in making contract award decisions.

4376.3 The CCO shall develop and maintain a current, comprehensive list of all contractors that have been debarred, suspended or declared ineligible.

4376.4 The CCO shall utilize the federal government consolidated list of debarred, suspended or otherwise ineligible contractors until the Library's list is developed within 12 months from the date these rules are promulgated.

4376.5 The consolidated list shall include the following:

(a) The names and addresses of all debarred, suspended, or ineligible contractors with cross references when more than one (1) name is involved in a single action;

(b) The cause for each action, along with statutory or regulatory authority;

(c) The scope of the action;

(d) In the case of ineligible contractors, the name of the federal agency or other authority responsible for the action, and the name and telephone number of the point of contact for the action; and

(e) The termination date of each listing.

4376.6 The CCO shall not solicit offers from, award contracts to, or consent to subcontract with a debarred or suspended contractor.

4376.7 A contractor designated as ineligible shall be excluded from receiving contracts and subcontracts under the conditions and for the period set forth in the applicable statute or regulation.

4376.8 The CCO may continue contracts or subcontracts in existence at the time a contractor is debarred, suspended or determined ineligible, unless the CCO determines in writing that the existing contracts or subcontracts should be terminated to protect the best interests of the Library for any of the reasons set forth in these regulations.

4376.9 The CCO shall not exercise an option to renew or otherwise extend a current contract with a debarred, suspended or otherwise ineligible contractor, unless the CCO approves the action in writing.

4376.10 In any subcontract requiring Library consent, the CCO shall not consent to the award of a subcontract to any debarred, suspended or otherwise ineligible contractor unless the CCO approves the award, in writing, based on compelling reasons in the best interest of the Library.

4376.11 The CCO may debar a contractor for any of the following reasons:

(a) Conviction of, or civil judgment for, commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;

(b) Conviction of, or civil judgment for, violation of any federal, state or District of Columbia statute relating to the submission of offers (bids, proposals or quotations);

(c) Conviction of, or civil judgment for, commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(d) Conviction of, or civil judgment for, commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the contractor or subcontractor;

(e) Violation of the terms of a Library contract or subcontract so serious as to justify debarment, such as willful failure to perform any Library contract; a history of failure to perform, or a record of unsatisfactory past performance on any Library, District or federal contract; or

(f) Any other cause of a serious or compelling nature that affects the present responsibility of the contractor or subcontractor.

4376.12 Debarment shall include debarment of all divisions or other organizational elements of the contractor.

4376.13 The CCO may extend the debarment decision to include any affiliates of the contractor by specifically naming the affiliate and giving the affiliate written notice of the proposed debarment and an opportunity to respond in accordance with the provisions of this Section.

4376.14 Debarment shall be for a period not to exceed three (3) years based on the seriousness of the cause(s) of debarment. The debarment period begins on the date the contractor receives the notice of proposed debarment.

4376.15 If suspension precedes debarment, the suspension period shall be considered in determining the debarment period.

4376.16 If the CCO decides to impose a debarment, the contractor and any applicable affiliates shall be given prompt notice of the debarment by written notice in a manner determined appropriate by the CCO. The notice shall include the following:

(a) A reference to the notice of proposed debarment;

(b) The reasons for the proposed debarment;

(c) The effective date and length or period of the proposed debarment;

(d) A statement that the proposed debarment is effective throughout the Library's contracting system; and

(e) Notice to the proposed debarred contractor that its rights to administrative review as provided in 4376.17 through 4376.22 of this Section.

4376.17 Any contractor intending to appeal the CCO's proposed debarment or suspension shall appeal to the Contracts Review Committee within 10 calendar days of receipt of the CCO's decision to debar or suspend the contractor.

4376.18 The CCO shall submit a report outlining the proposed debarment or suspension action for the review of the Contracts Review Committee. The Contracts Review Committee may hold an informal hearing within ten (10) calendar days of receipt of the contractor's appeal and request for a hearing, unless such time period is extended by the Committee.

