

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.04) (2007 Repl.), section 4902 (b) of the Department of Health Functions Clarification Act of 2001 effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731(b)) (2008 Repl.), and Mayor's Order 2004-46, dated March 22, 2004, hereby gives notice of his adoption of amendments to Title 16, Chapter 36 of the District of Columbia Municipal Regulations (DCMR). The amendments repeal the current massage establishment infractions provisions in section 3625 and replace it with a new section 3625 schedule of fines for massage establishment and health spa facilities to correspond with the new Massage Establishment and Health Spa Facility Regulations which were published in the *D.C. Register* on October 9, 2009 at 56 DCR 7975.

The Notice of Emergency and Proposed Rulemaking was published on November 13, 2009, in the *D.C. Register* at 56 DCR 46. The Department did not receive any comments on the proposed rulemaking and no changes were made to the proposed rules. These rules will take effect immediately upon publication of this notice in the *D.C. Register*.

Section 3625 of Chapter 36 of Title 16 DCMR (Civil Infractions Schedule of Fines) is amended to read as follows:

**3625 MESSAGE ESTABLISHMENT AND HEALTH SPA FACILITY
 INFRACTIONS**

- 3625.1 Violation of the following provisions shall be a Class 1 infraction:
- (a) 25 DCMR D 1306.2 (1) – Operating a massage establishment or health spa facility without a required license in violation of 25 DCMR D1200.1;
 - (b) 25 DCMR D 1200.1 – Operating a massage establishment or health spa facility with a suspended license;
 - (c) 25 DCMR D 1306.2 (3) – Operating a massage establishment or health spa facility without a valid Certificate of Occupancy;
 - (d) 25 DCMR D 1306.2 (4) – Operating a massage establishment or health spa facility for an illegal clandestine drug laboratory or related activities;
 - (e) 25 DCMR D 1306.2 (5) – Operating a massage establishment or health spa facility for prostitution;

- (f) 25 DCMR D 1306.2 (6) – Failure of licensee to employ a massage therapist who is licensed in the District in violation of 25 DCMR D 200.1;
- (g) 25 DCMR D 1306.2 (7) – Failure of licensee to employ a manager of a massage establishment or health spa facility who is on the premises during all hours of operation in violation of 25 DCMR D 200.2;
- (h) 25 DCMR D 1306.2 (8) – Failure of licensee to employ a massage therapist who is on the premises during all hours of operation in violation of 25 DCMR D 200.3;
- (i) 25 DCMR D 1306.2 (9) – Operating a massage establishment or health spa facility with six (6) or more critical violations that cannot be corrected on site during the course of the inspection;
- (j) 25 DCMR D 1306.2 (10) – Failing to allow access to DOH representatives during the massage establishment or health spa facility’s hours of operation and other reasonable times as determined by DOH in violation of 25 DCMR D 1300.4;
- (k) 25 DCMR D 1306.2 (11) – Hindering, obstructing, or in any way interfering with any inspector or authorized DOH personnel in the performance of his or her duty; or
- (l) 25 DCMR D 1306.3 – Operating in violation of any provision specified in 25 DCMR D 1700, 1701, or 1702.

3635.2 **Reserved**

3625.3 Violation of the following provisions shall be a Class 3 infraction:

- (a) 25 DCMR D 1306.2(2) – Operating a massage establishment or health spa facility with an expired license in violation of 25 DCMR D1200.1;
- (b) 25 DCMR D 1306.1(a) – Operating with extensive fire damage that affects the massage establishment or health spa facility’s ability to comply with these regulations;
- (c) 25 DCMR D 1306.1(b) – Operating with serious flood damage that affects the massage establishment or health spa facility’s ability to comply with these regulations;
- (d) 25 DCMR D 1306.1(c) – Operating with loss of electrical power to critical systems, including but not limited to lighting, heating, cooling, or ventilation controls for a period of two (2) or more hours;

- (e) 25 DCMR D 1306.1(d) – Operating with no hot water, or an unplanned water outage, or the water supply is cut off in its entirety for a period of one (1) or more hours in violation of 25 DCMR D 605, 606, and 702.1;
- (f) 25 DCMR D 1306.1(e) – Operating with inadequate water pressure to any part of the massage establishment or health spa facility;
- (g) 25 DCMR D 1306.1(f) – Operating with insufficient water capacity to any part of the massage establishment or health spa facility;
- (h) 25 DCMR D 1306.1(g) – Use of a water supply that is not approved by the Department;
- (i) 25 DCMR D 1306.1(h) – Operating with a defect or condition that exists in the plumbing system supplying potable water that may result in the contamination of the water;
- (j) 25 DCMR D 1306.1(i) – Operating with a sewage backup or sewage that is not disposed of in an approved and sanitary manner;
- (k) 25 DCMR D 1306.1(j) – Operating with a cross-connection between the potable water and non-potable water distribution systems, including but not limited to landscape irrigation, air conditioning, heating, and/or fire suppression system;
- (l) 25 DCMR D 1306.1(k) – Operating with a back siphonage event;
- (m) 25 DCMR D 1306.1(l) – Operating with toilet and/or handwashing facilities that are not properly installed;
- (n) 25 DCMR D 1306.1(m) – Operating with the presence of toxic or noxious gases, vapors, fumes, mists, or particulates in concentrations immediately dangerous to life or health, or in concentrations sufficient to cause an environmental disease or public nuisance;
- (o) 25 DCMR D 1306.1(n) – Operating with the presence of any unapproved pesticide residues in the interior building areas of a massage establishment or health spa facility, in food storage or service areas contained within the massage establishment or health spa facility, or in the presence of any food in the establishment; or in the presence of excessive restricted-use pesticide in any outdoor area of a massage establishment; or any evidence of the indiscriminate use of a pesticide or herbicide which may be injurious to the health of humans;

- (p) 25 DCMR D 1306.1(o) – Operating with the presence of any disease-causing organism in water exposed to the atmosphere which has caused or is likely to cause an environmental disease in the massage establishment or health spa facility;
- (q) 25 DCMR D 1306.1(p) – Operating with equipment that by condition, design, construction, or use poses an immediate risk of entrapment, fall, puncture, pinch, crush, trip, or other cause of injury;
- (r) 25 DCMR D 1306.1(q) – Operating with environmental surfaces, including but not limited to equipment, furnishings, beds, mattresses, mats, massage tables, pillows, linens, robes, garments, chairs, or other items within any room of a massage establishment or health spa facility that are stained with blood or bodily fluids, or soiled; or infested with vermin; or are in an otherwise unsanitary condition;
- (s) 25 DCMR D 1306.1(r) – Operating with any unmitigated biohazardous event that simultaneously involves more than one (1) customer, massage therapy room or a public area exceeding two hundred square feet (200 sq. ft.);
- (t) 25 DCMR D 1306.1(s) – Operating with a gross insanitary occurrence or condition that may endanger public health including but not limited to an infestation of vermin;
- (u) 25 DCMR D 1306.1(t) – Operating with incorrect hot water temperatures that cannot be corrected during the course of the inspection in violation of 25 DCMR D 702.1;
- (v) 25 DCMR D 1306.1(u) – Operating with the presence and use of any used bedding which has not been sterilized or disinfected in violation of D.C. Official Code § 8-502(4), including the presence or use of any used bedding discarded and then recovered from a dumpster, trash room, alleyway, landfill, dump, junkyard, or hospital; or
- (w) 25 DCMR D 1306.1(v) – Failing to minimize the presence of insects, rodents, or other pests on the premises in violation of 25 DCMR D 821 (a) through (d).

