Glossary of Commonly Used Procurement Terms

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20% Rule
Some OGS Information Technology product contracts contain a 20% rule. This means that if an agency is buying product and also needs to buy ancillary services (e.g.: consulting and training) under the same contract for the purposes of customizing the product, or product roll-out and implementation, the agency may be able to purchase those services up to 20% of the value of the product and first year's maintenance. The 20% rule currently applies to microcomputer, printer, software, interactive voice response systems, videoconferencing systems and networking hardware and software contracts.

When using the 20% option, the awarding agency must first do an independent estimate for the services needed. In the event the estimate exceeds the 20% limit, the agency should either: undertake a competitive procurement, or justify a single/sole procurement. (WBST)

Agency Specific Contract
Agency Specific contracts are contracts where the specifications for a Product or a particular scope of work are described by centralized procurement to meet the needs of one or more specific agency's needs. These contracts are usually limited by quantities and delivery points. Agency specific contracts are agency term contracts for purchases made during a specified term period. (See also "As Specified Contracts" definition.)

Aggregated Buy
An Aggregated Buy is the process whereby an Authorized User determines the specific contractor and final pricing for the purchase of a product, service or system on behalf of more than one Authorized User. Participation in an Aggregated Buy eliminates the need for an Authorized User to conduct a mini-bid or a best and final negotiation. (WBST)

Ancillary Product
An ancillary product is a product which is purchased or licensed on a restricted use basis in conjunction with the principal manufacturer's product being acquired (e.g., may be used only in combination, or by educational institutions for research use). (ApB)

As Specified Contract
As Specified contracts are contracts where the specifications for a Product or a particular scope of work are described and defined to meet one individual agency's needs. As specified contracts are "one time" purchases. (See also "Agency Specific Contracts" definition.)
**Authorized Users**

Authorized users are agencies or any other entities authorized by the laws of the State of New York to participate in NYS centralized contracts (including but not limited to political subdivisions, public authorities, public benefit corporations and certain other entities set forth in law). Each such agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation. The term "Authorized User" shall include "Licensees." (ApB)

**Authorized User**

An agency, or other entity authorized by the laws of the State of New York to participate in NYS centralized contracts (including but not limited to political subdivisions, public authorities, public benefit corporations and certain other entities set forth in law), or the State of New York acting on behalf of one or more Agencies and other entities, provided that each such Agency or other entity shall be solely responsible for liabilities or payments due as a result of participation. (WBST)

**Back-Drop**

Back-Drop contracts are a pool of qualified vendors who are contracted with the State of New York and eligible to participate in the secondary mini-bid award process. (WBS) Appendix B defines back-drop contracts as multiple award, centralized contracts where OGS defines the specifications for a general scope of work or product(s) to meet the needs of contract users. Bids are taken either at a certain date and time or may be accepted on a continuous recruitment basis, as described in the bid specifications. Selection of a contractor from among back-drop contract holders for an actual product, project or particular scope of work may subsequently be made on the basis of a mini-bid among qualified backdrop contract holders, on a single or sole source basis where the authorized user can establish appropriate justification, or such other method as described in the bid document. (ApB)

**Best & Final Negotiations**

This is the process required for an Authorized User when making significant purchases from brand bid or negotiated contracts, or, in some cases, any purchase from a limited multiple award contract. A brand bid or negotiated contract covers the full product line of a specific brand of product (i.e. Compaq microcomputers, Cisco networking hardware and software, Hewlett-Packard printers, Oracle software, Polycom video systems, etc.). In addition, whenever an agency is making a first time major purchase such as purchasing a new system, or installing software for the first time, all options available to the agency should be evaluated, including an agency competitive procurement or use of a centralized contract. When the decision is made to purchase from a centralized contract, an agency should solicit best and final offers, based on the agency's statement of needs.

Smaller purchases can be made directly from these contracts, but it is required that for certain minimum size orders and recommended for other smaller size orders, that Users either:

- draft an informal statement of their needs and solicit best and final offers from competitive sources; or
- if the user can document a single source procurement, negotiate with the contractor of choice to finalize a best value purchase.
The following awards include multiple contracts awarded by region. When making any purchase from these awards, it is required that the Authorized User solicit best and final offers from all contractors for the applicable region:

- Electronic Key Systems and Telephone Equipment
- Digital Centrex Equipment
- Cable (installed)

Awards that include multiple contracts outline the required Procurement Procedures for soliciting best and final offers. (WBST)

**Best Value**
A Best Value award is one that optimizes quality, cost and efficiency, typically applies to complex services and technology contracts, and is quantifiable whenever possible. Costs in the case of "best value" are distinguished from "price." Costs include conversion costs, life-cycle costs, etc., and embody price, which is the amount charged by the vendor for the given commodity or service. (PG)

**Centralized Contract**
Centralized contract means any contract for the purchase of commodities or services, established or approved by the commissioner of General Services as meeting the State's requirements including, but not limited to, any contract let by the federal government, other state or local governments or purchasing consortia. (SFL)

**CL / Circular Letter**
A CL or circular letter is a mechanism used to inform customers of PSG initiatives, categorical happenings, etc.