4376.19 The Contracts Review Committee shall issue a final decision within forty-five (45) calendar days after receiving the contractor's appeal. The Contracts Review Committee may issue a decision without a hearing.

4376.20 Each contractor intending to file an appeal of the Contracts Review Committee's decision shall file an appeal with the District of Columbia Contract Appeals Board (CAB). In order for the CAB to consider the appeal, the contractor shall file the appeal within ten (10) calendar days after the contractor receives a written decision from the Contracts Review Committee.

4376.21 The contractor shall exhaust all administrative review procedures provided in this Section fully and properly before appealing to the CAB.

4376.22 The CAB shall have exclusive jurisdiction to hear and decide appeals from written decisions of the Contract Review Committee.

4377 RESERVED

4378 PROTESTS

4378.1 All protests by interested parties shall be filed in writing and submitted to the CCO. For protest purposes, an "interested party" means an actual or prospective

bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

4378.2 A protestor shall file the protest within seven (7) working days after the protestor knew or should have known, whichever is earlier, of the facts and circumstances upon which the protest is based.

4378.3 The Library shall not consider protests filed after seven (7) working days. The CCO shall issue a written decision on the protest within ten (10) working days after receipt of the protest.

4378.4 Each protest filed with the CCO shall identify the solicitation or contract number and shall include the name, address and phone number of the protestor.

4378.5 The protest shall provide a concise discussion of the grounds of the protest and a specific request for a ruling from the CCO. The protest shall include an original signed by the protestor or its representative.

4378.6 The protestor or representative shall serve the protest on the Library by obtaining written and dated receipt from the Executive Director/Chief Librarian or designee.

4378.7 The Executive Director/Chief Librarian may request additional information in support of the protest.

4378.8 When a protest is timely filed with the Library prior to an award, the Executive Director/Chief Librarian shall withhold the award of the contract, pending a decision by the Library's Contracts Review Committee, unless the President of the Library Board of Trustees overrides the automatic stay.

4378.9 The Executive Director/Chief Librarian shall notify bidders/offerors when the Executive Director/Chief Librarian withholds the award pending disposition of the protest.

4378.10 If applicable, the Executive Director/Chief Librarian may request bidders or offerors, before expiration of the time for acceptance of their bid or offer, to extend the time for acceptance to avoid the need for a resolicitation.

4378.11 The protestor may appeal the written decision of the Executive Director/Chief Librarian within ten (10) working days after receipt of the written decision to the Contracts Review Committee.

4378.12 The Contracts Review Committee shall issue a written decision within thirty (30) calendar days after receipt of the appeal. Any failure by the Contracts Review Committee to issue a written decision within the thirty (30) calendar days shall constitute a denial of the protest and shall authorize the contractor to appeal the protest to the Contract Appeals Board.

4378.13 Upon written request of the protestor, an informal hearing may be held at the sole discretion of the Contracts Review Committee.

4378.14 Each protestor intending to appeal the Contracts Review Committee's decision shall file an appeal to the District of Columbia Contract Appeals Board (CAB). In order for the CAB to consider the appeal, the protestor shall file the appeal within ten (10) working days after the protestor receives a written decision from the Contracts Review Committee.

4378.15 The CAB shall have exclusive jurisdiction to hear and decide protests and appeals from written decisions of the Contracts Review Committee.

4378.16 The contractor shall exhaust all administrative review procedures provided in this Section fully and properly before appealing to the CAB.

4379 RESERVED

4380 DISPUTES AND CLAIMS

4380.1 The Library shall attempt to resolve all disputes arising under or relating to contracts by mutual agreement informal discussions between the contractor and CCO.

4380.2 The CCO is encouraged to use Alternative Dispute Resolution (ADR) procedures whenever possible, however, certain factors may make the use of ADR inappropriate.

4380.3 Any dispute arising under or relating to a contract which is not resolved by informal discussions shall be resolved in accordance with this Section.

