

Glossary of Important Terms

- **AMERICAN BAR ASSOCIATION (ABA) MODEL PROCUREMENT CODE**

Developed by the American Bar Association (ABA) and adopted in 1979. A collection of statutory principles and policies that provide guidance to public policy managers who wish to responsibly manage public procurement. State and larger local governments have individually codified the ABA MPC into procurement law and policy to effectively guide their procurement organizations.

- **ACCEPTANCE**

1. Indication that all parties to the contract agree to be bound by the terms of the contract.
2. An indication by one party of a willingness to act in accordance with the contract or offer.
3. The assumption of a legal obligation by a party to a contract, and to the terms and conditions of that contract.

- **ACQUISITION**

The process of obtaining supplies, services, or construction through purchase, lease, or grants.

- **BEST ALTERNATIVE TO A NEGOTIATED AGREEMENT (BATNA)**

A BATNA is like a "Plan B" should negotiations begin to break down and set the criteria for the state to walk away from the negotiation. A BATNA contains all of the state's options, including negotiating with other bidders, extending the existing contract, and rebidding.

- **BID PREFERENCE**

Bid preferences are usually procurement laws mandating that bid prices for a preferred class of bidders be given special consideration when comparing their bid prices with those of other bidders, not in the preferred class, i.e., "local" suppliers may be given a bid preference over suppliers that are not defined as "local."

- **BID TABULATION SHEET**

A summary document of all responsive bidders with their total extended prices, which the agency has calculated and verified to ensure accuracy. It may also include unit prices for each item, total prices, delivery terms and conditions, whether each bidder has met the requirements for licenses, bonds, evidence of insurance, or other information deemed appropriate by the contracting officer.

- **BRAND-NAME-OR-EQUAL SPECIFICATION**

One or more manufacturers' brand names, with identifying model numbers, are used in a specification to invoke certain quality, performance, and other salient characteristics needed to meet the solicitation requirements.

- **BREACH OF CONTRACT**

Failure by either contracting party to fulfill a contract, wholly or in part, without legal excuse. (Harney, 1992)

- **BRIBERY**

The crime of offering, giving, receiving, or soliciting anything of value to influence the action of an official or in the discharge of a public duty.

- **CANNIBALIZATION**

A term used to describe the disassembly, dismantling, stripping, or tearing down of buildings or equipment for salvage components or parts, which may be used to repair, assemble, or rebuild other equipment. A process used to extend the life cycle of equipment.

- **CHIEF PROCUREMENT OFFICER (CPO)**

NASPO defines the Chief Procurement Officer as the official who leads the state central procurement office and is responsible for the control of all procurement efforts across the state, as established by statute or law.

- **CODE OF ETHICS**

A guide to acceptable and ethical behavior as defined by an organization or public body. A standard of behavior adopted by an organization. Written policies or guidelines which apply to the ethical behavior of members of an organization, business, or public entity. (NASPO, 2001)

- **COMPETENT PARTIES**

Persons are legally capable of entering into a contract, are of legal age, and have a sound mind (ISM, 2000).

- **CONFLICTS OF INTEREST**

1. A situation that can undermine a person due to self-interest and public interest.
2. A situation when parties discharge the responsibility to a third party.

(Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.)

- **CONSIDERATION**

1. Something of value which is exchanged by two parties and which serves to form or bind a contract.
2. A type of mutual commitment that must exist to form an express contract.
3. That which is given or promised to bring a binding contract into existence.

- **CONTRACT**

1. An obligation, such as an accepted offer, between competent parties upon a legal consideration, to do or abstain from doing some act.
2. A legally binding promise, enforceable by law.
3. An agreement between parties with binding legal and moral force, usually exchanging goods or services for money or other considerations.

- **CONTRACT ADMINISTRATION**

A term used to describe the functions that are performed after the parties have signed the contract (Sherman, 1996). Typical contract administration activities are goal-oriented, aimed at ensuring enforcement of the

contract terms and conditions while giving attention to the achievement of the stated output and outcome of the contract.

- **DELEGATED AUTHORITY**

Authorized or appointed individuals, outside the purchasing department, are delegated authority under the entity's rules and procedures that allow them to make small-dollar purchases on behalf of the agency.

- **DEFINITION OF NEED**

Identification of what is needed, how many, functionalities, features, etc. Usually, a rough idea forms prior to researching the market and writing specifications.

