

## I. Q & A: Regarding Completing the Procurement, Cost Reasonableness, and Contract Information Checklists Under the Sub-Agreement Module for the BCC Data Management System

### Q 1: WHAT IS THE PURPOSE OF THIS MODULE?

The purpose of this module is to capture all the procurement and contracting documentation associated with your CDBG-DR funded activities for which you intend to seek reimbursement from the Boulder County Collaborative (BCC). If it was necessary to procure goods or services to carry out the funded activity, each procurement that will be reimbursed will need to complete the Sub-Agreement Module in Salesforce. The following questions should walk you through identifying the appropriate documents needed based on type of purchase methodology used during the procurement. **Procurement resources are available on the BCC's website at [www.bccollaborative.org/procurement-resources.html](http://www.bccollaborative.org/procurement-resources.html).**

### Q2: WHAT TYPE OF PURCHASE DO I HAVE?

Types of purchasing methodologies that are eligible under Federal and State procurement are listed below. The requirements for these types of procurement can be found at 2 CFR 200.317-325. The State has a dollar threshold that is lower than the Federal guidelines. If the State or your local procurement policies are more stringent, have lower funding caps, or don't require certain types of procurement (for example, City of Longmont's procurement code does not allow qualifications-based selection without price consideration) then you must follow those more restrictive requirements. Where the State has a different threshold, that amount will be listed. *Note: If your local funding thresholds are lower than the State or Federal thresholds, you may want to consider raising the caps for the purposes of flood recovery procurements only which would not impact your normal business process but could possibly lower barriers to flood related procurements.*

- **Micro Purchase** – up to **\$3,000** (total aggregated)
  - Acquisition of supplies or services with established market rates (i.e., supplies ordered from Office Supply catalogue) - no quote or bid required.
- **Small Purchase** – Up to **\$150,000** for CDBG-DR only projects, **\$100,000** for FEMA match projects, **or more stringent local threshold**
  - Acquisition of goods and services with an aggregate total of no more than the threshold amounts listed above (bids, proposals, or quotes are solicited but no published formal request for bids, proposals, or quotes is required).
- **Invitation for Bid (IFB)** – More than **\$150,000 State and Federal cap (\$100,000 FEMA)**

-also called Sealed Bids, is publicly bid and is required if contract is estimated to be more than the **\$150,000 cap** for total aggregate services and is preferred by HUD for **all** construction contracts.

- **Competitive Proposals** – No dollar threshold  
-also called Request for Proposals or Qualifications [RFP/RFQ]- this method does not require a dollar threshold but they must be publically bid and identify all evaluation factors and their relative importance with sufficient time to respond. The RFP does require price to be a factor in the evaluation. If procuring architectural/engineering services, then the RFQ can be used which allows these professional services to be based on qualifications without considering price as a factor.
- **Non-competitive Proposals** – there is no dollar threshold for non-competitive proposals: however, this method requires specific justifications (described below in Q3).

### Q 3: HOW DO I KNOW IF I HAVE A SEALED BID OR A COMPETITIVE PROPOSAL?

#### Invitation for Bid vs. Competitive Proposals.

**Sealed bidding** is the required method for procuring construction, and preferred for supplies and non-complicated service contracts in excess of the State and Federal small purchase threshold (**\$150,000 CDBG-DR, \$100,000 FEMA**).

The purchase meets the criteria for a Sealed Bid if:

- Bids were sealed
- Bids were publicly solicited
- Two or more responsible suppliers bid
- There was a public opening of the bids
- Bid was awarded to the responsible bidder whose bid is the lowest price and conforms to all the material terms and conditions of the invitation for bid
- Contract is a firm fixed-price contract (lump sum or unit price)

**Competitive Proposal Method** is more appropriate when the scope requirements cannot be described specifically enough to accurately estimate the total cost of the contract *or* the nature of the requirement is such that the Grantee needs to evaluate more than just price to be sure that the prospective contractor understands and can complete the contract, especially when contracting for professional services (e.g., legal, architect-engineer, accountant, etc.) where specific expertise is needed.

