



# *OCD-DRU Compliance & Monitoring*

## ***Procurement Compliance and Regulations***

***(Section 6 of the Grantee Administrative Manual)***



# OCD-DRU Compliance & Monitoring

## ***The Role of Cost and Price Analyses***

### ***2 CFR 200.323(a):***

*The non-Federal entity must perform a **cost or price analysis** in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.*



# OCD-DRU Compliance & Monitoring

## ***Price Analysis vs Cost Analysis\*\****

Price Analysis — Price Analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., total sum) without analyzing any of the separate cost elements.

Cost Analysis — Cost Analysis is the evaluation of the separate elements (e.g., labor, materials, profit, etc.) that make up a contractor's total cost proposal or price to determine if they are allowable, directly related to the requirements and ultimately, reasonable. (Cost Analysis should apply to both new contracts and contract modifications or change orders.)

***\*\*Cost/Price Analyses can only be relied upon as controls if they are on file and dated prior to bid issue to establish chronology.***



# *OCD-DRU Compliance & Monitoring*

## ***Cost Analysis Determinations***

- Allowable?
- Reasonable?
- Allocable?



# *OCD-DRU Compliance & Monitoring*

## ***Procurement Types / Methods***

- Micro Purchase
- Small Purchase
- Competitive Sealed Bids
- Competitive Proposals
- Noncompetitive Proposals or Sole Source Provider



# OCD-DRU Compliance & Monitoring

## ***Micro Purchase***

- Micro purchases require simple price analysis prior to receiving bids or proposals. They do not require a cost analysis.
- Only accepted method for which no solicitation is required.
- Under \$2,000 for construction; and under \$5,000 for all other purchases.
- *Example:* A city or parish purchasing office equipment. (Quotes and use of a Purchase Order to accompany.)



# OCD-DRU Compliance & Monitoring

## ***Small Purchase***

- Relatively simple and informal procurement methods used for securing services, supplies or other property that does not cost more than the Simplified Acquisition Threshold (which is currently set at \$150,000), in the aggregate.
- If small purchase procurement is used, price or rate quotations (or submitted bids) will be obtained from an adequate number of qualified sources.
- *Example:* Breaking down larger contracts into smaller contracts for feasibility.



# *OCD-DRU Compliance & Monitoring*

## ***Sealed Bid***

- Formal advertising for the purchase of goods or services is the preferred method for the purchase of equipment and construction services.
- The grantee should always prepare their own cost estimate and compare it to the low competitive bid received. If they are significantly different, the grantee will need to evaluate its initial estimate, compare it to the bids received, and identify the appropriate price.





# *OCD-DRU Compliance & Monitoring*

## ***Sealed Bid***

For sealed bidding to be feasible, the following must be present:

- o A complete, adequate and realistic specification or purchase description;
- o Two or more responsible bidders are willing and able to compete effectively for the business; and
- o The procurement lends itself to a firm fixed-price contract and the selection of the bidder can be made principally on the basis of price.



# *OCD-DRU Compliance & Monitoring*

## ***Sealed Bid***

When sealed bids are used, the following requirements apply:

- o Invitation for bids must be publicly advertised;
- o Invitation for bids shall adequately define the items/services, enabling the bidder to properly respond;
- o All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- o A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder; and
- o Any bid may be rejected if there is a sound documented reason.



# OCD-DRU Compliance & Monitoring

## ***Competitive Proposals***

- Essentially two types:
  - Request for Proposal (RFP)
  - Request for Qualifications (RFQ)
- This method is typically used to contract for professional consulting, architectural, or engineering services. To determine the reasonableness of proposed costs, the grantee will need to perform a cost analysis using the appropriate set of principles.



# *OCD-DRU Compliance & Monitoring*

## ***Competitive Proposals***

- The Request For Qualifications (RFQ) method may be used for qualification-based procurement of architectural/engineering professional services. Typically, only A/E professional services may use factors other than price as a selection factor.
- The Request For Proposal (RFP) method may be used for other types of professional service providers. Price must be a factor when selecting professional service firms other than A/E.



# OCD-DRU Compliance & Monitoring

## ***Non-Competitive Proposals / Sole Source***

Non-competitive proposals are appropriate only if one of the following situations exists:

- The item is available only from a single source;
- The disaster emergency will not permit a delay resulting from competitive solicitation; (*Should be true exigency*)
- The Federal agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the grantee; or
- After solicitation of a number of sources, competition is determined inadequate.



# OCD-DRU Compliance & Monitoring

## ***Non-Competitive Proposals / Sole Source***

*(Regulation references from prior slide)*

Procurement Standard	Procurement Regulation Description
§200.320(f)	Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
§200.320(f)(1)	The item is available only from a single source;
§200.320(f)(2)	The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
§200.320(f)(3)	The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity, or
§200.320(f)(4)	After solicitation of a number of sources, competition is determined inadequate.



# *OCD-DRU Compliance & Monitoring*

## ***Noncompetitive Proposals / Sole Source***

- The non-competitive method should be considered for use under limited circumstances—generally when all other methods have been exhausted.
- Grantee should consult CDBG Program and/or Compliance staff before utilizing this method.
- A thorough cost analysis of the single bid verifying proposed cost data is required if the non-competitive method is used.



# OCD-DRU Compliance & Monitoring

## ***A Compliant Path from Sealed Bid to Noncompetitive?***

Although federal regulations require a minimum of two responses to sealed bids—*per 2 CFR 200.320(c)(1)(ii) & 24 CFR 85.36(d)(2)(i)*—HUD does allow for a path to compliance when the sealed bid method only garners a single response—via Noncompetitive Proposal.