4380.4 The CCO shall include a Disputes clause in each solicitation and contract that provides for resolution of disputes in accordance with the provisions of this Section.

4380.5 A routine request for payment that is not in dispute when submitted is not a claim under these Regulations. A contractor's submission or request may be converted to a claim under this Section by the contractor complying with the submission and certification requirements of this Section if it is disputed or is not acted upon in a reasonable time.

4380.6 A contractor's claim shall be submitted in writing to the CCO for a written decision. The CCO or designee shall hold informal discussions with the contractor in an attempt to resolve contract disputes.

4380.7 A claim by the Library against the contractor shall be subject to a written decision by the CCO.

4380.8 For contractor claims exceeding one hundred thousand dollars ($100,000), the contractor shall submit with the claim a certification that:

(a) The claim is made in good faith;

(b) Supporting data are accurate and complete to the best of the contractor's knowledge and belief;

(c) The amount requested accurately reflects the contract adjustment for which the contractor believes the Library is liable; and

(d) The person signing the certification is authorized to act on behalf of the contractor.

4380.9 The contractor's certification shall be executed by the authorized individual of the contractor.

4380.10 When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the CCO shall prepare a written decision within forty-five (45) calendar days of receipt of the contractor's claim. The CCO's written decision shall do the following:

(a) Grant or deny the claim, in whole or in part;

(b) Give reasons for the CCO's written decision;

(c) Inform the contractor of the right to seek further redress by requesting reconsideration from the Contracts Review Committee; and

(d) Specifically state that the written document is the CCO's final decision.

4380.11 A failure of the CCO to issue a decision within forty-five (45) calendar day period shall be deemed a decision by the CCO denying the claim and authorizes the contractor to file an appeal with the Contracts Review Committee.

4380.12 If applicable, the contractor may file an appeal from the CCO's final decision with the Contracts Review Committee, within ten (10) calendar days from receipt of the CCO's written decision.

4380.13 The Contracts Review Committee may conduct an informal hearing and issue a decision for claims of one hundred thousand dollars ($100,000) or less within thirty (30) calendar days of receipt of the contractor's appeal.

4380.14 For claims over one hundred thousand dollars ($100,000), the Contracts Review Committee may conduct an informal hearing and issue a written decision within forty-five (45) calendar days after receiving the contractor's appeal.

4380.15 If a decision will not be issued by the Contracts Review Committed within forty-five (45) calendar days, the CCO shall notify the contractor as to when a decision will be issued.

4380.16 The Contracts Review Committee's decision shall advise the contractor of the right to appeal its decision to the District of Columbia Contract Appeals Board.

4380.17 The CAB shall have exclusive jurisdiction to hear and decide appeals from final decisions of the Contracts Review Committee.

4380.18 The contractor shall exhaust all administrative review procedures provided in this Section fully and properly before appealing to the CAB.

4380.19 The Library shall be responsible for payment of interest on claims decided in the contractor's favor. Interest shall accrue from the date the CCO receives the claim until payment is made. Interest shall accrue at the rate established by the District of Columbia Council pursuant to the D.C. Official Code #23-3302, as amended.

4380.20 If the contractor is unable to support any part of claim and there is evidence of fraud or misrepresentation on the part of the contractor, the CCO shall refer the matter to the District of Columbia Inspector General.

4381 ALTERNATIVE DISPUTE RESOLUTION

4381.1 The CCO may use Alternative Dispute Resolution (ADR) procedures to increase the opportunity for inexpensive and expeditious resolution of issues that are in dispute.

4381.2 The elements of ADR shall include:

(a) Existence of an issue in dispute;

(b) Both parties agree to participate in the ADR process;

(c) Both parties agree to use alternative dispute procedures; and

(d) Participation of high-level officials from both parties who have the authority to involve the issue in controversy.

