

## Glossary of Terms

An **arbitrary action** is an action not based on reason or judgment but on personal will or discretion without regard to rules or standards.

A **bid bond** is a written guarantee from a third party guarantor (usually a bank or an insurance company) submitted by a contractor (bidder) with a bid. A bid bond ensures that when the grantee accepts a contractor's bid, the contractor will proceed with the contract, and it assures the bidder has the financial means to accept the job for the price quoted in the bid.

A **bid guarantee** consists of a firm commitment, such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute contractual documents that may be required within a specific time period.

**Bonding** or **bonding insurance** is a way of insuring against loss caused by a failure of a bidder or contractor to perform. The cost of bonding varies, but generally premiums are between .75 percent and 3 percent of the face value of the bond. The actual cost varies depending on the risks and nature of the bond. If the contractor fails to perform, the insurance company is responsible to the insured for payment, up to the limit of the bond. The insurance company then has recourse against the contractor for reimbursement.

A **change order** is a written order by a project owner directing the contractor to change contract amount, requirements, or time. The changes must be within the scope of the contract and in accordance with the contract's provisions for changes to be legally implemented without the consent of the contractor. A change order may also be called a modification order.

A **contract** is a voluntary, deliberate, and legally enforceable (binding) agreement (oral or written) between two or more competent parties in which there is a promise to do something in return for a valuable benefit known as consideration. A contractual relationship exists when there is (1) an offer, (2) acceptance of the offer, and a (3) valid (legal and valuable) consideration. Each party to a contract acquires rights and duties relative to the rights and duties of the other parties. Contracts may also include a subcontract under the contract.

A **contractor** is a person or firm that agrees to furnish a certain number or quantity of goods, material, equipment, personnel, and/or perform services that meet or exceed stated requirements or specifications, at a mutually agreed upon specified price. See definition for vendor.

A **contract administration system** is a system for handling contracts, including (1) invitation to bid, (2) bid evaluation, (3) award of contract, (4) contract implementation, (5) measurement of work completed, and (6) computation of payments. It also includes monitoring contract relationships, addressing related problems, incorporating necessary changes or modifications in the contract, ensuring both parties meet or exceed each other's expectations, delivering the specified goods and/or perform services, and actively interacting with the contractor to achieve the contract's objective(s).

A **cost plus percentage contract** is an agreement in which the contractor is provided a specified percentage of profit over and above the actual costs incurred.

**Cost analysis** is an evaluation of the elements (e.g., labor or materials) that make up the contractor's total cost or price to determine if they are allowable, allocable, and reasonable. A cost analysis is required when the potential contractor is required to submit the elements that make up the estimated cost. A cost analysis is required when price competition is lacking, unless price reasonableness can be established on the basis of catalog or market prices of commercial products or services sold in substantial quantities to the general public. A product is considered to be "sold in substantial quantity" when the regular sales volume is large enough to constitute a real commercial market. Services are considered to be "sold in substantial quantity" when the contractor/vendor customarily provides them, using regularly employed personnel, and using equipment (if any is needed) regularly maintained solely to provide the services.

Cost analysis is required for sole-source procurements using the noncompetitive proposal procurement method. It is required when negotiating a contract after a sealed bid procurement fails to produce more than one bidder, and it is determined rebidding would not produce additional bids. It is required for any contract changes or change orders if the price will change, whether it increases or decreases.

Under a **cost-reimbursement contract**, allowable costs incurred by a contractor in the performance of a contract are reimbursed as described in the terms of the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

[Federal Acquisition Regulation 16.301]

A **firm-fixed-price contract** provides for a price not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places maximum risk and full responsibility for all costs and resulting profit or loss on the contractor. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties.

A firm-fixed-price contract is suitable for acquiring commercial items or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications when fair and reasonable prices can be established at the outset, such as when:

- (a) There is adequate price competition;
- (b) There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid certified cost or pricing data;
- (c) Available cost or pricing information permits realistic estimates of the probable costs of performance; or

(d) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

[Federal Acquisition Regulation 16.202]

**Equipment** means tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such a definition would at least include all equipment defined herein.

[34 CFR § 80.3]

Under IDEA regulations, **equipment** means (a) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and (b) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

[34 CFR § 300.14]

**Labor surplus area** means a geographical area identified by the U.S. Department of Labor as an area of concentrated unemployment or underemployment or an area of labor surplus. To access additional information on labor surplus areas, visit: [www.doleta.gov/programs/lisa.cfm](http://www.doleta.gov/programs/lisa.cfm).

