

Part I Chapter 02 Definitions

As used in this handbook, the following words shall have the meanings provided in this chapter unless otherwise noted.

Advertising: The placement of a public notice of a contracting opportunity.

1. In a newspaper of general circulation.
2. In a trade publication as provided in *45 Pa.C.S. 306*.
3. By electronic publication accessible to the general public.
4. By issuance of invitations for bids and request for proposals to bidders or offerors on the purchasing agency's solicitation mailing list.
5. By notification to prequalified bidders or offerors.

Affiliates: Persons are affiliates of each other if, either directly or indirectly:

1. One controls or has the power or ability to control the other, whether or not exercised or
2. A third person controls or has the power or ability to control both, whether or not exercised.

Agency: An executive or independent agency.

Agency Head: The Secretary, or other official, who is first in responsibility within an agency.

Amendment: A written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract.

Assignment: The transfer or taking over by another of a contract or any part of a contract or any contractual right or duty.

Bid: A firm and unconditional offer in response to an invitation for bids.

Bidder: A person that submits a bid in response to an invitation for bids.

Bid or Proposal Security: An acceptable form of security conditioned upon the successful bidder's or offeror's execution of a contract in accordance with the terms and conditions of the invitation for bids or request for proposals and receipt of acceptable performance security, if required. Such security is solely for the protection of the agency requesting bids or proposals.

Bureau of Small Business Opportunities (BSBO): An office within the Department of General Services with the responsibility to assure participation by, and the fair treatment of, small and small diverse businesses in Commonwealth contracting opportunities. BSBO also has overall responsibility for the Commonwealth's Contract Compliance Program.

Certified Minority Business Enterprise/Women Business Enterprise/Veteran Business Enterprise/Service Disabled Veteran Business Enterprise (MBE/WBE/VBE/SDVBE): A small business that has applied to the Department of General Services, BSBO, and received certification as a MBE/WBE/VBE/SDVBE.

Change Order: A printed or electronic order signed by the contracting officer directing the contractor to make changes which the changes clause of the contract authorizes the contracting officer to order. The change order may be either with the consent of the contractor or a unilateral order by the contracting officer.

Comptroller: The chief financial accounting officer within an agency appointed by the Governor and responsible to the Deputy Secretary for Comptroller Operations in the Office of the Budget.

Construction: The process of building, altering, repairing, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property. The term does not include the routine operation or maintenance of existing structures, buildings, or real property. The term does not include bridge, highway, dam, airport (except vertical construction), or railroad construction.

Contact Person: The using agency employee charged with the daily supervision of the delivery of a supply or the performance of the services or construction and who interacts with the contractor at the worksite or delivery location.

Contract: A type of written agreement, regardless of what it may be called, for the procurement of supplies, services, or construction and executed by all parties in accordance with the *Commonwealth Attorney's Act, Act of October 15, 1980 (P.L. 950, No. 164)*

Contract Compliance: A program designed to ensure that Commonwealth contracting and grant funding is nondiscriminating in intent and effect. The program involves three aspects:

1. Nondiscrimination in the Commonwealth's award of contracts and grants.
2. Nondiscrimination by those who are awarded commonwealth contracts and grants in their award of subcontracts and supply contracts for the performance under commonwealth contracts.
3. Nondiscrimination by those who are awarded commonwealth contracts and grants in the hiring and treatment of their employees.

Contractor: any person that has entered into a contract with a Commonwealth agency.

Contract Modification: A written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. Sometimes called an amendment.

Contract Purchase Order: Written authorization from a purchasing or using agency for a contractor to proceed to furnish a material, service, or construction item in accordance with a statewide requirements contract.

Contracting Officer: A person authorized to enter into and administer contracts and make written determinations with respect to contracts.

Cost Plus Percent of Cost (CPPC) Contract: A contract that provides for compensation to the supplier in the form of reimbursement of allowable costs plus an agreed percentage of the costs.

Debarment: Action taken by the head of the purchasing agency to remove a person or entity from consideration for an award of any Commonwealth contract or subcontract for a specified period of time.

Deficiency Item: Work performed under a construction contract but which the design professional, the contractor, or the inspector will not certify as being completed according to the contract.

Delivery Date: The date, as stated within the contract, when materials are required to be delivered or services are to be rendered.

Department: The Department of General Services.

Design/Build Contract: A construction contract in which the contractor is responsible for both the design and construction of any public structure or building or other public improvements of any kind to any public real property.