"**Commodity**" or "**Commodities**"
Commodities are standard articles of commerce in the form of material goods, supplies, products or similar items. Lowest price is the basis for awarding all commodity contracts among responsive and responsible offerers. (PG)

"**Commodity**" or "**commodities**" means, except with respect to contracts for state printing, material goods, supplies, products, construction items or other standard articles of commerce other than technology which are the subject of any purchase or other exchange. (SFL)

**Costs**
"Costs" as used in this article shall be quantifiable and may include, without limitation, the price of the given good or service being purchased; the administrative, training, storage, maintenance or other overhead associated with a given good or service; the value of warranties, delivery schedules, financing costs and foregone opportunity costs associated with a given good or service; and the life span and associated life cycle costs of the given good or service being purchased. Life cycle costs may include, but shall not be limited to, costs or savings associated with construction, energy use, maintenance, operation, and salvage or disposal. (SFL)
**Direct Buy**  
The ability for an Authorized User to buy directly from an OGS contract using its standard form, format or purchase order, and which does not require a mini-bid, best and final negotiation, creation of a procurement record, or other required process, prior to making the buy. (WBST)

**Discriminatory Jurisdictions**  
Jurisdictions that impose sanctions or otherwise restrict the ability of New York State companies when they compete for contracts on an equal basis within those jurisdictions. The NYS Finance Law (SFL) Article IX Section 139i and Article XI Section 165(6)(a) requires that a state agency will not enter into a contract with businesses meeting the following criteria.

- the bidder's principal place of business, defined as the location of the primary control, direction and management of the enterprise, is located in a jurisdiction that discriminates against New York State vendors (currently identified in the PSG version of Appendix A: http://www.ogs.state.ny.us/procurecounc/pdfdoc/appendixa.pdf, and
- the goods or service offered are substantially manufactured, produced or performed outside New York State.

**Emergency**  
An Emergency is considered an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk. An agency's failure to properly plan in advance which then results in a situation in which normal practices cannot be followed does not constitute an emergency. (PG)

**Fast Track**  
This process is a streamlined mini-bid process under the IT Services backdrop contracts used to acquire Consulting Services for the various Categories of Expertise, as defined in the backdrop contracts, when there is a need to augment the State workforce for specified periods of time (six months, one year, up to eighteen months) based on Hourly rates. (WBST)

**Filed Requirements Contract**  
A Filed Requirements Contract is a term contract covering specified delivery points and estimated quantities. The intent is to guarantee a source of supply for a critical commodity for a specified period of time for agencies who have submitted, or 'filed' their requirements with centralized procurement. (WBS)

**Group**  
A Group is a classification of product (commodities, services or technology) assigned by PSG. (ApB)

**Letter of Acceptance**  
A Letter of Acceptance is a letter to the successful bidder(s) indicating acceptance of its bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a contract but is not an order for product, and contractor should not take any action with respect to actual contract deliveries except on the basis of purchase orders sent from authorized user(s). (PG)
Licensed Software
Licensed software includes ancillary products, error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g. patches, fixes, PTFs, programs, code or data conversion, or custom programming). (ApB)

Licensee
A Licensee is one or more authorized users who acquire product from contractor by execution of a license in accordance with the terms and conditions of the contract, provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual authorized user(s) on whose behalf the license was executed who took receipt of the product, and who shall be solely responsible for performance and liabilities incurred. (ApB)

Licensor
A Licensor is a contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract. (ApB)

Life Cycle Costs
Life Cycle Costs are defined as the sum of the fees and indirect costs in the purchase of a commodity, service or technology. Life Cycle Costing is used for procurements that involve the expenditure of funds for both the fees associated with the services to be procured (price) and costs associated with the introduction of the services into the environment (indirect costs). An example of the application of the Life Cycle Cost evaluation is the sum cost of the acquisition of a new computer environment (offer price) and the cost of a systems conversion necessitated by the installation of a new computer environment (indirect costs). (PG)

Lowest Price
"Lowest Price" is the basis for awarding all commodity contracts among responsive and responsible offerers. (PG)

Mini-Bid
A Mini-Bid Process is an abbreviated bid process in which contract users solicit final pricing from back-drop contractors for specific projects. It differs from "best & final" offers because the mini-bid process is required in certain contracts and the exact process is clearly outlined in the back-drop contracts. (WBS)
Mini-Bid Process
A formal mini-bid is the process whereby an Authorized User develops a project definition outlining their specific requirement and solicits bids from qualified back-drop contractors to determine the best value solution. From development of the project specifications to the project award takes from six to ten weeks, a fraction of the time when compared with the traditional RFP procurement. Project awards shall be based on "Best Value. In the technology area, PBX Systems and IT Services make use of the mini-bid process and each one has several unique features found in its own guidelines describing the required formal mini-bid process. These guidelines are available on the OGS website or upon request from the Procurement Services Group.