3625.4 Violation of any provision of the District of Columbia Massage Establishment and Health Spa Facility Regulations (25 DCMR, Subtitle D) which is not cited elsewhere in this section shall be a Class 4 infraction.

UNIVERSITY OF THE DISTRICT OF COLUMBIA**CORRECTED NOTICE OF FINAL RULEMAKING**

The Board of Trustees of the University of the District of Columbia pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (“Act”) effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a); 38-1202.06) hereby deletes Chapters 30, 31, 32, 33, 34, and 35 of Title 8, D.C.M.R., in their entirety and adopts a new Chapter 30 of Title 8, D.C.M.R., effective upon publication of this notice in the D.C. Register. The purpose of the adopted rules is to give effect to the UDC Procurement Rules approved by the Council of the District of Columbia. The substance of the rules adopted herein was published in the D.C. Register on December 25, 2009, for a public comment period of not less than thirty (30) days. *See 56 DCR 9602*. No public comment was received by the Board.

The Board of Trustees of the University of the District of Columbia hereby deletes Title 8 D.C.M.R., Chapters 30, 31, 32, 33, 34, and 35, and inserts a new Chapter 30, as follows:

3000 PURPOSE AND APPLICATION

- 3000.1 The University of the District of Columbia Procurement Rules (the “Rules”) issued by the Board of Trustees of the University of the District of Columbia (the “Board”) establish policies relating to the procurement, management, control and disposal of supplies, services and construction at the University System of the District of Columbia.
- 3000.2 The President of the University of the District of Columbia (the “President”) is vested with the authority to administer these Rules.
- 3000.3 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.
- 3000.4 Any contract totaling two hundred fifty thousand dollars (\$250,000) or more shall be approved by the President before it shall be effective.
- 3000.5 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.
- 3000.6 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.

3000.7 Nothing in these Rules shall be construed as limiting the ability of the University to establish procurement procedures and methods involving paperless and/or electronic procurement so long as such procurement is conducted in accordance with these Rules.

3001 AUTHORITY AND RESPONSIBILITY OF THE OFFICE OF THE CHIEF CONTRACTING OFFICER

3001.1 The President shall exercise the procurement authority of the Board in accordance with these rules. The President shall appoint a Chief Contracting Officer (“CCO”).

3001.2 The CCO, under the supervision of the President or the President’s designee, shall serve as the University’s chief procurement officer and shall be responsible for the University’s overall procurement program, including the formation of procedures and guidelines for implementing these Rules.

3001.3 Unless otherwise provided herein the CCO, with the approval of the President or the President’s designee, 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 who become separated from the University.

3001.4 Any University official designated as a contracting officer shall not be delegated contracting authority greater than that of the CCO.

3001.5 Only the CCO and other University contracting officers are authorized to enter into contracts, terminate contracts or contractually bind the University for the procurement of supplies, services, or construction. A contracting officer may bind the University only to the extent of their written delegated authority by the CCO under Subsection 3001.3. Any contract or procurement for supplies, services, or construction entered into or conducted by an individual other than the CCO or other University contracting officers shall be considered an unauthorized procurement.

3001.6 Unauthorized Procurements.

(a) A procurement conducted by an individual without authority to enter into contracts or contractually bind the University for the procurement of supplies, services, or construction may be ratified at the sole discretion of

the University if (a) such ratification is in the best interest of the University; and (b) such ratification can be accomplished as a procurement conducted in accordance with these rules. The President shall develop procedures for the ratification of unauthorized procurements.

- (b) An unauthorized procurement which is ratified by the University shall be treated as though it was entered into by the University.
- (c) Unless it is ratified by the University, the person who entered into the unauthorized procurement may be personally liable for any liabilities resulting from the unauthorized procurement. Regardless of whether an unauthorized procurement is ratified by the University, an employee who enters into an unauthorized procurement shall be subject to appropriate disciplinary action by the University.

3001.7 **Conflicts of Interest.** The procurement operations of the University shall be conducted with the sole aim of providing the best value to the University in accordance with these rules. No person having contracting authority for the University or otherwise involved in any procurement shall participate in the procurement if the person is affiliated with, has financial interest in, or is a parent, child, spouse, or sibling of a person who is affiliated with or has a financial interest in, any bidder or prospective bidder in response to any University solicitation, including both formal solicitations and procurements conducted under simplified procurement procedures.

3002 PUBLICIZING CONTRACT ACTIONS

3002.1 The CCO shall issue a formal written solicitation for all proposed contracts with an estimated price over one hundred thousand dollars (\$100,000).

3002.2 The CCO shall publicize the formal written solicitation referred to in Section 3002.1 at least five (5) days before issuance of a solicitation, unless the CCO determines that good cause exists to use a shorter period. Publication shall be in a manner calculated to reach a significant number of prospective bidders, and may include the posting of a notices in newspapers, trade publications, and websites including the University's web site and others.

3002.3 The closing date for receipt of initial proposals shall not be less than ten (10) calendar days after publicizing the initial solicitation, unless the CCO determines that the good cause exists to use a shorter period.

3002.4 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;
- (c) simplified procurements; and
- (d) contracts existing as of the effective date of these Rules.

3003 SOURCES OF SUPPLES AND SERVICES

3003.1 The University shall satisfy requirements for supplies, services and construction in accordance with these Rules from the source or sources which provide the best value to the University, including but not limited to the following sources:

- (a) Group Purchasing Organizations;
- (b) U.S. General Services Administration (GSA) Federal Supply Schedules;
- (c) Existing District of Columbia or Federal contracts;
- (d) District of Columbia supply schedules;
- (e) Federal Prison Industries (UNICOR);
- (f) D.C. Department of Corrections, Industries Division, or other District of Columbia agencies;
- (g) Intergovernmental Agreements;
- (h) Cooperative Agreements; or
- (i) Full and Open Competition

3003.2 The University shall be exempt from obtaining the of approval of the Office of the Chief Technology Officer for the procurement of technology items, as provided in D.C. Official Code § 1-1403 (2001 ed.).

3004 INDEPENDENT COST ESTIMATE

3004.1 The University shall develop an independent cost estimate for all requirements for supplies, services and construction totaling in excess of one hundred thousand dollars (\$100,000).

3004.2 The independent cost estimate shall be realistic based on the requirement and not on the budget and shall not be disclosed to anyone outside the University.