The purchase meets the criteria for a Competitive Proposal if includes:

- Published written request for submissions with adequate time to respond (at least 2 weeks)

- Received 2 or more proposals (RFP) or qualifications (RFQ)
- If RFP, includes *both* qualifications and cost information
- If RFQ (used for architecture or engineering), *only* offerer's expertise/experience are submitted, no cost, and rates are negotiated
- Factors for evaluation of the proposal are clearly and fairly applied to all submittals
- Clear process for technical evaluation and determination of responsible offerer are evident

#### Q 4: WHAT IF THE PURCHASE WAS NON-COMPETITIVE?

##### **Non-competitive Proposal**

Non-competitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

- Item/service only available from a single source; or
- Where a public emergency or urgent situation is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods; or
- Where after solicitation of a number of sources, competition is determined inadequate.

The purchase meets the criteria for a Non-competitive Proposal if includes:

- Written justification that demonstrates that proposal was infeasible under other procurement means listed above and one of the circumstances bulleted above apply.

#### Q 5: WHAT IS THE PROCUREMENT CHECKLIST IN BCC DATA MANAGEMENT SYSTEM?

The BCC Data Management System (DMS) has a procurement checklist on the "Sub-Agreements" page. This checklist itemizes the key compliance requirements monitored by HUD and OIG when reviewing contract procurement. The checklist will need to be marked "complete" when the appropriate back-up documentation has been put into DMS upload pane under the procured vendor's name. If an item on the checklist does not apply to the particular type of purchasing that was used, then the item would be marked "N/A".

**Navigation to the Procurement Checklist in BCC DMS:** Select "Contracting & Expenses" from the blue drop down menu in the top right of the screen. Several tabs are then shown at the top of the module that take you to various pages, including Vendors, Sub-Agreements, Costs, and Cost Allocation Plans. A new Vendor must first be created on the "Vendors" page. Then a new Sub-Agreement can be created on the "Sub-Agreements" page that tiers from that Vendor. The Procurement Checklist is included on the Sub-Agreements" page.

#### Q6: HOW DO I KNOW IF AN ITEM IN THE PROCUREMENT CHECKLIST IS COMPLETE OR N/A?

Each checklist item is explained below:

1. Solicitation: This item has a drop down box that provides the purchase types (i.e., micro purchase, small purchase, IFB, RFP, RFQ, non-competitive). Chose the type of purchase that supports the contract being added to the system.
2. IFB/RFP Package: The IFB/RFP Package is the entire package of information necessary for potential bidders to submit a bid or proposal. There are some slight differences between an IFB and RFP/RFQs. Required documents for each are listed below. *[Note: this item should be marked N/A if procurement was through micro or small purchase method]*

*IFB*

- Cover Page with Table of Contents
- Bid Form (Form of Statement of Bidders Qualifications)
- Specification and Statement of Work
- Required HUD Forms and Certifications (including Section 3 forms)
- Wage Classifications if Davis Bacon construction project

*RFP/RFQ*

- Cover Page with Table of Contents
- Statement of Work
- Submission Requirements
- Evaluation Factors
- Required HUD Forms and Certifications (including Section 3 forms)

3. Proposal/Bid: A copy of each proposal or bid received from prospective contractors is required.
4. Quotes: This would only be marked complete if the purchase type was the Small Purchase method. There should be at least 3 quotes for a procurement if outreach to specific contractors is performed rather than publicly advertising a Request for Quotes, and a written justification as to how the low bidder was determined. Documentation of quotes is required. *[Note: this item should be marked N/A for all other methods of purchasing except Small Purchase]*
5. Cost and Price Analysis: There must be documentation that supports that a Cost/Price Analysis was completed prior to awarding a contract and documentation that the chosen vendor's contract is reasonable based on the cost/price analysis. *[Note: this must be completed for all types of purchases above the Small Purchase Threshold of \$150,000. HUD guidance on Cost/Price Analysis is in Section II below. For FEMA Match projects, cost/price analysis is required for every procurement.]*
6. Davis Bacon Prevailing Wage Rates: There must be proof that the correct and appropriate Davis Bacon wage decision was included in the purchasing solicitation. *[Note: This would apply to ANY of the purchasing methods where the solicitation is for construction work over \$2,000, **except** if the contract is for less than 8 units of housing construction, including rehabilitation, demolition, or elevation.]*

