

Public Assistance  
Non-competitive  
Procurement  
Guide

### **Allowability of Non-Competitive Proposals:**

44 C.F.R. §13.36(d)(4) provides that noncompetitive proposals (i.e. procurement from only one source) may be justified; however, each of the following three requirements must be met.

First, procurement by any one of the following methods must be infeasible

- Small purchase procedures
- Sealed bids
- Competitive proposals

Second, one of the following circumstances must apply:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The awarding agency authorizes noncompetitive proposals; or
- After solicitation of a number of sources, competition is determined inadequate.

Third, a cost analysis is required, including the following:

- Verifying the proposed cost data,
- Verifying the projections of the data, and
- Verifying the evaluation of the specific elements of costs and profits.

In other words, the costs, cost projections, and cost elements must be allowable and reasonable.

### **Allowability and Reasonableness of Costs**

Allowability of Costs: According to OMB Circular No. A-87, various factors affect the allowability of costs. To be allowable, costs must meet the following general criteria:

- a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.
- b. Be allocable to Federal awards under the provisions of this Circular.
- c. Be authorized or not prohibited under State or local laws or regulations.
- d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.

- e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
- f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.
- h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
- i. Be the net of all applicable credits.
- j. Be adequately documented.

Reasonability of costs: OMB Circular No. A-87 provides that a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness of a given cost, the following factors must be considered:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.
- b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.
- c. Market prices for comparable goods or services.
- d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.
- e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

#### Professional Service Contracts

OMB According to OMB Circular No. A-87 further addresses the reasonableness of the costs of professional and consulting services, i.e. costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill.

Reasonableness: The costs of the services must be reasonable in relation to the services rendered. (See above.)

Allowability: No single factor or any special combination of factors is necessarily determinative of the allowability of costs in a particular case. However, the following factors are relevant to the determination of allowability:

- The nature and scope of the service rendered in relation to the service required.
- The necessity of contracting for the service, considering the governmental unit's capability in the particular area.
- The past pattern of such costs, particularly in the years prior to Federal awards.
- The impact of Federal awards on the governmental unit's business (i.e., what new problems have arisen).
- Whether the proportion of Federal work to the governmental unit's total business is such as to influence the governmental unit in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.
- Whether the service can be performed more economically by direct employment rather than contracting.
- The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.
- Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

Attached is a chart which may be helpful for addressing the noncompetitive procurement issue.

<b>Applicant's Justification for Noncompetitive Procurement of Contracts</b>			
	<b>Yes</b>	<b>No</b>	<b>Remarks</b>
1. Infeasibility of more favored methods	___	___	Are the following procurement methods infeasible under the circumstances? <ul style="list-style-type: none"> <li>• Small purchase procedures</li> <li>• Sealed bids</li> <li>• Competitive proposals</li> </ul>
2. Justification for use of noncompetitive proposals	___	___	Do any of the following particular circumstances justify the use of noncompetitive proposal(s) for the contract? <p>___ The item is available only from a single source;</p> <p>___ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;</p> <p>___ The rewarding agency authorizes noncompetitive proposals; <u>or</u></p> <p>___ After solicitation of a number of sources, competition was determined inadequate</p>
3. Cost Analysis: Are the costs allowable?	___	___	Do the costs meet the following general criteria? <ul style="list-style-type: none"> <li>• Necessary and reasonable for the proper and efficient performance and administration of the project</li> <li>• Authorized or not prohibited under State or local laws or regulations.</li> <li>• Conform to FEMA regulations as to types or amounts of cost items.</li> <li>• Consistent with policies, regulations, and procedures that apply uniformly to both FEMA grants and other activities of the governmental unit.</li> <li>• Determined in accordance with generally accepted accounting principles.</li> <li>• Not used to meet cost sharing or matching requirements of any other Federal award.</li> <li>• Net of all applicable credits.</li> <li>• Adequately documented.</li> </ul>

<b>Applicant's Justification for Noncompetitive Procurement of Contracts</b>			
	<b>Yes</b>	<b>No</b>	<b>Remarks</b>
<p>4. Cost Analysis: Are the costs reasonable?</p> <p>(Note: a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.)</p>	___	___	<p>Do any of the following factors support the reasonableness of the costs?</p> <p>___ The cost is of a type generally recognized as ordinary and necessary for the project.</p> <p>___ Restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; laws and regulations.</p> <p>___ Market prices for comparable goods or services.</p> <p>___ Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.</p> <p>___ There were no significant deviations from the established practices of the governmental unit which may unjustifiably increase the cost of the FEMA grant.</p>
<p>5. Professional Service Contracts (only). Reasonableness of the costs.</p>	___	___	<p>In addition to the above reasonableness factors, are the costs of the professional services reasonable in relation to the services rendered?</p> <p>(Note: these include costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill.)</p>
<p>6. Professional Service Contracts (only). Allowability of the costs.</p>	___	___	<p>Do any of the following factors support the allowability of the costs?</p> <p>___ The nature and scope of the service rendered in relation to the service required.</p> <p>___ The necessity of contracting for the service, considering the governmental unit's capability in the particular area.</p> <p>___ The past pattern of such costs, particularly in the years prior to the current project.</p> <p>___ The impact of the disaster/FEMA grant on the governmental unit's business (i.e., what new problems have arisen).</p> <p>___ Whether the proportion of Federal work to the</p>

<b>Applicant's Justification for Noncompetitive Procurement of Contracts</b>				
	<b>Yes</b>	<b>No</b>		<b>Remarks</b>
6. Continued:			<p>governmental unit's total business is such as to influence the governmental unit in favor of incurring the cost, particularly where the services rendered are not of a continuing nature.</p> <p>___ Whether the service can be performed more economically by direct employment rather than contracting.</p> <p>___ The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.</p> <p>___ The adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).</p>	
<b>Attach Cost Analysis: Applicant must submit a monetary evaluation for reasonableness of costs.</b>				