3005 ITEMS EXEMPT FROM COMPETITIVE PROCUREMENT

- 3005.1 The services, supplies, and materials enumerated in this section shall be exempt from the competitive procurement requirements imposed by this Chapter.
- 3005.2 The University may procure the following goods and services without subjecting such procurements to competition:
- (a) Abstracts of titles for real property and title searches;
 - (b) Artistic services or works of art;
 - (c) Contracts for commodities or contractual services if Federal or District law prescribes with whom the University must contract or if the rate of payment is established during the appropriation process;
 - (d) Legal services, litigation support services, or negotiation services including, but not limited to, attorney's fees and costs, copying of documents, court reporters, experts, mediators, preparation of exhibits or demonstrative evidence, process servers, scanning and storing of documents;
 - (e) Brokers and other agents retained by the University to negotiate for and obtain goods, services, including but not limited to insurance policies, and real estate for the University at competitive prices;
 - (f) Copyrighted or patented materials, including, but not limited to, technical pamphlets, published books, maps, testing or instructional materials;
 - (g) Dues and memberships in trade or professional organizations;
 - (h) Entertainers;
 - (i) Fees and costs of job-related seminars and training;
 - (j) Items purchased for resale to the general public;
 - (k) Maintenance and support of existing software and technology;
 - (l) Metro farecards and passes;
 - (m) Personal property or services provided by another public entity, agency, or authority;
 - (n) Postage;
 - (o) Purchases of advertising in all media;

- (p) Recreational program instructors;
- (q) Registration fees for trade and career fairs;
- (r) Special event venues and related services as dictated by the establishment;
- (s) Subscriptions for periodicals and newspapers;
- (t) Ticket purchases for special events, tourist attractions and amusement parks;
- (u) Translation services, including American Sign Language and foreign languages;
- (v) Professional development training which supports administrator, faculty, and student achievement;
- (w) Educational assessments and special education testing equipment and materials; and
- (x) Utilities, including but not limited to electric, gas, propane, oil, and water services.

3006 SIMPLIFIED PROCUREMENT PROCEDURES

- 3006.1 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).
- 3006.2 For each procurement in an amount over ten thousand dollars (\$10,000) 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 University considering price and other factors (including the administrative cost of the purchase).
- 3006.3 The CCO may solicit at least three (3) oral price quotations for procurements over ten thousand dollars (\$10,000) up to twenty-five thousand dollars (\$25,000).
- 3006.4 The CCO shall solicit at least three (3) written price quotations for procurements over twenty-five thousand dollars (\$25,000) up to one hundred thousand dollars (\$100,000).

- 3006.5 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.
- 3006.6 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.
- 3006.7 The CCO shall use the simplified procurement procedure that is most suitable, economical and efficient based on the circumstances of each procurement.
- 3006.8 The CCO shall establish and maintain a simplified procurement procedure source list to include sources for micro-purchases.
- 3006.9 The CCO shall retain records supporting all oral and written quotations for three (3) years.

3007 SIMPLIFIED PROCUREMENT PROCEDURES: MICRO PURCHASES

- 3007.1 A procurement for ten thousand dollars (\$10,000) 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.
- 3007.2 Certified local, small, or disadvantaged businesses shall be considered for micro-purchases to the maximum extent practicable.
- 3007.3 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.
- 3007.4 Micro-purchase requirements may be processed and paid for utilizing the University's purchase card upon implementation of the University's purchase card program.

3008 SIMPLIFIED PROCUREMENT PROCEDURES: GROUP PURCHASING ORGANIZATIONS

- 3008.1 When beneficial to the University, the University shall participate in group purchasing organizations.
- 3008.2 A procurement in the amount of one hundred thousand dollars (\$100,000) or less may be made without obtaining competition if the procurement is made from a group purchasing organization recognized under Section 3008.3. The pricing of supplies and services provided by a group purchasing organization recognized under Section 3008.3 shall be presumed to be fair and reasonable.

3008.3 The University shall recognize group purchasing organizations under this section if the CCO determines that the organization offers prices which are fair and reasonable under Section 3009.

3008.4 The CCO shall review each GPO recognized by the University under Section 3008.3 annually to ensure that prices offered by that GPO in each category of goods or services in which the University procures from that GPO are and continue to be fair and reasonable. Upon satisfactory completion of this annual review, the fairness and reasonableness of GPO prices shall be presumed and no determination of fairness and reasonableness need be made for every transaction with the applicable GPO.

3009 DETERMINATION OF PRICE REASONABLENESS AND AWARD

3009.1 The CCO shall determine that the price to be paid to the successful bidder is fair and reasonable for all simplified procurement transactions, not including group purchasing transactions.

3009.2 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:

- (b) Historical prices;
- (c) Current price lists;
- (d) Advertisements;
- (e) Catalog prices;
- (f) Comparison prices with similar items;
- (g) Best value analysis;
- (h) Market surveys;
- (i) The contracting officer's knowledge of the item being procured; or
- (j) Other reasonable comparisons.

3010 BLANKET PURCHASE AGREEMENTS

3010.1 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.

- 3010.2 A BPA shall not exceed the simplified procurement limitation of one hundred thousand dollars (\$100,000).
- 3010.3 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.
- 3010.4 A BPA shall not be used for any supply, service, books or equipment for which a requirements type contract has been issued by the University.
- 3010.5 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.
- 3010.6 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.

3011 PURCHASE ORDERS

- 3011.1 Purchase orders shall be on a form approved by the CCO.
- 3011.2 Except as otherwise provided, the CCO shall issue each purchase order on a firm-fixed-price basis.
- 3011.3 Each purchase order shall include any trade and prompt payment discounts that are offered.
- 3011.4 Each purchase order shall contain a definite calendar date for delivery of supplies or performance of services.
- 3011.5 If the CCO wants to secure a binding contract between the offeror and the University before delivery or performance, the CCO shall require the contractor's written acceptance of the purchase order.

3012 UNPRICED PURCHASE ORDERS

- 3012.1 The CCO shall issue an unpriced purchase order only under the following circumstances:
- (a) When the transaction will not exceed the University'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.

3012.2 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 fixed price is provided.

3013 MODIFICATION OF PURCHASE ODERS

3013.1 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.

3013.2 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.

3014 TERMINATION AND CANCELLATION OF PURCHASE ORDERS

3014.1 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.

3014.2 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.

3014.3 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.

3014.4 The CCO shall terminate or cancel purchase orders in writing by formal letter, electronic mail or by written modification.

3015 SPECIFICATIONS, STATEMENTS OF WORK, PURCHASE DESCRIPTIONS

3015.1 The CCO shall provide specifications, statements of work or purchase descriptions in a manner designed to promote competition to the maximum extent possible.

3015.2 Specifications, statements of work or purchase descriptions shall reflect the minimum needs of the University. 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.

3015.3 Performance specifications or statements of work shall be the preferred description for University procurements to encourage offerors to propose innovative solutions and approaches.

3015.4 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.

3015.5 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 University's requirements and market research of other products or features do not meet or cannot be modified to meet the University's needs.

3016 COMPETITIVE SEALED BIDDING

3016.1 The CCO has the discretion to determine which method of procurement to utilize in the purchase of supplies, services or construction. Competitive sealed bidding shall be the University'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 one sealed bid.