7. Bid Bond Certification: A bid bond in the amount of 5% of the bid is required for construction bids over \$100,000.
8. Equal Employment Certification: This certification must be included in solicitations and bids/proposals for construction contracts over \$10,000. *[Note: the would be marked N/A for micro and small purchases under \$10,000 or professional services solicitations]*
9. Section 3 Plan: These forms must be included in all solicitations and bids/proposals over \$100,000. *[Note: Mark N/A if micro or small purchase under \$100,000]*
10. Section 3/Segregated Facilities Certification: This is required for all contracts over \$100,000.
11. Civil Rights Certification: This is required in all solicitations and contracts. *[Note: Mark N/A if a micro purchase]*
12. Labor Standards & Davis Bacon Certification: Required for all construction solicitations and bids/proposals in excess of **\$2,000** (with the exception of new construction, rehabilitation, demolition, or elevation of 8 units of housing or less).
13. Statement of Bidder's Qualifications: Required in all IFB, RFP, and RFQs. This form is intended to determine whether the bidder is "responsible," or able to satisfactorily perform the work. *[Note: Mark N/A if a micro purchase]*
14. Certificate of Corporate Principal: Required in all IFB, RFP, and RFQs. Debarment regulations require that corporate principals must not be debarred, in addition to the company itself. The CDBG-DR federal procurement provisions addendum includes a clause stating that by submitting a bid or proposal, the Corporate Principal is certifying that he/she is not debarred. *[Note: Mark N/A if a micro purchase]*
15. Non-Collusion Affidavit of Prime Bidder: Required in all IFB, RFP, and RFQs. *[Note: Mark N/A if a micro or small purchase]*
16. Bid Advertising with MBE/WBE: Documentation demonstrating satisfaction of the Six Affirmative Steps for using minority and women owned businesses when possible. *[Note: Mark N/A for micro purchases]*
17. Amendment/Addendum Log: Copy of the Amendment Log (i.e., listing of any additional information sent to prospective bidders/proposers prior to bid/proposal submission. *[Mark N/A for micro and small purchases]*
18. Bid Opening and Tabulation Checklist: Summary of bids, proposals, or quotes if with tabulation of eligible submittals and price comparisons if applicable. *[Note: Mark N/A if a Micro Purchase]*
19. Scoring/Evaluation Sheet: Copy of the scoring criteria, scores per submission, and evaluation of award (i.e., what is the basis for choosing this vendor?) for RFPs and RFQs. *[Note: Mark N/A for Micro Purchase, Small Purchase, and Invitation for Bid]*

20. Cost Reasonableness: This item has a drop down that gives the option of four choices: Price Competition, Cost Analysis, Price and Cost Analysis, and N/A. See Section below for HUD guidance for Cost and Price Analysis.

### Q7: HOW DO I COMPLETE THE CONTRACT PROVISIONS SECTION?

The Contract Provisions Checklist is on the “Sub-Agreements” page below the Procurement Checklist in the BCC DMS.

This section must be completed based on the terms in the contract. If this is a Prime Contract with sub-contractors, ONLY the Prime Contract terms will be reviewed. Below is an explanation of the Contract Provisions checklist based on Appendix II to 2 CFR Part 200. *Note: If the contract has the CDBG-DR Federal addendum, then these terms should be included in the addendum and therefore compliant with the following list of contract terms.*

1. Administrative, Contract, or Legal Remedies: All contracts in excess of **\$150,000** must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide such sanctions and penalties as appropriate. *[Note: Mark N/A for Micro and Small Purchases]*
2. Termination Clause: All contracts over **\$10,000** must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. *[Note: Mark N/A if contract is LESS than \$10,000]*
3. Equal Employment Opportunity Clause: All contracts that meet the definition of “federal assisted construction contract” in 41 CFR Part 60-1.3<sup>1</sup> must include the equal opportunity clause in accordance with Executive Order 11246. *[Note: the would be marked N/A for micro and small purchases under \$10,000 or professional services solicitations]*
4. Davis Bacon Act Clause: All Prime construction contracts in excess of **\$2,000** (with the exception of new construction, rehabilitation, demolition, or elevation of 8 units of housing or less) must include compliance with the Davis-Bacon Act for federal prevailing wage requirements.
5. Contract Work Hours and Safety Standards Act Clause: Must be included in all contracts awarded in excess of **\$100,000** that involve the employment of mechanics or laborers.