4381.3 ADR procedures may be used at any time that the CCO has the authority to resolve the issue in dispute.

4381.4 If a claim has been submitted, ADR procedures may be applied to all or a portion of the claim.

4381.5 An agreement to use ADR shall be in writing and shall specify a maximum award that may be used by the arbitrator.

4381.6 The CCO shall develop guidelines for the use of ADR procedures to resolve the dispute prior to utilizing this process. The CCO shall further develop clauses to be inserted in solicitations and contracts when ADR procedures will be utilized.

4382 RESERVED

4383 STANDARD CLAUSES, PROVISIONS AND PROCUREMENT MANUAL

4383.1 The CCO shall develop standard provisions and clauses for all Library solicitations and contracts as required by these Regulations. These standard provisions and clauses define the responsibilities and rights of the parties. The CCO shall develop a procurement manual that provides the details and instructions for implementing these Regulations within 120 after promulgation of these Regulations.

4384 RESERVED

4399 DEFINITIONS

When used in this Chapter, the following words and terms shall have the meanings ascribed:

Best and Final Offer (BAFO) - An offeror's final proposal revision containing its best technical and price/cost offer as revised following negotiation of the offeror's original proposal.

Bidder - A firm or individual who submits a bid in response to an Invitation for Bids or a Request for Quotations.

Bond – A written instrument executed by a bidder or contractor and a second party (the "surety" or "sureties"), to assure fulfillment of the principal's obligations to a third party (the obligee or Library), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, for any loss sustained b the obligee.

Brand Name Description - A description that identifies a product by its brand name and model or part number or other appropriate nomenclature by which the product is offered for sale.

Claim – 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 a contract. A claim arising under a contract is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant; provided that a written demand or written assertion by the contractor seeking the payment of money exceeding one

hundred thousand dollars ($100,000) is not a claim under this Chapter until certified as required by Section 4380.8

Commercial Item - Any item, other than real property, that is used by the general public for other than governmental purposes and that has been sold, leased, or licensed to the general public.

Competitive Process - The process of obtaining offers (including bids and quotes) from two or more sources for products or services so that the desired items may be obtained at the lowest overall cost or best value.

Contracting Officer - A person with the authority to enter into, administer and/or terminate contracts. Contracting Officers sign contracts on behalf of the Library and bear the legal responsibility for contracts. Only those personnel with the requisite background and experience are designated as Library Contracting Officers.

Consent to Subcontract – The CCO's written consent for the prime contractor to enter into a specific subcontract.

Construction – The process of altering, repairing or improving an existing or building a new facility.

Contracts Review Committee – A committee appointed by the President of the Board of Library Trustees for the purpose of considering appeals from decisions made by the Executive Director/Chief Librarian regarding claims, debarment and suspensions, protests and disputes. The Committee shall include five (5) voting members: the President, three other Board members, and the Executive Director/Chief Librarian. Decisions shall be made by a majority vote.

Corporate Surety – A corporation licensed under District insurance laws which, under its charter, has legal power to act as surety for others.

Contracting Officer's Technical Representative (COTR) - The person responsible for the technical aspects of a requirement including monitoring contractor performance.

Debarment – Action taken by the CCO to exclude a contractor from Library contracting and approved subcontracting for a specified period of time.

Delivery Order - An order for supplies placed against established contracts which have been awarded by the Library. The price, terms and conditions have been previously agreed upon in a master contract, leaving only the quantity of supplies and the place of delivery to be determined.

Executed – Transactions that are agreed to and signed by both parties.

Full and Open Competition - The competitive process where all responsible sources are permitted to compete for a contract award.

Individual Surety – A person who is liable for the entire penal amount of the bond.

Informal Hearing – A hearing with no formal rules of evidence, which may be performed by written correspondence.

Insurance – A contract that provides that, for a stipulated consideration, the insurer undertakes to indemnify the insured party against risk of loss, damage, or liability resulting from an unknown or contingent event.

Limited Competition - The process when full and open competition has been justifiably waived but a select number of offers are solicited and evaluated. Limited competition pertains to the negotiation procurement process.