- 3016.2 Each procurement by competitive sealed bidding shall be initiated by the issuance of an Invitation for Bid (IFB), which shall be publicized in accordance with Section 3002, and which shall include (i) a specification, statement of work, and/or purchase description, as appropriate, (ii) the time of delivery of the goods or services required by the University, and (iii) the deadline, place, and manner for submitting bids.
- 3016.3 After the issuance of an IFB, the IFB shall not change unless the CCO issues a written amendment to all prospective bidders to which the IFB was sent. The CCO shall distribute each amendment to all prospective bidders within a reasonable time to allow consideration of the information before submitting their offers. If a change to an IFB is so significant that it warrants complete revision, the CCO shall cancel the original IFB and issue a new IFB.
- 3016.4 Prior to the contract award, the CCO may cancel the IFB if the CCO determines that cancellation is in the best interest of the University. If an IFB is canceled, the CCO shall inform all parties which received the solicitation as soon as it practicable.
- 3016.5 To be considered for award, a bid shall be required to comply with all the requirements of the IFB.
- 3016.6 The CCO shall evaluate bids without discussions with bidders when the competitive sealed bidding method of procurement is utilized. Prior to award, the CCO shall have no discussions with bidders except at a conference of which all prospective bidders are informed.
- 3016.7 The CCO shall prescribe the manner in which bids shall be submitted..
- 3016.8 Bids shall be received in the office designated in the solicitation not later than the date and time set for receipt of bids. Bids not received by the set time shall be considered late.
- 3016.9 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.
- 3016.10 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.

- 3016.11 The CCO shall examine each bid for mistakes after the bid opening.
- 3016.12 The CCO shall have the discretion to waive minor informalities or minor irregularities in bids if waiver is in the best interest of the University. If the CCO has reason to believe that a mistake has been made relating to the terms of the bid, the CCO shall request the bidder to verify the bid and the suspected mistake.
- 3016.13 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 CCO notifies a bidder of an alleged mistake, the bidder shall have until the deadline set by the CCO to submit a written notice and correction of the alleged mistake;
 - (b) If the bidder discovers a mistake in the bidder's bid or proposal, the bidder may submit a corrected bid or proposal no later than the date and time specified in the solicitation for the receipt of bids;
 - (c) 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;
 - (d) Correction of an apparent clerical mistake may be permitted before award; and
 - (e) 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.
- 3016.14 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.
- 3016.15 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 by the CCO:

- (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 most acceptable bid under the original IFB;
- (b) That no change shall be made in the contract as awarded: or
- (c) To terminate the contract.

3016.16 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.

3016.17 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 University, considering only price or price-related factors specified in the IFB.

3016.18 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.

3017 COMPETITIVE SEALED PROPOSALS

3017.1 If the CCO determines competitive sealed bidding is not appropriate, procurements shall be conducted utilizing the competitive sealed proposal (CSP) method.

3017.2 Each procurement by competitive sealed proposals shall be initiated by the issuance of a Request for Proposals (RFP), which shall be publicized in accordance with Section 3002, and which shall include (i) a specification, statement of work, and/or purchase description, as appropriate, (ii) the evaluation factors specified pursuant to Section 3017.8, (iii) the time of delivery of the goods or services required by the University, and (iv) the deadline, place, and manner for submitting proposals.

3017.3 After the issuance of an RFP, the RFP shall not change unless the CCO issues a written amendment to all prospective bidders to which the RFP was sent. The CCO shall distribute each amendment to all prospective bidders within a reasonable time to allow consideration of the information before submitting their offers. If a change to an RFP is so significant that it warrants complete revision, the CCO shall cancel the original RFP and issue a new RFP.

3017.4 Prior to the contract award, the CCO may cancel the RFP if the CCO determines that cancellation is in the best interest of the University. If an RFP is canceled, the CCO shall inform all parties which received the solicitation as soon as it practicable.

- 3017.5 To be considered for award, a proposal shall be required to comply with all the requirements of the RFP.
- 3017.6 The CCO shall evaluate proposals without discussions with bidders when the competitive sealed proposal method of procurement is utilized. Prior to award, the CCO shall have no discussions with bidders except at a conference of which all prospective bidders are informed.
- 3017.7 Proposals shall be received in the office designated in the solicitation not later than the date and time set for receipt of proposals. Bids not received by the set time shall be considered late.
- 3017.8 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 University reserves the right to evaluate initial proposals and make award without discussions.
- 3017.9 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;
 - (a) Resolve any suspected mistakes without disclosing information concerning other proposals received or the evaluation process; and
 - (b) Provide offerors a reasonable opportunity to submit revisions to their proposal that may result from the discussions.
- 3017.10 Proposal evaluations shall be based on the evaluation factors outlined in the solicitation. Numerical, adjectival or other rating methods may be used to indicate the relative weight of each factor. Factors not specified in the solicitation shall not be considered or utilized.
- 3017.11 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 3016.12 shall be used to correct any minor informalities or irregularities.
- 3017.12 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.

- 3017.13 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 University to reopen negotiations.
- 3017.14 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 University.
- 3017.15 The CCO shall award the contract to the offeror whose proposals offers the best value to the University.

3018 TECHNICAL EVALUATION OF PROPOSALS

- 3018.1 When the CCO determines that a proposals received in response to a solicitation require evaluation on technical aspects of the proposal, the CCO shall appoint a Technical Evaluation Panel (TEP) who shall be responsible for making a recommendation to the CCO with respect to the contract award.
- 3018.2 In accordance with guidelines established by the CCO, the TEP shall evaluate each proposal on the basis of the factors contained in the solicitation, and shall provide a recommendation as to which proposal offers the best value to the University based on (i) each proposal's responsiveness to each factor, and (ii) the responsibility of each offeror, as defined in Section 3057.
- 3018.3 A TEP convened under Section 3018.1 shall consist of not less than three (3) members appointed by the CCO. The CCO shall appoint University employees with sufficient relevant technical knowledge to evaluate the proposals. Non-university employees may serve on a TEP provided that no (i) University employee with the requisite knowledge is available to serve in the place of the non-University employee, and (ii) the non-University employee is not affiliated with any of the offerors submitting responses to the applicable solicitation or is not a related person, as defined in Section 3001.7, to a person who is affiliated.
- 3018.4 For solicitations with an anticipated cost exceeding two hundred fifty thousand dollars (\$250,000), the determinations and appointments required by this section shall be made by the President or the President's designee.

3019 SOLE SOURCE PROCUREMENT

- 3019.1 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 University. The CCO shall take action, whenever possible, to avoid the need to continue to procure the same supply, service or construction without competition.
- 3019.2 The CCO shall determine the format used to request a proposal for a sole source procurement.

- 3019.3 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 3020 exists.
- 3019.4 The CCO shall prepare a written determination and findings (D&F) that justifies the use of each sole source procurement. The President or the President's designee shall approve all D&Fs in excess of one hundred thousand (\$100,000) before issuance of a solicitation.
- 3019.5 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) (i) 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; or (ii) a discussion of the proposed contractor's unique qualifications that qualify the proposed contractor for a sole source award;
 - (d) A statement that the anticipated costs to the University will be fair and reasonable; and
 - (e) Any other relevant facts to support the use of a sole source procurement.