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<sup>1</sup> *Federally assisted construction contract* means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

6. Rights to Inventions Clause: If the contract meets the definition of “funding agreement” under 37 CFR 401.2(a)<sup>2</sup> and the recipient enters into a contract with a small business firm or nonprofit organization the recipient must comply with the “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms”. *[Note: Including this clause in all contracts is the safest way to ensure compliance regardless of the type of firm or organization that bids or proposes.]*
7. Clean Air Act and the Federal Water Pollution Control Act Clause: Contracts and subcontracts in excess of **\$150,000** must contain a provision that requires compliance with all applicable standards, orders or regulations issued pursuant to these Acts.
8. Debarment and Suspension Clause (Executive Orders 12549 and 12689): No contracts may be awarded to parties listed on the government-wide exclusions in the System for Award Management (SAM).
9. Byrd Anti-Lobbying Amendment Clause: Contracts or bids exceeding **\$100,000** must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence a Federal contract.
10. Procurement of Recovered Materials: All State agencies and political subdivisions of a State *and* its contractors must comply with section 6002 of the Solid Waste Disposal Act. Requirements include procuring only items designated in guidelines of the EPA at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000, procuring solid waste management service in a manner that maximizes energy and resource recovery, and establishing an affirmative Procurement program for procurement of recover materials identified in the EIA guidelines. *[Note: Required for all contracts that include purchase of materials in excess of \$10,000.]*
11. Section 3 Contract Clause: HUD requires that all Section 3 covered projects that meet the thresholds set for recipients, contractors, and subcontractors must contain the clauses found at 24 CFR 135.38.

Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of CDBG-DR assistance that is used for the following projects;

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

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<sup>2</sup> The term *funding agreement* means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

- (ii) Housing construction; and
- (iii) Other public construction.

Section 3 requirements apply to consultants, contractors, and subcontractors performing work on Section 3 covered project(s) when the amount of total assistance exceeds **\$200,000**; *and* any individual contract or subcontract exceeds **\$100,000**. If a recipient receives Section 3 covered housing or community development assistance in excess of **\$200,000**, but no contract exceeds **\$100,000**, the Section 3 preference requirements *only* apply to the recipient. *[Note: Mark N/A if contracts do not meet these thresholds or do not trigger Section 3]*

***Note: All section 3 covered contracts shall include the following clause (referred to as the section 3 clause).***

*Section 3 Clause to be inserted into contracts*

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.



D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

12. Energy Efficiency Clause: Requires contractors to comply with mandatory standards and policies relating to energy efficiency as contained in the State energy conservation plan. *[Required for all contracts.]*

#### **Q8: HOW DO I COMPLETE THE CONTRACT AWARD SECTION?**

After completing the checklists for Procurement and Contract Provisions, it is necessary to complete the Contract Award checklist which documents the appropriate steps were taken in the award of the contract. Below is an explanation of the Contract Award checklist.

1. Notice of Award/Regret Letters: Copy of document notifying proposers of award or no award of the contract. *[Note: Mark N/A for Micro or Small Purchase]*
2. Executed Service or Construction Contract: Copy of the Contract fully executed with all dates and signatures. *[Note: Mark N/A for Micro Purchase from supply vendor (e.g., Office Depot, etc.)]*

3. A/E Design Contract: Copy of architectural or engineering design contract for construction with fully executed dates and signatures. *[Note: Mark N/A if not applicable to award]*
4. Insurance Certificates: Copy of required insurance certificates listed in the IFB/RFP and/or award contract. *[Note: Mark N/A for Micro Purchases]*
5. Performance Bond: Required for construction or facility improvement contracts and sub-contracts exceeding **\$100,000**. Copy of Performance Bond from the contractor for **100%** of the contract price.
6. Payment Bond: Required for construction or facility improvement contracts and sub-contracts exceeding **\$100,000**. Copy of Payment Bond from the contractor for **100%** of the contract price.

#### Q9: WHAT ARE THE REQUIREMENTS FOR DUNS NUMBERS, SAM VERIFICATION, AND COLORADO GOOD STANDING VERIFICATION?

After completing the Contract Award checklist, the next section is called Vendor Checklist (Pulled from Vendor Page). This information is copied over from the Vendor Page, where the checkboxes are for SAM Verification and Colorado Good Standing Verification. Here is the process to be followed to be able to complete these checkboxes on the “Vendor” page (*remember, the Vendor page must be created before you can create a “Sub-Agreement” page where the Procurement and Contracting Checklists are*):

#### Eligibility:

Refer to the Debarment Check Guidance on the BCC webpage ([www.bccollaborative.org/procurement-resources.html](http://www.bccollaborative.org/procurement-resources.html)) to determine whether your vendor needs to obtain a DUNS number and register on SAM.gov or if a unique identifier and a debarment certification is sufficient.