Design/Professional Services: Those professional services within the scope of the practice of architecture, geology, engineering, landscape architecture or land surveying, including studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual design, plans and specifications, value engineering, maintenance manuals and other related services associated with research, planning, development, design, construction, alteration or repair of real property. The term includes services provided under the supervision of a professional engineer to develop engineering software to aid design professionals in performing their work. The term does not include those services which are not exclusively within the scope of architecture, geology, engineering, or landscape architecture but which are related to capital improvements such as, but not limited to, environmental hygienic, construction management as described in *Section 322 of Commonwealth Procurement Code*, exhibit design, fine arts or lesser arts and crafts, even though an architect, geologist, engineer, or landscape architect may provide such services.

DGS: The Department of General Services.

Dual Employment: The entering into a contract with an individual already on a Commonwealth Payroll, or on contract with the Commonwealth, whether in a different agency or in a different position in the same agency.

Effective Date: A date fixed by the contracting officer which is on or after the date the contract has been fully executed by the contractor and by the purchasing agency and all approvals required by Commonwealth contracting procedures have been obtained. The contract shall not be a legal and binding contract until after the Effective Date is affixed and the contract is sent to the contractor.

Electronic: Any electrical, digital, magnetic, optical, electromagnetic or other form of technology that entails capabilities similar to these technologies. Electronic includes transmission via a telefacsimile device.

Electronic Signature: A signature in electronic form attached to or logically associated with an electronic record. It includes an electronic symbol (including a printed name) or a process attached to or logically associated with a bid, contract or purchase order, and executed, adopted or agreed upon by a person with the intent to sign the bid, contract or purchase order. An electronic signature qualifies as an original signature.

Emergency: Existence of a threat to public health, welfare, or safety or circumstances outside the control of an agency creating an urgency of need which does not permit the delay involved in using formal, competitive methods.

Employee: An individual drawing a salary or wages from a Commonwealth agency, whether elected or not, and any noncompensated individual performing personal services for any Commonwealth agency.

Energy Conservation Measure: A training program or facility alteration designed to reduce energy consumption or operating costs. The term may include, without limitation:

1. Insulation of the building structure or systems within the building.
2. Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, additional glazing reductions in glass area or other window and door systems modifications that reduce energy consumption.
3. Automated or computerized energy control systems.
4. Heating, ventilating, or air conditioning system modifications or replacements.
5. Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to applicable state or local building codes for the lighting system after the proposed modifications are made.
6. Energy recovery systems.
7. Systems that produce steam or forms of energy such as heat as well as electricity for use within a building or complex of buildings.
8. Energy conservation measures that provide operating cost reductions based on life cycle cost analysis.
9. A training program or facility alteration that reduces energy consumption or reduces operating costs, including allowable costs, based on future reductions in labor costs or costs for contracted services.
10. A facility alteration which includes expenditures that are required to properly implement other energy conservation measures.
11. A program to reduce energy costs through rate adjustments, load shifting to reduce peak demands, and/or use of alternative energy suppliers, such as, but not limited to:

- a. Changes to move favorable rate schedules;
 - b. Negotiation of lower rates, same supplier or new supplier, where applicable; and
 - c. Auditing of energy service billing and meters.
12. The installation of energy information and control systems that monitor consumption, redirect systems to optimal energy sources, and manage energy-using equipment.
 13. Indoor air quality improvements.
 14. Daylighting systems.
 15. Renewable and/or on-site distributed power generation systems.

In all cases, however, improvements must result in a guaranteed minimum savings with the ESCO payments linked to actual documented energy and cost reductions.

Established Catalog Price: The price included in a catalog, price list, schedule, or other form that:

1. Is regularly maintained by a manufacturer or contractor.
2. Is either published or otherwise available for inspection by customers.
3. States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.

Executive Agency: The Governor and the departments, boards, commissions, authorities, and other officers and agencies of the Commonwealth. The term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers, and agencies or any independent agency or state-affiliated entity.

Expiration Date: The date on which a contract expires. The last date when work to be billed under the contract can be performed.

Extension of Contract: The continuation of an existing contract, with the same supplier or contractor, which is due to expire and does not provide for an option to renew.

Firm, Fixed Price Contract: A contract where the total amount to be paid to the contractor is fixed and is not subject to adjustment by reason of the cost experience of the contractor. The term includes contracts where the unit price is set but the total price varies because actual quantities purchased deviate from the quantities estimated to be purchased. The term also includes contracts where the price may be adjusted in accordance with a contractually established price adjustment provision independent of the contractor's costs.

Funds Commitment: An alternative way for agencies to encumber funds for a procurement without creating a purchase order. The document is created in the finance module rather than the procurement module of SAP. Use of a funds commitment requires preapproval by the Department.

Grant: A furnishing of assistance by the Commonwealth or any person, financial or otherwise, to any person to support a program. The term does not include an award whose primary purpose is to procure construction for the grantor. A contract resulting from such an award is a procurement contract and not a grant.