**Labor surplus area firm** means a firm that, together with its first-tier subcontractors, will perform substantially in labor surplus areas identified by the U.S. Department of Labor. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price. [40 CFR § 33.103]

A **minority firm** (minority business enterprise) is a business in which minority group members own 51 percent or more of the company; or, in the case of a publicly-owned business, one in which minority group members own at least 51 percent of its voting stock and control management and daily business operations. Such groups include, but are not limited to, African Americans, Hispanic Americans, Native Americans, Indian tribes, Asian Pacific Americans, Native Hawaiian Organizations, and other minorities.

**Negotiable instruments** are unconditioned writing that promises or orders the payment of a fixed amount of money, including checks, drafts, bearer bonds, some certificates of deposit, promissory notes, and bank notes (currency). [Section 3-104 of the Uniform Commercial Code]

A **payment bond** is a deposit or guarantee in connection with a contract to assure all persons (employees, suppliers, subcontractors, and others creditors) supplying labor and material receive payment. A payment bond is executed to assure payment of all persons supplying labor and materials (subcontractor, supplier, service provider, etc.) in the execution of the work (services, materials, etc.) provided for in the contract.

A **performance bond** is a written guarantee from a third party guarantor (usually a bank or an insurance company) submitted by a contractor on winning the bid. A performance bond ensures payment of a sum (not exceeding a stated maximum) of money in case the contractor fails to fully perform the contract. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligation under the contract.

**Price** is the quantity of payment or compensation given by one party to another in return for goods or services. It includes any fee or profit applicable to the contract type.

**Price analysis** is the evaluation of prices through (1) comparison of current quotations, (2) comparison of current quotations with previous quotations for the same or similar items, (3) comparison with the purchaser's own cost estimates, and (4) use of standard measures. It is used when a detailed cost analysis is not performed. Price analysis is used to verify the overall price offered is fair and reasonable.

**Procurement** is the complete process of obtaining goods and services from preparation and processing of a requisition to receipt and approval of the invoice for payment.

**Profit** is the dollar amount or payment over and above allowable costs paid to the contractor or supplier to motivate contract performance.

A **purchase order (PO)** is a buyer-generated document authorizing a purchase. It is issued by a buyer/grantee to a seller/contractor indicating descriptions, quantities, prices, discounts, payment terms, dates of performance or shipment, other associated terms and conditions, and identifies a specific vendor. When accepted by the vendor, a purchase order becomes a contract binding on both parties.

A **retainer** is a fee paid in advance to a person or firm to secure the privilege of obtaining services as and when required.

**Small firm** (business) criteria are established by the Small Business Administration (SBA). The SBA has established two widely used size standards – 500 employees for most manufacturing and mining industries and \$7.0 million in average annual receipts for most nonmanufacturing industries. However, many exceptions exist. For the applicable size standard, see the SBA's Small Business Size Regulations, 13 CFR §121. More information on Small Business Size Regulations is available online at SBA's website

located at: <http://www.sba.gov/content/small-business-size-regulations> and at the Table of Small Business Size Standards, [http://www.sba.gov/sites/default/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf).

**Source evaluation** or **source determination** involves discovering the root or cause of an issue or problem. For example, a company experiencing higher than expected costs associated with a product could use source determination procedures to backtrack through the production process and find where costs begin to increase.

**Subgrant** means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible grantee. The term includes financial assistance when provided by a contractual legal agreement, but does not include procurement purchases nor does it include any form of assistance which is excluded from the definition of grant in 34 CFR § 80.36. [34 CFR § 80.36]

A **grantee** means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. [34 CFR § 80.30]

A **time-and-materials contract** provides for acquiring supplies or services on the basis of direct labor hours at specified fixed hourly rates (including wages, overhead, general and administrative expenses, and profit) and actual cost for materials. A time-and-materials contract is used when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. The contract specifies separate fixed hourly rates that include wages, overhead, general and administrative expenses, and profit for each category of labor. [Federal Acquisition Regulation 16.601]

**Value engineering** is an examination of each procurement item to ascertain its total cost of acquisition, maintenance, and usage over its useful life and, wherever feasible, to replace eliminate or reduce the cost or use a more cost effective substitute.

A **vendor** is an individual or firm that supplies goods or services. See definition for contractor.

**Women's business enterprise** means a business or businesses owned by a woman or a group of women; or the establishment, maintenance, or development of a business or businesses by a woman or a group of women. A women-owned business is a small business which a woman or a group of women control and operate and own not less than 51 percent of the business. [15 USC § 7108(7)-(8)]