#### Steps for Vendors that require a DUNS number and SAM.gov registration PRIOR TO CONTRACT AWARD:

1. Vendor obtains a DUNS Number by registering through Dun and Bradstreet, Inc. at <https://fedgov.dnb.com/webform>.
2. Using the DUNS Number, Vendor registers with SAM at [www.sam.gov](http://www.sam.gov).
3. BCC Partner checks the Vendor’s status on SAM.
  - a. SAM status needs to be “Active” and have “No” exclusions to receive federal funding.
  - b. Make sure to use the save to PDF function to save and upload the SAM documentation into Salesforce on the Vendor page.

SAM Search Results		
List of records matching your search for :		
Search Term : City* of Longmont*		
Record Status: Active		
ENTITY	LONGMONT, CITY OF	Status:Active
DUNS: 080397110	+4:	CAGE Code: 497L2 DoDAAC:
Expiration Date: Sep 22, 2016	Has Active Exclusion?: No	Delinquent Federal Debt?: No
Address: 350 KIMBARK STREET		
City: LONGMONT		State/Province: COLORADO
ZIP Code: 80501-5500		Country: UNITED STATES

4. BCC Partner checks the business’s status with the Colorado Secretary of State’s Office by entering business information at <https://www.sos.state.co.us/biz/BusinessEntityCriteria.do>
5. BCC Partner downloads the Certificate of Good Standing and uploads to Vendor page on Salesforce.
6. BCC Partner marks the checkboxes for SAM Verification and Colorado Good Standing, and enter the SAM registration expiration date on the Vendor page in Salesforce.

**Steps for Vendors that do not require a DUNS number and SAM.gov registration PRIOR TO CONTRACT AWARD:**

1. Vendor provides one of the following unique identifiers to BCC Partner:
  - a. Provides EIN taxpayer identification number
  - b. Provides Social Security Number
  - c. Obtains a DUNS Number by registering through Dun and Bradstreet, Inc. at <https://fedgov.dnb.com/webform>
2. Vendor signs Debarment Certification Form (available at [www.bccollaborative.org/procurement-resources.html](http://www.bccollaborative.org/procurement-resources.html)) and provides to BCC Partner.
3. BCC Partner enters unique identifier and uploads Debarment Certification Form to Vendor page in Salesforce.
4. BCC Partner checks the business’s status with the Colorado Secretary of State’s Office by entering business information at <https://www.sos.state.co.us/biz/BusinessEntityCriteria.do>
5. BCC Partner downloads the Certificate of Good Standing and uploads to Vendor page on Salesforce.

## II. Q & A: Quick Guide to Cost and Price Analysis for HUD Grantees and Funding Recipients

### Q. 1: WHEN DO I PERFORM A COST OR PRICE ANALYSIS TO DETERMINE COST REASONABLENESS?

All CDBG-DR contracts over the small purchase limit of \$150,000 and change orders to such contracts require a cost or price analysis to make a cost/price reasonableness determination. They also require an independent cost estimate before receiving bids or proposals. Note: If the local agency procuring the contract has more restrictive requirements for cost/price analysis, those shall be followed. All procurements are still required to follow the federal Cost Principles to demonstrate that costs are necessary and reasonable, as described in 2 CFR 200.318(i). The \$150,000 federal threshold (or more stringent local threshold) to complete cost/ price analysis does not in any way eliminate requirements for fair and open competition, as applicable.

FEMA PA or HMGP projects are still required to follow the requirements of 44 CFR 13.36(f) instead of 2 CFR 200 because the presidential disaster declaration date for DR-4145 precedes the effective date of 2 CFR 200. Therefore, FEMA PA or HMGP projects have no threshold for triggering independent cost estimates and cost/price analysis, these elements are required for every procurement.

### Q. 2: WHAT IS PRICE ANALYSIS?

Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., lump sum) without analyzing any of the separate cost elements included in the bid/proposal.

### Q. 3: WHAT IS COST ANALYSIS?

Cost analysis is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price (for both new contracts and modifications) to determine if they are allowable, directed related to the requirement and ultimately, reasonable.