Local, Small, Disadvantaged Business Enterprise - A firm or individual certified by the Department of Small and Local Business Development as a local, small or disadvantaged business enterprise.

Market Research – Collecting and analyzing information about capabilities within the market to satisfy Library requirements.

Mentor-Protégé Program – A program designed to encourage approved mentors to provide various forms of assistance to eligible protégé participants for the purpose of enhancing local, small and disadvantaged business enterprises participating in Library procurement opportunities.

Minor Informality or Irregularity – A minor error or irregularity that is merely a matter of form and not of substance. It also pertains to some immaterial defect in an offer that can be corrected or waived without being prejudicial to other offerors.

Notice of Intent to Award – A written notice to the apparent awardee advising of intent to award the contract contingent upon the execution of required bonds and the formal contract, and the obtaining of all necessary approvals.

Offeror - A firm or individual who submits a proposal in response to a Request for Proposals. The terms "bidder" and "offeror" are sometimes used interchangeably in the procurement process.

Payment Bond - A bond that ensures payment as required by law to all persons supplying labor or material in the performance of work required by the contract.

Performance Bond – A bond that secures performance and fulfillment of the contractor's obligations under the contract.

Penal Sum or Penal Amount – The amount of money specified in a security (or a percentage of the bid price in a bid security) as the maximum payment for which the surety is obligated.

Plans and specifications – Drawings, text, and other descriptions of the physical or functional characteristics required for and preliminary to the contract or construction project.

Protest – A claim by an interested party that the solicitation or the award of the contract or the failure to award the contract was or is contrary to law and that the action or inaction by the Library affects the direct economic interests of the interest party.

Purchase Order - An instrument used to contract for supplies and services for simplified procurements up to $100,000, except as required by **Section 4313**.

Request for Proposals (RFPs) - An instrument used in negotiated procurements to communicate the Library's requirements to prospective offerors and to solicit proposals. The term solicitation is used interchangeably with RFP.

Request for Qualifications - An instrument used to solicit qualifications from interested sources with the intent of pre-qualifying those sources to participate in a future solicitation.

Request for Quotations - An instrument used to procure supplies and services within the simplified procurement threshold up to $100,000.

Requisition - The document used to formally initiate a request for the procurement of supplies or services for simplified or major acquisitions.

Simplified Procurement - A requirement for supplies or services for $100,000 or less.

Sole Source - Supplies or services that are available form only one source. Sole source procurements must be fully documented and justified.

Statement of Work - The section of the contract and solicitation that describes the actual work to be accomplished when Competitive Sealed

Proposals are used.

Subcontract – A contract between a prime contract (or a subcontractor) and a subcontractor to furnish supplies or services for performance of a part of a prime contract or another subcontract, including, but not limited to, purchase orders, and changes and modifications to purchase orders. A subcontract also means a joint venture or teaming arrangement.

Subcontractor – A supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Task Order - An order for services placed against established contracts which have been awarded by the Library or other authorized source of supply. The price, terms and conditions have been previously agreed upon in a master contract, leaving only the quantity of services and the place of performance to be determined.

Technical Evaluation - The process that is used to evaluate technical proposals submitted by offerors in response to a Library solicitation.

Technical Evaluation Panel - A group of individuals who are responsible for evaluating the technical proposals submitted by offerors.

Termination for Convenience – The exercise of the Library's right to partially or wholly terminate contractor performance when it is in the Library's interest.

Termination for Default - Exercise of the Library's right to partially or wholly terminate contractor performance because of contractor's actual or anticipated failure to perform its contractual obligations.

Any person desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the D.C. Register. Comments should be submitted to Grace Perry-Gaiter, DCPL General Counsel, Martin Luther King Jr. Memorial Library, 901 'G' Street, N.W., 4th Floor, Washington, D.C. 20001. Copies of the proposed rulemaking may be obtained by writing to the address stated above.