GSA eLibrary: Provides GSA Contract award information for all GSA Programs.

GSA Schedule: A collection of Federal contracts with suppliers for products and services within a defined category.

Independent Agency: Boards, commissions, and other agencies and officers of the Commonwealth which are not subject to the policy supervision and control of the Governor. The term does not include any state affiliated entity, any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, any state-related institution, political subdivision or any local, regional, or metropolitan transportation authority.

Inspector: The person authorized or engaged by the government agency to inspect the work performed and materials furnished pursuant to a contract to determine whether the work completed is in compliance with the contract.

Interagency Agreement: A binding contractual agreement executed between two or more Commonwealth agencies, in which at least one is normally not an executive agency as defined in the *Commonwealth Attorneys Act, 71 P.S. §§ 732-101*.

Intergovernmental Agreement: A binding contractual agreement executed by the Commonwealth with the federal government or its agencies, another state or its agencies, or with instrumentalities of the Commonwealth (boroughs, cities, counties, state-related institutions, etc.). These agreements should be processed in accordance with the requirements of the *Commonwealth Attorneys Act, 71 P.S. §§ 732-101*. They are not subject to the requirements of Chapter 5 of the Commonwealth Procurement Code. Intergovernmental agreements should not be used to circumvent competitive procurements from a commercial contractor. The purpose of an intergovernmental agreement should align with the mission of the governmental entity. The agency should include justification in the file.

Invitation For Bids (IFB): All documents, including those either attached or incorporated by reference, used for soliciting bids.

Invitation To Qualify (ITQ): This term has a dual meaning. It is a commonly-used name for the invitation for bids or request for proposals that is used to solicit bids or proposals for the multiple award method of procurement. It is also sometimes used to identify the document that solicits applications or proposals for qualification of bidders/offerors.

Issuing Office: The sole point of contact for the offerors to contact the purchasing agency with any questions in regard to a request for proposals.

License: Permission or authority to use personal property for specific purposes without possessing title to, or any interest in, the property itself.

Life Cycle Cost: The total cost of the supply in terms of purchase cost, installation cost, maintenance cost, energy cost, supply cost, and other costs.

Line Item Specific Pricing: Contract pricing which has been established with each line item having a "specific" or defined item description and a set price.

Loan: The disbursement of funds by the Commonwealth to any person where the principal amount disbursed is required to be repaid to the Commonwealth, with or without interest, under an agreement.

Maintenance: Work that does not change the size, type, or extent of the facility. The facility includes the component parts of the existing building or structure.

Materials: Supplies, excluding insurance.

Medical Assistance Provider Agreement: A written agreement by a licensed or qualified provider of medically related services to participate in the medical assistance program administered by the Department of Public Welfare.

Memorandum of Understanding (MOU): A cooperative arrangement between executive agencies or, if concurred with both parties, an arrangement between an executive agency and an independent agency, as defined in the *Commonwealth Attorneys Act, 71 P.S. §§ 732-101*, which does not create any contractual rights or obligations between the signatory agencies. This document does not require approval by the Office of Attorney General.

Multiterm Contract: A contract for materials, services, or construction whose term covers more than one Commonwealth fiscal year.

Notice to Proceed: Written authorization from the purchasing agency's contracting officer to the contractor to perform the services or construction specified in the contract. The notice to proceed cannot be issued until on or after the effective date of the contract.

Offeror: A person that submits a proposal in response to a request for proposals.

Option to Renew: A provision of the IFB or RFP and included as a provision within the contract which allows the continuance of a contract for an additional time period.

Participating Provider Agreement (PPA): A written agreement between the Department of Health and a licensed or qualified provider of medically related services which was approved by the Office of the Budget and the Department of General Services and was awarded on a noncompetitive basis.

Party: Any person, corporation, unincorporated association, partnership, state governmental agency political subdivision, authority, another state, or the government of the United States.

Performance Security: Security provided by a contractor solely for the protection of the purchasing agency or using agency receiving the materials, services, or construction, conditioned upon the faithful performance of the contract in accordance with plans, specifications, and conditions of the contract.

Procurement: Buying, purchasing, renting, leasing, licensing, or otherwise acquiring any supply, service, or construction. The term also includes all functions that pertain to the obtaining of any material, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement Description: The words used in a solicitation to describe the supply, service, or construction to be procured. The term includes specifications attached to or made a part of the solicitation.

Proposal: An offer made in response to a request for proposal which may be subject to negotiation and award criteria set forth in the request for proposal.

Programs and Systems Division: A division within DGS Bureau of Procurement which receives and processes information on proposed contracts for publication on the DGS website (and in the *Pennsylvania Bulletin*, upon request only).