### Q. 4: WHEN DO I PERFORM A PRICE ANALYSIS?

You use price analysis whenever you are comparing lump sum prices – not cost estimates - received from contractors in a competitive pricing situation (e.g., when sealed bids are obtained).

### Q. 5: WHAT QUALIFIES AS COMPETITION?

Generally, competition means two or more (HUD deems this adequate) responsible (e.g., not debarred or suspended, etc.) offerors (“bidders”), competing independently, submit priced offers that satisfy the grantee’s contract requirement. FEMA considers three or more responsible offerors to be adequate competition. Obviously, the greater the number of offers received, the greater the competition and ideally, the better the pricing.

#### Q. 6: WHEN DO I PERFORM A COST ANALYSIS?

Cost analysis is used whenever you do not have price competition. A cost analysis is required when:

- Using the **competitive proposal** (or “negotiated”) method of contracting (see 2 CFR 200.320 (d)) for a definition), e.g., for acquiring professional, consulting or architect/engineering (A/E) services. Under the competitive proposal method, offerors are required to submit cost proposals that show the elements (e.g., labor, materials, overhead, profit) of their proposed costs or price.
- Negotiating a contract with a **sole source**, i.e., not soliciting competitive bids or offers. When a sole source is appropriate and justified (see 2 CFR 200.320 (f)), you must obtain a complete cost breakdown from the sole source contractor and perform an analysis using the cost principles to establish a fair and reasonable price or estimated cost.
- After soliciting competitive sealed bids, you receive **only one bid**, and it differs substantially from your independent estimate of the contract price. If you determine that the bid is unreasonable and decide to not re-compete (e.g., market survey tells you that you wouldn’t get competition), then you may formally cancel the solicitation and negotiate a contract price with the single bidder. In that case, you must obtain a cost breakdown of the single bid price and use cost principles to determine if that price is reasonable.
- Negotiating a **modification** (including change orders) to *any* type of contract, as long as the contract originally was, or would be put over, the \$150,000 small purchase threshold for CDBG-DR project procurements, or any amount for FEMA Match project procurements, if the modification changes the work authorized under the contract, and changes the price or total estimated cost, either upwards *or* downwards. You must obtain a detailed breakdown of the contractor's proposed cost - not a lump sum proposal – before negotiating the change in contract price.

**CAUTION:** *Modifications that change the work beyond the scope of the contract must be justified in accordance with the conditions set forth in 2 CFR 200.320 (f). If the out-of-scope change cannot be justified, you must procure the work competitively.*

#### Q. 7: DO I NEED TO ANALYZE AND NEGOTIATE PROFIT SEPARATELY?

Whenever there is no price competition (small purchases not excluded) or you are required to perform a cost analysis, and you are negotiating a contract action that provides for a profit or fee, you must negotiate profit separately. When negotiating profit, you should consider **all** of the following:

- The complexity of the work to be performed. The more difficult the work, the more profit a contractor may be entitled to.
- Contractor’s risk. How much risk – either performance or cost to the contractor - will the contract create? The higher the risk, the higher the reward, i.e., profit.
- Contractor’s investment (labor, oversight, etc.). How much and what type of resources will the contractor have to dedicate to performing the contract? The greater the investment of resources the more profit.

- Subcontracting. The amount of profit depends upon the size, nature and oversight needs of the subcontracts the contractor will use. Will the contractor perform most of the work, or will he/she sub out some of it, and if so, how much? Will subcontracted work be routine or complex? What amount and level of oversight and management will subcontracted work require of the contractor? Simple subcontracts for routine supplies of services should not be worth as much profit as complex subcontracts that require a lot oversight by your own highly skilled staff or management.
- Quality of the contractor's past performance. Profit should reward the contractor for a proven record of high quality performance. A consistent record of delivering quality goods or services on time within cost, indicates that the contractor will likely “deliver the goods” to you, too. (Note: You probably won’t be considering a poor performer for a new contract award.) Performance under the current contract must be considered when negotiating a modification.
- Industry profit rates in the surrounding geographical areas for similar work. What’s the “going rate,” especially for standard, more commercial types of work?  
**CAUTION:** Be careful to not pay going rates when the work required is not really covered by those rates, e.g., paying specialty rates for routine work.  
**CAUTION!** The “cost-plus-a-percentage-of-cost” and “percentage-of-construction-cost” contract types are prohibited. (See also 2 CFR 200.323 (d)) These types of contracts reward contractors for incurring greater costs, which is just the opposite of what is in your, the buyer’s, best interest.