Except where an agency can justify single or sole source procurement or where the requirement does not exceed $15,000, (or where a direct purchase is made form an NYS MBE, WBE, SBE for up to $50K) the formal mini-bid process is required for an Authorized User to utilize these two contracts. (WBST)

Mini-Bid Project Definition
A Mini-Bid Project Definition is a bid document containing project specific bid specifications developed by or for an authorized user which solicits bids from Contractors previously qualified under a back-drop contract. (ApB)

Multi-State Contract
A Multi-State Contract is any contract open to agencies of the State of New York which is also open to the agencies of other states. The contract may be administered by New York State, or by another host state. (WBS)

Multiple Award
A Multiple Award is an award of a contract to more than one responsive and responsible bidder who meets the requirements of a specification, where the multiple award is made on the grounds set forth in the bid document in order to satisfy multiple factors and needs of authorized users. Those factors may include complexity of items, various manufacturers, differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, geographic location or other pertinent factors. (ApB) A multiple award may be made as the result of a single IFB (e.g., books) or as the result of issuing a single contract for multiple IFB's for similar type products (e.g., PC's)

Negotiated Contract
A contract established by agreements reached between a contracting entity and a vendor in lieu of issuing a bid document. While occasionally negotiation follows a competitive bid when only one bid is received, such resulting contracts are considered to be competitive procurements. (WBST)

Non-State Agencies
Non-State Agencies, also referred to as Authorized Users, are any of a group of entities authorized by law to utilize State centralized contracts. For a complete list of eligible groups, see the OGS Website. http://www.ogs.state.ny.us/purchase/snt/othersuse.asp
**Piggyback Contract**
A Piggyback Contract is a contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use in accordance with the requirements of the New York State Finance Law. (ApB)

**Preferred Sources**
To advance special social and economic goals, certain providers have “preferred source” status under the law. The acquisition of commodities and/or services from preferred sources is exempted from statutory competitive procurement requirements. All State agencies, political subdivisions and public benefit corporations (which includes most public authorities), are required to purchase approved products and services from preferred sources in accordance with the procedures and requirements described in the Preferred Source Guidelines.

http://www.ogs.state.ny.us/procurecounc/pdfdoc/psguide.pdf

**Price**
"Price" unless otherwise specified means the amount of money set as consideration for the sale of a commodity or service and may include, but is not limited to, when applicable and when specified in the solicitation delivery charges, installation charges and other costs. (SFL)

**Prime Vendor Contract**
A Prime Vendor Contract is a contract that establishes a single vendor or multiple vendors as the source for a broad range of goods and/or services associated with a given purchasing sector(s). OGS has currently let Prime Vendor contracts for food and household supplies, and industrial and commercial supplies and equipment. (WBS)

**Procurement Guidelines**
The New York State Procurement Council has adopted procurement guidelines to assist New York State agencies when procuring commodities, services and technology. Procurement Guidelines may be viewed at:

http://www.ogs.state.ny.us/procurecounc/default.asp

**Procurement Record**
The Procurement Record is the accumulated documentation, relating to a purchase, by an Authorized User. Documentation should include, but not necessarily be limited to justification for a single or sole source purchase, competitive methodology utilized (mini-bid vs. agency RFP) and reasonableness of price. Chapter 95 of the Laws of 2000 includes an amendment to Section 163 (7) of the State Finance Law stating, "Agencies are required to document evaluation criteria in the procurement record prior to the initial receipt of offers in a best value procurement." Section 163 (9) (g) was amended to add "The procurement record must include each amendment to a contract and the justification for the same." (WBST)

A Procurement Record is the documentation by the issuing entity of the decisions made and approach taken during the procurement process. (ApB)
Procurement Record
The new procurement law includes a requirement that a "Procurement Record" be kept for each acquisition. The Record formalized the practice of agencies to maintain documentation concerning the procurement process and the decisions made during that process. The Procurement Record, including the solicitation documents, should contain all the materials necessary to be conveyed to the Office of the State Comptroller for contract review purposes and any other material the agency determines is essential. The Record is designed to both serve and protect agencies and the business community during and after the procurement. (PG)

Product
A Product is a deliverable under any bid or contract which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software. (ApB)

Purchasing Memorandum (PM)
A Purchasing Memorandum is the notification document used by PSG to announce an adjustment, modification, extension or cancellation of a contract.