3020 EMERGENCY PROCUREMENTS

- 3020.1 The CCO may award a contract on an emergency basis if the requirement is essential to handle an existing or imminent emergency situation, including, but not limited to, any situation or condition which would threaten the health, safety, or welfare of the University community or severely hamper the ability of the University to accomplish its educational mission.
- 3020.2 Emergency procurement procedures shall not be used for contracts exceeding ninety (90) days, unless such a term is essential to respond to the emergency situation.
- 3020.3 The CCO shall not be required to publicize emergency solicitations or contract awards for emergency requirements.
- 3020.4 The CCO shall take steps to maximize competition by soliciting bids or proposals from as many potential offerors as possible.

- 3020.5 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 University will be fair and reasonable in light of the emergency conditions; and
 - (f) Any other relevant facts that support the emergency justification.
- 3020.6 The CCO shall determine the appropriate format to solicit bids or proposals on an emergency basis.

3021 TYPES OF CONTRACTS

- 3021.1 The CCO shall utilize the type or types of contract described in this section for each method of procurement, unless a different type of contract is in the best interest of the University.
- 3021.2 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 , unless a different type of contract is in the best interest of the University.
- 3021.3 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 University, unless a different type of contract is in the best interest of the University.
- 3021.4 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.

3021.5 The CCO shall ensure that all contracts entered into by the University include all applicable clauses to protect the University's interests.

3022 FIXED-PRICE CONTRACTS

3022.1 Fixed-price contracts may provide for a firm price or, in appropriate circumstances, an adjustable price.

3022.2 The CCO shall use a fixed-price contract with economic price adjustment when it is necessary to protect the University and the contractor when fluctuations in labor and material costs may occur during contractor performance for reasons beyond the control of the contractor.

3022.3 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. All fixed price contracts with economic price adjustments shall include a ceiling price.

3022.4 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 contractor 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.

3023 OTHER TYPES OF CONTRACTS

3023.1 When the CCO determines that a contract other than a fixed price or fixed price with economic adjustment should be used, the CCO shall justify such use in writing. When any other type of contract is used, the CCO shall take steps to minimize cost overruns. All contracts shall include a specified price ceiling that the contractor shall not exceed.

3023.2 Nothing in this section shall be construed as limiting the CCO's discretion to choose any form of contract that is in the best interest of the University, including contracts combining elements of one or more of the contract types listed herein, provided that all contracts entered into by the University shall include a specified price ceiling that the contractor shall not exceed.

3023.3 **Cost Reimbursement Contracts**

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

(b) Cost reimbursement contracts shall only be used when (i) the contractor's accounting system is adequate for determining costs applicable to the contract, and (ii) there is reasonable assurance that the University will be able to apply effective monitoring and cost controls.

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

3023.4 **Time and Materials Contracts**

(a) The CCO shall prefer the use of a time and materials contract when it is not possible to estimate accurately the extent or duration of the work or the anticipated costs with any degree of confidence. The CCO shall ensure supervision of contractor performance when a time and materials contract is used.

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

3023.5 **Labor Hours Contracts.** The labor hours contract may be used in the same manner as a Time and Materials Contract when no materials are required.

3023.6 **Letter Contracts**

(a) The CCO shall use a letter contract when contract work must begin immediately and awarding a definitive contract is not immediately possible. The CCO shall ensure that each letter contract is as definitive and complete as possible under the circumstances.

(b) 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. The liability of the University shall not exceed fifty percent (50%) of the estimated cost for the term of the definitive contract, unless approved in advance by the CCO.

3023.7 **Multiple Award Contracts.** The CCO may use a multiple award contract when more than one contractor is to be awarded a contract for specific supplies or services.

3024 LOCAL, SMALL, DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

3024.1 The CCO shall include in the University's annual solicitations and contracts for procurements 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. This section shall not apply to any procurement for which there is no LSDBE firm which can provide a competitive-value service taking into account a twelve percent (12%) price differential.

3024.2 Firms and individuals shall be certified by the D.C. Department of Small and Local Business Development in order to participate in the University's LSDBE set-aside program.

3024.3 The CCO may set-aside certain University procurement opportunities for certified LSDBE firms.

3024.4 The CCO shall establish procedures for the utilization of LSDBE firms in University procurement opportunities in the University procurement manual.

3024.5 The CCO may 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 University procurement opportunities. This program is designed to 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 University contracts.

3025 RESERVED.

3026 ESTIMATE OF CONSTRUCTION COSTS

3026.1 An estimate of construction costs shall be prepared by the University's program staff for each proposed contract and for each proposed contract modification estimated to exceed twenty-five thousand dollars (\$25,000).

3026.2 The estimate shall be prepared in as much detail as though the University was competing for award. This may or may not include consultant input. Consultants assisting in costs estimates shall be considered ineligible to bid on the scope for which assistance was provided.

3026.3 Access to information concerning the University estimate shall be limited to University personnel whose official duties require knowledge of the estimate.

3026.4 The amount of the University estimate shall not be disclosed, except as otherwise permitted by these regulations.

3026.5 Contracts for construction shall not be awarded at cost to the University.

3027 NOTICE OF THE SCOPE OF CONSTRUCTION PROJECTS

3027.1 All pre-solicitation notices and each solicitation shall state the approximate scope of the construction requirement in terms of physical characteristics and estimated price.

3027.2 In no event shall the scope of a project disclose the University's estimate of costs. Instead, the CCO shall describe the estimated project in terms of price ranges that do not reveal the University's estimate.

3028 LIQUIDATED DAMAGES IN CONSTRUCTION CONTRACTS

3028.1 The CCO shall determine the need for liquidated damages in construction contracts.

3028.2 In construction contracts estimated to exceed twenty-five thousand dollars (\$25,000), the CCO may include a liquidated damages clause.

3028.3 If liquidated damages are used in a contract, the CCO shall include an appropriate, reasonable rate or rates of liquidated damages.

3028.4 The provisions of this section shall apply to all liquidated damage clauses included in construction contracts.

3028.5 When liquidated damages clauses are required or used, if different completion periods for separate parts or phases of the work are specified in the contract, the CCO shall include a provision, providing for liquidated damages for delay or a failure to perform each separate part or phase of the work compensating the University for damages incurred.

3028.6 The CCO shall base the minimum amount of liquidated damages on the estimated cost of general project conditions for each day of delay in completion. These conditions shall include but are not limited to the estimated costs for project management services, supervision, inspections, construction administration, and increased user relocation costs.

3028.7 Whenever the University anticipates other specific losses related to the failure of the contractor to complete the work on time, the CCO shall also include in the contract stipulations for incorporating these additional costs as they are identified.

3029 PRICING CONSTRUCTION CONTRACTS

3029.1 The CCO shall prefer the use of firm-fixed-price contracts to procure construction, unless the CCO determines that a different type of contract is in the best interest of the Univeristy.

3029.2 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.

3029.3 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.

3030 CONSTRUCTION CONTRACTS WITH ARCHITECT-ENGINEER FIRMS

3030.1 Except as otherwise provided in this chapter, 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 President or the President's designee.

3030.2 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 President or President's designee.