- **DESIGN SPECIFICATION**

Describe the dimensional and other physical requirements of the item to be purchased. Design means that the specification concentrates on how a product is to be fabricated or constructed. It is the most traditional kind of specification (NASPO, 2015).

- **EMERGENCY PROCUREMENT**

A purchase made due to an unexpected and urgent request where health and safety or the conservation of public resources is at risk. Usually, formal competitive bidding procedures are waived.

- **FIRM FIXED PRICE (FFP)**

A type of contract providing for a price that is not subject to adjustment on the basis of the contractor's cost experience in performing the contract. FFP contracts place maximum risk and full responsibility on the contractor for all costs and resulting profit or loss.

They provide a maximum incentive for the contractor to control costs, perform effectively, and impose a minimum administrative burden upon the contracting parties unless changes are issued or unforeseen events occur during performance.

- **FIXED PRICE WITH ESCALATION**

The response from the supplier/contractor outlines very specifically how the supplier proposes to complete the work as outlined in the Scope of Work. It defines what will be done, how, by whom, and cost factors.

- **FIXED PRICE WITH INCENTIVE**

Fixed price with incentive contracts provides an incentive to reduce cost by allowing for the adjustment of profit and establishing the final contract price by a formula based on the relationship of the final negotiated cost to the total target cost. Incentives may also be a price incentive for early performance.

- **INVITATION FOR BIDS (IFB)**

Procurement method used to solicit competitive sealed bid responses.

- **KICKBACKS**

The payment of something of value to an individual with the goal of persuading or influencing his or her decision or performance in a certain situation.

- **LEGALITY OF PURPOSE**

To be valid and enforceable, a contract must be consistent with federal, state, or local law and cannot violate legal statutes of public policy (ISM, 2000). For example, a contract for the distribution of illicit drugs is not a binding contract because the purpose of the contract is illegal.

- **LIQUIDATED DAMAGES PROVISION**

Damages paid, usually in the form of a monetary payment, agreed to by the parties to a contract, that are due and payable as damages by the party who breaches all or part of the contract. May be applied on a daily basis for as long as the breach is in effect. May not be imposed as an arbitrary penalty. The key to establishing liquidated damages is reasonableness. It is incumbent upon the buyer to demonstrate, through quantifiable means, that damages did exist.

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- **MARKET RESEARCH**

Involves collecting and analyzing information on the capabilities and limitations in the commercial marketplace, as well as determining the best method to obtain the required goods and services. The goal of market research is to better understand the marketplace and suppliers. (Intro to Market Research)

- **MUTUALITY OF OBLIGATION**

Both parties to an agreement are obligated or none of the parties is obligated. Both parties must supply consideration to the other party. It is a sub-element of consideration. There may be more than two parties obligated in an agreement.

- **NEGOTIATE**

Conferring, discussing, or bargaining to reach an agreement in business transactions. A bargaining process between two or more parties, each with its own agenda and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern. A process of planning, reviewing, and analyzing used by a buyer and a seller to reach acceptable agreements or compromises.

- **PCARD OR PROCUREMENT CARD**

Short for Procurement Card. A payment method whereby internal customers (requisitioners) are empowered to deal directly with suppliers for purchases using a credit card issued by a bank or major credit card provider. Generally, a pre-established credit limit is established for each card issued. The cards enable eProcurement and facilitate online ordering, frequently from pre-approved suppliers under blanket contracts. (Martin & Miller, 2006).

- **PERFORMANCE SPECIFICATION**

At the most basic level, performance specifications identify the function that a using agency wishes to achieve and does not commit to any specific design or brand name. Instead, the specification states what the purchaser needs the product or service to do and asks the vendor to demonstrate that its product or service qualifies (NASPO, 2015).

- **PRIMARY MARKET RESEARCH**

Primary market research is research you do yourself to collect necessary data, such as surveying each primary department that uses a potential commodity or service to get its input in narrowing down specifications.

- **PROCUREMENT OFFICER**

Any person duly authorized to enter into and administer a contract and make written determinations and findings thereto. Also includes an authorized representative of the procurement officer acting within the limits of his or her authority.

- **PROTEST**

Any person duly authorized to enter into and administer a contract and make written determinations and findings thereto. Also includes an authorized representative of the procurement officer acting within the limits of his or her authority.