**Q. 8: HOW DO COST ANALYSIS AND PRICE ANALYSIS APPLY TO THE DIFFERENT CONTRACTING METHODS?**

Procurement Type	Cost Reasonableness Determination
Small Purchase	<ul style="list-style-type: none"> <li>• CDBG-DR: N/A (but still comply with Cost Principles)</li> <li>• FEMA: Price Competition or Cost Analysis</li> </ul>
Invitation for Bid (Sealed Bid)	<ul style="list-style-type: none"> <li>• Price Competition</li> </ul>
Competitive Proposals	<ul style="list-style-type: none"> <li>• Price Competition</li> <li>• Cost Analysis</li> </ul>
Noncompetitive Proposals	<ul style="list-style-type: none"> <li>• Cost Analysis</li> </ul>

### Q 9: WHAT OTHER CONTRACT ACTIONS OR TYPES REQUIRE COST ANALYSIS?

- *Contract Modifications.* If you are negotiating a modification (including change orders) to any contract above the small purchase limit of \$150,000 for CDBG-DR project procurements or any FEMA project procurement (even if the basic contract was awarded competitively through sealed bidding) that changes the scope of work previously authorized and impacts the price or estimated cost, you must use cost analysis to arrive at a reasonable cost. The only exception to this rule is a contract modification based on pricing terms already established in the contract document. Keep in mind that changes in scope do not always result in increased costs. Elimination or reduction of contract work may result in a decrease in the contract price. Regardless of the direction of the price change, these modifications require cost analysis using the cost principles to determine that the price change is fair and reasonable.

### Q. 10: HOW DO I PERFORM AN ANALYSIS?

Here are some basic techniques.

#### **Price analysis**

Use as many of the following techniques as applicable and appropriate:

- Compare competitive prices received in response to the solicitation to one another. This assumes you receive a large enough number of competitively priced offers from the current marketplace.
- Compare proposed prices with prices under existing contracts and with prices proposed in the past for the same or similar items/services. Be sure to factor in any market changes (e.g., commodity price changes) or other influences (e.g., inflation).
- Apply rough yardsticks (e.g., dollars per pound, per square foot, per hour, etc.) to compare prices and highlight significant inconsistencies that warrant additional pricing inquiry.
- Compare competitive price lists, published catalog or market prices of commodities and products, similar indices and discount or rebate arrangements.
- Compare proposed prices with your independent (i.e., in-house) cost estimates.

#### **Cost Analysis**

Verify the accuracy of the cost and pricing information submitted, and evaluate:

- The reasonableness of the proposed costs, including allowances for contingencies. To be considered reasonable, proposed costs must meet three critical tests. The costs must be:
  - Allowable.* The applicable cost principles will usually state whether a type of cost is allowable or not. (2 CFR 200.403)
  - Allocable.* This means that the costs are logically related to, or required in the performance of the contract. Many costs may be allowable but not related to the work required under the contract. (2 CFR 200.405)

*-Reasonable.* This term is generally defined as what a prudent business would pay in a competitive marketplace. A cost can be allowable and allocable, and still not be what a prudent businessperson would pay (e.g., first class airfare for a proposed subcontractor). (2 CFR 200.404)

- The necessity for proposed cost items. Technical personnel (e.g., engineer, architect, information systems specialist, etc.) should review the proposed direct cost elements to determine their necessity to perform the contract and reasonableness (e.g., in comparison to market rates). A cost may be allowable under the cost principles and even allocable to the type of work to be performed, *but* still not be necessary for the specific contract.

Compare costs proposed by the offeror with:

- Actual costs previously incurred by the same contractor for the same or similar work. If it is a repetitive type of work or service, how much has it cost in the past. Apply any appropriate inflation factors for past work.
- Actual costs of previous the same or similar work performed by other contractors.
- Previous cost estimates from the offeror or other offerors for the same or similar items.
- The methods proposed by the offeror with the requirements of the solicitation (i.e., do the costs reflect the technical approach proposed and the work required?).
- The grantee's independent cost estimate, either created by grantee staff or for the grantee by an independent architect, engineer, appraiser, etc.

Verify that the offeror's cost submissions comply with the appropriate set of cost principles.