3031 DESIGN-BUILD PROCEDURES

3031.1 If the CCO uses a design-build process, two-phase design-build selection procedures shall be utilized.

- 3031.2 The CCO shall only use the two-phase design-build selection procedures when three or more offers are anticipated.
- 3031.3 The CCO may use one solicitation covering both phases, or the CCO may issue two solicitations in sequence.
- 3031.4 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.
- 3031.5 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 University's interest and is consistent with the purposes and objectives of two-phase design-build contracting.
- 3031.6 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 3031.4, and request that only those offerors submit phase-two proposals.

3032 INSPECTON AND SITE EXAMINATION

- 3032.1 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 University 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.
- 3032.2 The solicitation shall notify bidders of the time and place for the site inspection and date of examination.
- 3032.3 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.
- 3032.4 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.

3033 COMPETITIVE SEALED BIDS FOR CONSTRUCTION

- 3033.1 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.
- 3033.2 The CCO shall publicize the IFB in accordance with Section 3002.

- 3033.3 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.
- 3033.4 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 by the University 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.
- 3033.5 The CCO shall send IFB's to prospective bidders upon request.

3034 NOTICE OF INTENT TO AWARD

- 3034.1 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 University 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 University 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 University official.

3035 PRE-CONSTRUCTION CONFERENCE

3035.1 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.

3036 EVALUATION OF CONTRACTOR PERFORMANCE

3036.1 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 University.

3036.2 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.

3036.3 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.

3036.4 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.

3037 ARCHITECT-ENGINEER SERVICES

- 3037.1 The CCO shall publicize all requirements for architect-engineer services in accordance with Section 3002.
- 3037.2 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.
- 3037.3 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.
- 3037.4 Compliance with the provisions of Sections 3037 through 3046 of these regulations shall constitute the procedure for the procurement of architect-engineer services.
- 3037.5 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.
- 3037.6 When design competition is used by the University, the CCO may evaluate firms on the basis of their conceptual design of the project.
- 3037.7 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.

3038 ARCHITECT-ENGINEER QUALIFICATIONS

- 3038.1 To be considered for an architect-engineer contract, a firm shall file an appropriate architect-engineer qualification data form with the CCO.

- 3038.2 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.
- 3038.3 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.

3039 ARCHITECT-ENGINEER SELECTION

- 3039.1 The CCO, with the advice of the appropriate technical and staff representatives, will make the final selection.
- 3039.2 The final selection shall be a listing, in order of preference, of the firms considered most highly qualified to perform the work.
- 3039.3 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.

3040 COST ESTIMATE FOR ARCHITECT-ENGINEER CONTRACTS

- 3040.1 An independent University estimate of the cost of architect-engineer services shall be prepared by or under the direction of the CCO before commencing

negotiations for each proposed contract or contract modification estimated to exceed one hundred thousand dollars (\$100,000).

- 3040.2 Access to information concerning the University estimate shall be limited to University personnel whose official duties require knowledge of the estimate. The overall amount of the University's estimate shall not be disclosed except as permitted by this section.

3041 NEGOTIATIONS OF ARCHITECT-ENGINEER CONTRACTS

- 3041.1 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 University.

- 3041.2 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 3030.1

- 3041.3 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.

- 3041.4 The CCO shall limit the firm's subcontracting to firms agreed upon during negotiations or through a formal contract modification.

- 3041.5 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.

3042 RELEASE OF INFORMATION

- 3042.1 After final selection has taken place under the CCO may release information identifying the highest rated architect-engineer firm with which a contract will be negotiated.

- 3042.2 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.

3043 LIABILITY FOR DESIGN ERRORS OR DEFICIENCIES

- 3043.1 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 University for costs resulting from errors or deficiencies in designs furnished under its contract.

- 3043.2 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.
- 3043.3 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 University, the CCO shall initiate procedures to collect the amount due.
- 3043.4 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.

3044 DESIGN WITHIN FUNDING LIMITATION

- 3044.1 The University 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.
- 3044.2 In negotiating the funding limitation amount, the CCO shall make available to the firm the information upon which the University has based its initial construction estimate and subsequently acquired information that may affect the construction costs.
- 3044.3 If the price of construction proposed in response to a University 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.
- 3044.4 Any redesign services required by Section 3045 shall be performed at no increase in price or extension to the project schedule identified by the architect-engineer (A/E) contract, unless the cost of proposed construction is based on circumstances beyond the A/E firm's reasonable control.
- 3044.5 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.

3045 REDESIGN RESPONSIBILITY FOR DESIGN ERRORS OR DEFICIENCIES

3045.1 The architect-engineer firm shall make necessary corrections at no cost to the University if the designs, drawings, specifications, or other items or services furnished by the firm contain any errors, deficiencies, or inadequacies.

3045.2 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.

3046 ARCHITECT-ENGINEER PERFORMANCE EVALUATION

3046.1 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).

3046.2 The CCO shall prepare a performance report after final acceptance of the work or after contract termination.

3046.3 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.

3046.4 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.

3046.5 The CCO shall review each performance report for accuracy and reasonableness.

3046.6 The CCO shall include the performance evaluation report in the contract file for at least three (3) years after the date of the report.

3047 CONTRACTING FOR SERVICES

3047.1 The University may obtain services from professional, non-professional, expert and consulting personnel on an individual or organizational basis when such services would be in the best interest of the University's.

3047.2 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 acquired as simplified procurements.

3047.3 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;
- (e) Interagency governmental or cooperative agreements where the work is being performed by District, Federal or State employees or employees through cooperative agreements.
- (f) 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.

3047.4 The University shall ensure good management practices and contract administration techniques are used regardless of the contracting method.

3047.5 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;
- (c) Service contracts are awarded and administered in a manner that will provide the University its materials, 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.

3048 BONDS, INSURANCE AND OTHE FINANCIAL PROTECTIONS

3048.1 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;

3048.2 The CCO shall consider the following factors in non-construction contracts:

- (a) Whether University 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 University (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 University.

3048.3 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 University.

3048.4 When a security is required by the University, the CCO may accept any of the following types of security:

- (a) A bond provided by a surety in accordance with Section 3049;
- (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 University which pledge the full faith and credit of the United States;
- (d) Any other security determined by the CCO to be adequate.

3048.5 The CCO shall determine a contractor's responsibility even though security has been or can be obtained.

3049 BID BONDS, PROPOSAL BONDS, AND OTHER SECURITY

3049.1 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.

3049.2 When the University's independent cost estimate for a construction contract is over one hundred thousand dollars (\$100,000), the CCO shall require a Security

Bond, unless the CCO determines that good cause exists to allow bidders to proceed without a Security Bond.

3049.3 The CCO may require a Security Bond when the University's independent cost estimate for a construction project is less than one hundred thousand dollars (\$100,000).

3049.4 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.

3049.5 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.

3050 NONCOMPLIANCE WITH BID OR PROPOSAL SECURITY REQUIREMENTS

3050.1 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 the bid or proposal would be in the best interests of the University.

3050.2 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.

3050.3 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.

3050.4 If the Security Bond is received late, and the receipt is waived in accordance with Subsection 3050.1 of this section, the bid or proposal may be accepted.