- **PUBLIC-PRIVATE PARTNERSHIP**

A public-private partnership (P3) is a broad term used to describe the public facility and infrastructure contracts that minimally includes components of design and build (e.g., construction, renovation, rehabilitation) into one single contract. Components of financing, operations, maintenance, or management may be included within this single contract. A P3 contract allocates risks to the party (the government or the contractor) best able to manage the risks and may assign a higher level of responsibility for means and methods to the partner.

- **PUBLIC PROCUREMENT**

The designated legal authority to advise, plan, obtain, deliver, and evaluate a government's expenditures on goods and services that are used to fulfill stated objectives, obligations, and activities in pursuit of desired policy outcomes.

- **QUALIFIED PRODUCTS LIST (QPL)**

A list of products identified by manufacturers' names and model numbers that are the only items that meet the minimum specifications as determined by the using entity. These products are used when quality is such a critical factor and testing so lengthy or expensive that the entity wants to stay with proven products. The list is prepared by testing products, either in the lab or in daily use.

- **REQUEST FOR INFORMATION (RFI)**

A non-binding method whereby a jurisdiction publishes via newspaper, Internet, or direct mail its need for input from interested parties for an upcoming solicitation. A procurement practice used to obtain comments, feedback, or reactions from potential responders (suppliers, contractors) prior to the issuing of a solicitation. Generally, price or cost is not required.

Feedback may include best practices, industry standards, technology issues, etc.

- **REQUEST FOR PROPOSALS (RFP)**

The document is used to solicit proposals from potential providers (proposers) for goods and services. Price is usually not a primary evaluation factor. Provides for the negotiation of all terms, including price, prior to contract award. This may include a provision for the negotiation of best and final offers. May be a single-step or multi-step process.

- **REQUISITION**

An internal document by which a using agency sends details of supplies, services, or materials required to the purchasing department. Typically will include a description of the need and other information that is relative to the transaction. May be submitted in hard copy or via eProcurement software.

- **RESPONSIBLE BIDDER/PROTESTOR**

A business entity or individual who has the financial and technical capacity to perform the requirements of the solicitation and subsequent contract.

- **RESPONSIVE BID/PROPOSAL**

A bid or proposal that fully conforms in all material respects to the Invitation for Bids (IFB)/Request for Proposals (RFP) and all of its requirements, including all form and substance.

- **REVERSE AUCTION**

An online auction in which sellers bid against each other to win a buyer's business. Typically used to purchase commodities from multiple pre-qualified providers. Also referred to as eAuction.

- **SCOPE OF WORK**

Scope of work is a written description of the entity's needs and desired outcomes for the procurement and becomes the basis for any resulting solicitation.

- **SECONDARY MARKET RESEARCH**

Secondary market research is data that others have already gathered and made available, such as subscriptions to market research online tools or data from trade associations regarding industry trends or regulations.

- **SET-ASIDE**

An acquisition or procurement exclusively or partially reserved for the participation of a special class of contractors.

- **SOLE SOURCE PROCUREMENT**

A situation was created due to the inability to obtain competition. A procurement method where only one supplier possesses the unique ability or capability to meet the particular requirements of the solicitation.

The purchasing authority may require a justification from the requesting department within the agency explaining why this is the only source for the requirement.

- **SOLICITATION**

An Invitation for Bids, a Request for Proposals, telephone calls, or any document used to obtain bids or proposals for the purpose of entering into a contract.

- **STATEMENT OF WORK**

The response from the supplier/contractor outlines very specifically how the supplier proposes to complete the work as outlined in the Scope of Work. It defines what will be done, how, by whom, and cost factors.

- **SURPLUS PROPERTY**

Refers to goods or materials that are obsolete or no longer needed by the agency and are designated for disposal. Surplus becomes available for disposal outside of the entity because of some unforeseen situation that affects the use of the item. An example would be chairs or desks that have been replaced with new items.

- **TERMINATION FOR CONVENIENCE**

A contract clause that may be contained within boilerplate language allows for the contract to be ended at the discretion of the governmental entity.

Action by which the purchasing entity, in accordance with contract provisions, unilaterally cancels all or part of the contract work for the best interest of the jurisdiction, and with no reflection on the contractor's performance.