Per this guidance, the following three criteria—which are also outlined in 24 CFR 85.36(d)(4)—must be met:

- (i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, seal bids, or competitive proposals and one of the following circumstances apply:
  - A. The item is only available from one source;
  - B. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - C. The awarding agency authorizes noncompetitive proposals; or
  - D. After solicitation of a number of sources, competition is determined inadequate.
- (ii) Cost Analysis, i.e., verifying the proposed cost data, the projection of the data, and the evaluation of specific elements of costs and profits is required.
- (iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.





# OCD-DRU Compliance & Monitoring

## ***Compliance Breaches / Issue Determination***

Grant Fund Usage — As is the case with virtually all Federal Regulations, the spirit/intent of procurement regulations is to ensure the judicious use of federal funds.

Competition is Paramount — As is stated multiple times throughout CFR regarding procurement, the best—and perhaps *only*—way to provide for a judicious use of federal funds is to ensure ***free and open competition*** throughout the process.

Compliance Issues — Generally, when it comes to procurement, the graveness / prioritization of compliance issues is driven by the extent to which competition is hindered and/or funds are spent imprudently.



# *OCD-DRU Compliance & Monitoring*

## ***Contracting → Basic Contract Types:***

Purchase Order — A purchase order (P.O.) is a document issued by a buyer to a seller committing to pay the seller for the future sale of specific products/services at specified prices.

Fixed Price — A Fixed Price Contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract

Cost Reimbursement — A Cost Reimbursement contract provides for payment of allowable incurred costs, to the extent prescribed in the contract.

Time & Materials — A Time and Materials (T&M) contract provides for payment of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and actual cost for materials.



# OCD-DRU Compliance & Monitoring

## Procurement Types / Methods

Procurement Type	Cost Reasonableness	Contract Type	Solicitation Method	Applications	Dollar Thresholds (if applicable)
<b>Micro Purchase</b> See 8.0	<ul style="list-style-type: none"> <li>Price Analysis</li> </ul>	<ul style="list-style-type: none"> <li>Fixed Order</li> <li>Fixed Price</li> </ul>	<ul style="list-style-type: none"> <li>No Solicitation Required</li> </ul>	<ul style="list-style-type: none"> <li>Supplies</li> <li>Produced Items</li> <li>Single Task Services</li> </ul>	<ul style="list-style-type: none"> <li>Under \$2K for construction.</li> <li>Under \$5,000 for all other purchases</li> </ul>
<b>Small Purchase</b> See 9.0	<ul style="list-style-type: none"> <li>Price Analysis</li> </ul>	<ul style="list-style-type: none"> <li>Purchase Order</li> <li>Fixed Price</li> </ul>	<ul style="list-style-type: none"> <li>Quotations</li> <li>Submitted Bids</li> </ul>	<ul style="list-style-type: none"> <li>Produced Items</li> <li>Single Task Service</li> <li>Supplies</li> </ul>	<ul style="list-style-type: none"> <li>\$150K or less for produced items.</li> <li>\$150K or less for non-construction services</li> </ul>
<b>Sealed Bid (formal advertising)</b> See Subsection 10.0	<ul style="list-style-type: none"> <li>Price Analysis</li> <li>Cost Analysis</li> </ul>	<ul style="list-style-type: none"> <li>Fixed Price</li> </ul>	<ul style="list-style-type: none"> <li>Submitted Bids</li> </ul>	<ul style="list-style-type: none"> <li>Construction Items</li> <li>Produced or Designed Items</li> </ul>	<ul style="list-style-type: none"> <li>All construction contracts, including less than \$150K</li> <li>Produced or designed items over \$150K</li> </ul>
<b>Competitive Proposals</b> See Subsection 11.0	<ul style="list-style-type: none"> <li>Price Analysis</li> <li>Cost Analysis</li> </ul>	<ul style="list-style-type: none"> <li>Cost Reimbursement</li> <li>Fixed Price</li> <li>Time &amp; Materials</li> </ul>	<ul style="list-style-type: none"> <li>Submitted Proposals</li> </ul>	<ul style="list-style-type: none"> <li>Professional Services</li> <li>Multi Task Services</li> <li>Designed Items</li> </ul>	<ul style="list-style-type: none"> <li>Professional Services and/or Multi-task Services over \$150K.</li> <li>Designed Items over \$150K when sealed bid isn't appropriate.</li> </ul>
<b>Noncompetitive Proposals</b> See Subsection 12.0	<ul style="list-style-type: none"> <li>Cost Analysis</li> </ul>	<ul style="list-style-type: none"> <li>Cost Reimbursement</li> <li>Fixed Price</li> <li>Time &amp; Materials</li> </ul>	<ul style="list-style-type: none"> <li>Submitted Proposals</li> </ul>	<ul style="list-style-type: none"> <li>Produced Items</li> <li>Single Task Service</li> <li>Professional Services</li> <li>Multi Task Services</li> <li>Designed Item</li> </ul>	<ul style="list-style-type: none"> <li>No particular threshold, but may only be used when other methods are not feasible.</li> </ul>



# OCD-DRU Compliance & Monitoring

## ***Prohibited Procurement / Contract Methods***

- Piggyback Procurement / Contracting — The practice of utilizing a procurement conducted by another non-federal entity and/or the use of an agreement entered into by another non-federal entity and a contractor.
- “Cost Plus a Percentage of Cost” — Profit can be a portion of a contractor’s bid, but profit should be negotiated with the bidder. The level of profit will vary based on the size, risk and complexity of the project.
- “Retainer Contracts” — Grantees cannot award a contract to a contractor that is already on a retainer contract / agreement without a separate, competitive proposal.
- Restrictive or Exclusionary Practices — Generally, anything that restricts “full and open competition” is prohibited.



# *OCD-DRU Compliance & Monitoring*

***Questions?***