3051 PERFORMANCE AND PAYMENT SECURITY

- 3051.1 The CCO shall require a contractor to furnish performance and payment bonds or other security on any construction contract when the University'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.
- 3051.2 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 University's interests.
- 3051.3 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 University. The bidder or offeror shall furnish the security to the CCO as prescribed by this section.
- 3051.4 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 University's interests.
- 3051.5 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.
- 3051.6 The payment security shall be in an amount of not less than fifty percent (50%) of the total amount of the contract price.
- 3051.7 When a contract price is increased, the University 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.
- 3051.8 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.

3052 INSURANCE

- 3052.1 When appropriate, the CCO shall require each contractor to obtain insurance for the risks to which the contractor and the University are exposed, except when the contract specifically relieves the contractor of liability for loss of damage to University property, or when the CCO determines that good cause exists to proceed without insurance.
- 3052.2 The CCO shall have the right to disapprove the purchase of any insurance coverage not in the best interests of the University.
- 3052.3 The CCO shall require insurance coverage from each contractor when the contractor shall have possession of or control of University property or when conditions of the contract make it necessary for the protection of the University.
- 3052.4 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 University in the manner required by the CCO.
- 3052.5 When the CCO requires or approves insurance to cover loss of or damage to University 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 University and the District of Columbia government as additional insureds.

3053 OPTIONS

- 3053.1 The CCO may include options in solicitations and contracts when it is in the University's interests.
- 3053.2 The CCO shall ensure that the contracts with options specify the following, unless not appropriate to the needs of the University:
- (a) The contract shall specify limits on the purchase of additional materials, 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.

3053.3 University 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.

3053.4 The CCO shall express options for increased quantities of materials, supplies, or services in terms of the following:

(a) Percentage of specific line items; or

(b) Increase in specific line items.

3054 RESERVED

3055 SUBCONTRACTING

3055.1 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 University.

3055.2 The requirement for consent to subcontract shall also apply to teaming arrangements and joint ventures.

3055.3 The CCO shall require consent to subcontract in those instances where approval of subcontracts is required by this chapter or this section.

3055.4 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.

3055.5 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.

3055.6 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 University's interests can be adequately protected without requiring consent; and

(d) Any other relevant factors.

3055.7 The CCO shall ensure that any requirements for consent to subcontract are included in the solicitation for the prime contract.

3055.8 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.

3055.9 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.

3055.10 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 University; or
- (e) When the subcontract violates any statute or the provisions of these Rules.

3055.11 Prospective prime contractors shall be responsible for determining the responsibility of their subcontractors to include teaming arrangements and joint ventures.

3055.12 Determinations of prospective subcontractor responsibility may affect the University's determination of the prospective prime contractor's responsibility.

3055.13 The CCO may require a prospective prime contractor to provide written evidence of a prospective subcontractor's responsibility.

3056 USE OF DISCRETIONARY FUNDING

3056.1 Monetary gifts, endowments, charitable donations and bequests made to the University from individual or corporate sources shall constitute discretionary funding and shall not be subject to the requirements of these regulations.

3056.2 The President or President's designee shall develop a program for the use of discretionary funding that incorporates sound business decisions in the best interests of the University and shall be responsible for administering the University's discretionary funding program.

3057 CONTRACTOR RESPONSIBILITY

3057.1 The CCO shall ensure that purchases are made from and contracts awarded to responsible contractors only.

3057.2 To be determined responsible, a contractor must, to the satisfaction of the CCO:

- (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.

3057.3 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.

3057.4 The CCO's signing of a contract shall constitute a determination that a prospective contractor is responsible with respect to that contract.

3057.5 The CCO shall place a written determination in the contract file when a contractor is determined to be non-responsible.

- 3057.6 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 materials, supplies or services for acceptance by the University based on the terms of the 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.
- 3057.7 Inspections and tests by the University 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.

3058 CONTRACT ADMINISTRATION

- 3058.1 The CCO may delegate contract administration functions to a Contracting Officer's Technical Representative (COTR) who shall be appointed for each contract. The COTR shall be responsible for ensuring that materials, goods, and services are delivered to the University in accordance with specifications contained in the contract.
- 3058.2 The CCO may delegate the following functions to the COTR:
- (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 University property administration;
 - (e) Monitoring contractor performance to ensure the submission of deliverables;
 - (f) Preparing evaluations of contractor performance;

- (g) Any other function relating to contract administration not expressly reserved by these rules to the President or President's designee.
- 3058.3 The CCO may issue a stop-work order at any time to suspend work pending a decision by the President or President's designee of the University.
- 3058.4 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.
- 3058.5 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.
- 3058.6 The CCO shall include clauses in solicitations and contracts for Suspension of Work, Stop-Work Orders and University Delay of Work.
- 3058.7 At reasonable times and places, the University 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 University when the University 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 University's best interests as determined by the CCO.

3058.8 Books or records shall be maintained by a contractor or subcontractor for a period of three (3) years from the date of final payment.

3058.9 When the CCO requires an audit of a University contractor, the University 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.

3059 NOVATION AND CHANGE-OF-NAME AGREEMENTS

3059.1 The University may, when it is in its interest, recognize a third party as a successor in interest to a University 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.

3059.2 If a contractor wants the University 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 University for recognizing the successor in interest or the name change.
- (b) Ensure that the proposed contractor is responsible in accordance with Section 3057.
- (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.

3059.3 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.

- 3059.4 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.
- 3059.5 The CCO shall address and consider all issues related to the change in ownership before approving a novation agreement
- 3059.6 When it is not in the University'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 University, and the contractor may be terminated for default if the original contractor fails to perform.
- 3059.7 The CCO shall identify and evaluate any organizational conflicts of interest before recognizing and approving a successor in interest to a University contract.
- 3059.8 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 University 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 University's interest.
- 3059.9 When recognizing a successor in interest to a University 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 University;
 - (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.

3060**RESERVED**

3061 CONTRACT TERMINATION

- 3061.1 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.
- 3061.2 The CCO may terminate contracts for default or convenience in whole or in part.
- 3061.3 The termination notice shall state:
- (a) The contract is being terminated for default or for convenience of the University under the University's termination clause;
 - (b) The effective date of the termination;
 - (c) The extent of the termination; and
 - (d) Any special instructions to the contractor.
- 3061.4 The CCO shall have the discretion to amend or cancel a termination when it is in the best interest of the University.
- 3061.5 The CCO shall develop clauses for contractor default and University convenience terminations to be included in all University solicitations and contracts.
- 3061.6 The CCO shall develop termination procedures for fixed-price and cost-reimbursement type contracts.
- 3061.7 The University shall negotiate and enter into settlement agreements for contracts terminated for convenience.
- 3061.8 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.

3061.9 The CCO shall include all termination notices and actions taken as a result of a termination in the contract file.

3061.10 A subcontractor has no privity of contract or contractual rights against the University upon the termination of a prime contract.

3061.11 When a prime contract is terminated, the prime contractor and each subcontractor are responsible for the prompt settlement of their settlement proposals.

3062 CONTRACT MODIFICATIONS

3062.1 Only the CCO or other University contracting officer acting within the scope of their authority shall have the authority to modify University contracts.