Purchase Order: Written authorization for a contractor to proceed to furnish a supply, service or construction in accordance with the terms of the IFB and the awarded bidder's bid or a contract.

Purchasing Agency: A Commonwealth Agency authorized by Act 57 (*Commonwealth Procurement Code, 62 Pa.C.S. Sections 101 et seq.*) or by other law to enter into contracts for itself or as the agency of another Commonwealth Agency. When purchasing for another Commonwealth Agency, the purchasing agency acts on behalf of the principal in need of the materials, services, and construction and shall coordinate and cooperate with that agency.

Reimbursement/Invoice Basis: Payment based on submission of a request for reimbursement or of an invoice after cash expenditures were made, after materials were delivered, or after construction or services were performed.

Request for Proposals (RFP): All documents, including those either attached or incorporated by reference, utilized for soliciting proposals.

Responsible Bidder: A bidder that has submitted a responsive bid and that possesses the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

Responsible Offeror: An offeror that has submitted a responsive proposal and that possesses the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

Responsive Bid: A bid, which conforms in all material respects to the requirements and criteria in the invitation for bids.

Responsive Bidder or Offeror: a person who has submitted a bid or proposal which conforms in all material respects to the invitation for bids or request for proposals.

Responsive Proposal: A proposal which conforms in all material respects to the requirements and criteria in the request for proposals.

Sealed Bid: A bid whose contents are not disclosed until the bid opening time. Bids are typically submitted in sealed envelopes to meet this requirement, but electronic submission is not prohibited so long as the purchasing agency has the electronic capability to maintain the confidentiality of the bid until the bid opening time.

Sealed Proposal: A proposal whose contents are not disclosed until the proposal receipt date proposals are typically submitted in sealed envelopes to meet this requirement,

however, electronic submission is not prohibited so long as the purchasing agency has the electronic capability to maintain the confidentiality of the proposal until the proposal receipt date.

Services: The furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than drawings, specifications, or reports which are merely incidental to the required performance. The term shall include the routine operation or maintenance of existing structures, buildings, or real property. The term does not include employment agreements or collective bargaining agreements. The term includes utility services and those services formerly provided by public utilities such as electrical, telephone, water, and sewage service.

Signature: A distinctive mark or characteristic indicating identity. An electronic signature qualifies as an original signature.

Small Business: A business in the United States which is independently owned, is not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$20,000,000 in gross annual revenues (\$25,000,000 in gross annual revenues for those businesses in the information technology sales or service business).

Small Diverse Business: A DGS-certified minority-owned business, woman-owned business, service-disabled veteran-owned business or veteran-owned business, or United States Small Business Administration-certified 8(a) small disadvantaged business concern, that qualifies as a small business.

Specifications: The description of the physical or functional characteristics or the nature of a material, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a material, service, or construction item for delivery.

State-Affiliated Entity: A Commonwealth authority or a Commonwealth entity. The term includes the Pennsylvania Turnpike Commission, Pennsylvania Housing Finance Agency, Pennsylvania Municipal Retirement System, Pennsylvania Infrastructure Investment Authority, State Public School Building Authority, Pennsylvania Higher Educational Facilities Authority, and the State System of Higher Education. The term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, any state related institution, political subdivision or any local, regional, or metropolitan transportation authority.

Statewide Requirements Contract: A contract entered into by the purchasing agency which covers the annual, semiannual, or quarterly contract requirements of all Commonwealth agencies and allows the agencies to order needed materials, services, or construction directly from the contractor.

Subcontractor: An individual, business, university, governmental entity, or nonprofit organization contracting to perform part, or all, of another entity's contract.

Subscription: Delivery of, or access to, information in any form of media, including not only paper (newspapers, magazines, for example), but also electronic databases from which a Commonwealth agency may query, search, receive or otherwise obtain information and possibly generate reports.

Supplier: A bidder, offeror, or contractor offering to provide materials and/or services to the Commonwealth. May also be referred to as a vendor.

Supplies: Any property including, but not limited to, equipment, materials, printing, insurance, and leases of and installment purchases of tangible or intangible personal property. The term does not include real property, leases of real property, or alcoholic beverages or liquor purchased for resale by the Pennsylvania Liquor Control Board.

Suspension: The temporary disqualification of a person or entity from consideration for an award of any Commonwealth contract or subcontract for a period of up to three (3) months pending further investigation or the completion of legal proceedings if there is probable cause for debarment.

Using Agency: A Commonwealth agency, which utilizes any materials, services, or construction procured by the Commonwealth.

Work Statement: A detailed description of services to be performed by a contractor.

Written or Writing: Includes the electronic format.