Request For Information (RFI)
A Request For Information (RFI) provides a preliminary description of the program objectives and specifications and solicits input from offerers as to the availability of products and services to meet the agency's needs (PG)

Request for Proposals (RFP)
A Request for Proposals (RFP) is a type of bid document which is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value", as defined by State Finance Law. (ApB)

Request for Quotation (RFQ) / Letter Quote (LQ)
A Request for Quotation (RFQ), also referred to as Letter Quote (LQ), is a type of bid document which can be used when a formal bid opening is not required (e.g. discretionary, sole source, single source or emergency purchases). (ApB)

Responsible Bidder
Responsible Bidder is a bidder that is determined to have skill, judgment and integrity, and that is found to be competent, reliable, experienced and qualified financially, as determined by the Commissioner (OGS/PSG). (ApB)

A Responsive Bidder is a bidder whose offer meets the specifications or requirements prescribed in the bid document or solicitation, as determined by the Commissioner (OGS/PSG). (ApB)
**Service or Services**
"Service" or "services" means, except with respect to contracts for state printing, the performance of a task or task and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For the purposes of this article, technology shall be deemed a service. Services, as defined in this article, shall not apply to those contracts for architectural, engineering or surveying services, or those contracts approved in accordance with article eleven-b of this chapter. (SFL)

Services consist of the performance of a task or tasks, which may include the use of a material good or a quantity of material goods. According to the Procurement Stewardship Act of 1995, this definition includes technology, which can be either a good or a service or a combination thereof (often referred to as "bundled" acquisitions). (PG)

**Single Source**
A Single Source procurement is one in which two or more vendors can supply the commodity, technology and/or perform the services required by an agency, but the State agency selects one vendor over the others for reasons such as expertise or previous experience with similar contracts. (PG)

**Small Business Concern**
"Small business concern" or "small business" means a business which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons. (SFL)

**Sole Source**
A Sole Source procurement is one in which only one vendor can supply the commodities, technology and/or perform the services required by an agency. (PG)

"Sole source" means a procurement in which only one Contractor is capable of supplying the required product or service. (WBST)

**Single Source**
"Single source" means a procurement in which although two or more Contractors (or participating resellers) can supply the required product or service, the Authorized User, upon written findings setting forth the material and substantial reasons therefore, may award the order to one Contractor (or participating reseller) over the other(s). The Authorized User shall document in the procurement record the circumstances leading to the selection of the vendor, including the alternatives considered, the rationale for selecting the specific vendor and the basis upon which it determined the cost was reasonable. Refer to the Procurement Council Guidelines located at the OGS website for further information on Single and Sole Source. (WBST)
Specifications
In the case of commodities and technology, the detailed specifications will in most cases fall into one of the following types: (source for all-ApB)

- **Make and Model or Equal**—When an agency is not limiting its procurement to a specific brand, it may use a make and model specification. This will reference a specific manufacturer's product in order to describe such factors as functionality, style, or capacity. However, the agency may acquire any product having equivalent characteristics.

- **Qualified Products List**—If an agency has determined and can provide justification why only one product or only certain products can meet their needs, the detailed specification may take the form of a Qualified Products List. A statement must be made in the IFB that bids will be accepted on the specified item(s) only and that no substitutes will be considered.

- **Technical Specification** describes the product required in detail, usually outlining physical components.

- **Performance Specification** describes the specific performance expected from a product. The bidder assumes responsibility for ensuring that the product offered performs as required.

State Agency
"State agency" or "state agencies" means all state departments, boards, commissions, offices or institutions but excludes, however, for the purposes of subdivision five of section three hundred fifty-five of the education law, the state university of New York and excludes, for the purposes of subdivision a of section sixty-two hundred eighteen of the education law, the city university of New York. Furthermore, such term shall not include the legislature or the judiciary. (SFL)

Technology
Technology is defined as a good or a service or a combination thereof, that results in a technical method of achieving a practical purpose or in improvements in productivity. (PG)

“Technology” means either a good or a service or a combination thereof, that results in a technical method of achieving a practical purpose or in improvements in productivity. Goods may be either new or used. (SFL)

Term Contract
A Term Contract is any contract covering purchases made during a specified time period. (WBS)

Statewide Term Contract
A Statewide Term Contract is a term contract open to all State agencies, political subdivisions, and all others authorized by law to participate. Though the bid document may define or limit authorized contract users, the norm calls for the broadest possible participation. (WBS)

Using an Invitation for Bid (IFB) or a Request For Proposal (RFP)
The decision as to which procurement method or model to use is at the discretion of the procuring agency. Generally speaking, less complex procurements for commodities, services and/or technology should use an IFB and more complex procurements should use a RFP. (PG)