3062.2 The CCO or other University contracting officer shall have the authority to issue only two types of modifications:

- (a) Bilateral; or
- (b) Unilateral.

3062.3 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.

3062.4 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.

3062.5 The CCO shall develop clauses for changes, limitation of funds and limitation of costs to be included in all solicitations and contracts when applicable.

3063 CONTRACTS REVIEW COMMITTEE

3063.1 The Contracts Review Committee shall consider protests, disputes, appeals, debarment and suspension decisions made by the CCO.

3063.2 The President shall appoint the Chairperson of the Committee. Decisions shall be made by a simple majority vote.

3063.3 The Contracts Review Committee shall consist of three (3) voting members: The Chairperson appointed by the President (or designee), the President, and one (1) University employee not involved in the decision on appeal appointed by the Chairperson.

3064 DEBARMENT, SUSPENSION AND INELIGIBILITY PROCEDURES

3064.1 Debarment and suspension shall be imposed on University contractors only when it is in the best interest of the University and not for punitive purposes and only for the causes set forth in this Section.

3064.2 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.

3064.3 The CCO shall develop and maintain a current, comprehensive list of all contractors that have been debarred, suspended or declared ineligible.

3064.4 The CCO shall utilize the federal government consolidated list of debarred, suspended or otherwise ineligible contractors until the University's list is developed.

3064.5 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.
- 3064.6 The CCO shall not solicit offers from, award contracts to, or consent to subcontract with a debarred or suspended contractor.
- 3064.7 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.
- 3064.8 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 University for any of the reasons set forth in these regulations.
- 3064.9 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.
- 3064.10 In any subcontract requiring University 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 University.
- 3064.11 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 University contract or subcontract so serious as to justify debarment, such as willful failure to perform any University contract;

a history of failure to perform, or a record of unsatisfactory past performance on any University, 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.

- 3064.12 Debarment shall include debarment of all divisions or other organizational elements of the contractor, unless the CCO determines that good cause exists to debar only certain specified organizational units of the contractor.
- 3064.13 The CCO may extend the debarment decision to include any affiliates, subsidiaries, or parents 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.
- 3064.14 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.
- 3064.15 If suspension precedes debarment, the suspension period shall be considered in determining the debarment period.
- 3064.16 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 University's contracting system; and
 - (e) Notice to the proposed debarred contractor that its rights to administrative review as provided in 3064.17 through 3064.22 of this Section.
- 3064.17 Any contractor intending to appeal the CCO's proposed debarment or suspension shall appeal to the Contracts Review Committee within ten (10) calendar days of receipt of the CCO's decision to debar or suspend the contractor.
- 3064.18 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.

- 3064.19 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.
- 3064.20 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.
- 3064.21 The contractor shall exhaust all administrative review procedures provided in this Section fully and properly before appealing to the CAB.
- 3064.22 The CAB shall have exclusive jurisdiction to hear and decide appeals from written decisions of the Contract Review Committee.

3065 RESERVED

3066 PROTESTS

- 3066.1 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.
- 3066.2 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.
- 3066.3 The University 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.
- 3066.4 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.
- 3066.5 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.
- 3066.6 The protestor or representative shall serve the protest on the University by obtaining written and dated receipt from the President or President's designee.

- 3066.7 The University may request additional information in support of the protest.
- 3066.8 When a protest is timely filed with the University prior to an award, the University shall withhold the award of the contract, pending a decision on the protest, unless the President or the President's designee overrides the automatic stay.
- 3066.9 If applicable, the University 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.
- 3066.10 The protestor may appeal the written decision of the CCO within ten (10) working days after receipt of the written decision to the Contracts Review Committee.
- 3066.11 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.
- 3066.12 Upon written request of the protestor, an informal hearing may be held at the sole discretion of the Contracts Review Committee.
- 3066.13 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.
- 3066.14 The CAB shall have exclusive jurisdiction to hear and decide protests and appeals from written decisions of the Contracts Review Committee.
- 3066.15 The contractor shall exhaust all administrative review procedures provided in this Section fully and properly before appealing to the CAB.

3067 RESERVED

3068 DISPUTES AND CLAIMS

- 3068.1 The University shall attempt to resolve all disputes arising under or relating to contracts by mutual agreement informal discussions between the contractor and CCO.
- 3068.2 The CCO is encouraged to use Alternative Dispute Resolution (ADR) procedures whenever possible, however, certain factors may make the use of ADR inappropriate.

- 3068.3 Any dispute arising under or relating to a contract which is not resolved by informal discussions shall be resolved in accordance with this Section.
- 3068.4 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.
- 3068.5 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.
- 3068.6 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.
- 3068.7 A claim by the University against the contractor shall be subject to a written decision by the CCO.
- 3068.8 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 University is liable; and
 - (d) The person signing the certification is authorized to act on behalf of the contractor.
- 3068.9 The contractor's certification shall be executed by the authorized individual of the contractor.
- 3068.10 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, which must be approved for legal sufficiency by the University's legal counsel, 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; and
- (c) Inform the contractor of the right to seek further redress by requesting reconsideration from the Contracts Review Committee.

- 3068.11 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.
- 3068.12 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.
- 3068.13 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.
- 3068.14 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.
- 3068.15 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.
- 3068.16 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.
- 3068.17 The CAB shall have exclusive jurisdiction to hear and decide appeals from final decisions of the Contracts Review Committee.
- 3068.18 The contractor shall exhaust all administrative review procedures provided in this Section fully and properly before appealing to the CAB.
- 3068.19 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.

3069 ALTERNATIVE DISPUTE RESOLUTION

- 3069.1 The CCO may use Alternative Dispute Resolution (ADR) procedures to increase the opportunity for inexpensive and expeditious resolution of issues that are in dispute.
- 3069.2 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.

3069.3 ADR procedures may be used at any time that the CCO has the authority to resolve the issue in dispute.

3069.4 If a claim has been submitted, ADR procedures may be applied to all or a portion of the claim.

3069.5 An agreement to use ADR shall be in writing and shall specify a maximum award that may be used by the arbitrator.

3070 RESERVED

3071 STANDARD CLAUSES, PROVISIONS AND PROCUREMENT MANUAL

3071.1 The CCO shall develop standard provisions and clauses for all University solicitations and contracts as appropriate to the solicitation and contract under the circumstances, and as required by these Rules.

3099 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 University), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, for any loss sustained by 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.

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.

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.

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 University contracting and approved subcontracting for a specified period of time.

Delivery Order - An order for materials or supplies placed against established contracts which have been awarded by the University. The price, terms and conditions have been previously agreed upon in a master contract, leaving only the quantity of materials or 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 multiple 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.

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

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 University affects the direct economic interests of the interest party.

Request for Proposals (RFPs) - An instrument used in negotiated procurements to communicate the University'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.

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 materials, 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 materials, 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 University 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 University 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 University's right to partially or wholly terminate contractor performance when it is in the University's interest.

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

University of the District of Columbia or University System of the District of Columbia – The independent agency of the District of Columbia established by the Post-Secondary Education Reorganization Act of 1974 and all organizational units thereof, including, but not limited to, the flagship four-year institution, community college, cooperative extension service, and law school components.