

CPSR Myth Busters: Price Analysis Edition

Presented by:

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Your Presenter:

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Presentation Summary

- Introduction to Price Analysis
 - Regulations
 - Technique Overview
- Price Analysis Myths (Contractors)
- Price Analysis Myths (DCMA)

What is Price Analysis?

25 Words of Less: A Price Analysis is the documented objective evaluation of prices proposed by a subcontractor prior to submission to the Government.

- *Favorable Price Analysis = Acceptance of Proposed Prices*
- **Unfavorable Price Analysis** = Negotiation or ~~Rejection of Proposal~~

Why do we care about Price Analysis?

- What the FAR says about Subcontractor Price Analysis ...
(15.404-3 when enforced at the Prime Contract level). Does FAR Part 15 flow down to contractors?
- What the DFARS says about Subcontractor Price Analysis! (DFARS 252.244-7001)
- Role of Price Analysis and Negotiations in Government Audits and Reviews
- **Key to Finalizing Winning Proposals and Protecting Profitability**

Price Analysis Regulations

- **15.404-1(b):** Proposal Analysis Techniques (Price analysis techniques listed in order of priority)
- **15.403-1(c):** Defines Competitive Techniques (different for DOD and everyone else)
- **15.404-3:** Directs Contracting Officers to ensure contractors evaluate subcontractor pricing during the proposal process
- **44.303(b)&(c):** Scope of CPSR includes review of price competition obtained (b) and pricing techniques (c)
- **DFARS 252.244-7001(c)(7):(12)(22):** CPSR criteria directly related to cost and price controls (only clause that directly applies to contractors)

DFARS 252.244-7001: The CPSR Blueprint

- DCMA conducts CPSRs by evaluating Contractor Purchasing Systems against DFARS 252.244-7001(c).
- **TWELVE of the 24 7001(c) purchasing system evaluation criteria** directly address evaluation and documentation of price.
- Several additional criteria address cost and price controls not directly related to price analysis (contract type controls, etc.)
- Topics covered include competition [(c)(7)]; price analysis [(c)(4)(8)(10)]; Noncompetitive price analysis [(c)(9)]; Negotiations [(c)(11)] and discounts [(c)(12)]

Basic Price Analysis Concepts

- Documentation Requirements increase with the **Complexity** and **Dollar Value** of the procurement
- Noncompetitive Price Analyses rely on **solid well-documented assumptions**; facts are confirmed during Negotiations.
- A solid Price Analysis could be part of a **successful proposal**. It should sell the solution.
- Who are the two primary members of your audience? Your **Customer and DCMA/DCAA**. Not your PM!
- The FAR provides structure and guidance. [*FAR 15.404-1(b)(2) & (3); 15.403-1(c)(1)*]

Prioritization Examination

Most Reliable: Competition

Why? Best prices are offered during competition; all prices respond to specific SOW requirements; all prices open for negotiation.

Second Best: Prices Previously Paid by Government or Other Than Government

Why? Contemporaneous evidence that third party paid same or higher price for same or substantially similar service (The \$800 Hammer Latch)

Third Place: Parametric Estimating Method

Why? Up-to-date indexes and other sources maintained by disinterested third parties regarding fair market pricing

Prioritization Examination

Hon Mention: Why?	Competitively Published Price Lists Published evidence of prices open to variation by open market forces. Also see Undersecretary of DoD MAR 2014 Directive.
Slippery Slope: Why?	Independent Estimate Comparison prepared by party procuring item or service; poor timing can make even less reliable.
Getting Ugly: Why?	<i>Market Rates</i> Survey rates compiled from self-reporting entities
Rock Bottom: Why?	<i>Other Than Cost or Pricing Data</i> <i>See Technique's Name!</i>

Price Analysis Requirements

“Tell the Story” by Including the Following:

- Summary Background of the Procurement
- Summary of Analysis Technique and Selection Process
- Narrative Description of Basis of Comparison
- Bid / Comparison Matrix (SHOW YOUR WORK)
- Conclusion (F&R / Subject to Further Negotiation)

Where Do Price Analysis Myths Come From?

1. Contractor adoption of Customer (and Audit Agency) -Specific price analysis expectations and requirements
2. Audit agency misapplication of non-Part 52 requirements and class deviations on Contractors
3. Audit agency / Contractor misinterpretation of Part 52 regulations.
4. Urban Legends / Telephone Game
5. Confusion regarding Cost Analysis v. Price Analysis Requirements

Price Analysis Myths (Contractor)

1. **Use of available budget and unsupported historical pricing is acceptable to deem new pricing fair and reasonable (1)**

Myth: Most customers expecting physical deliverables care about budget, not formal price analysis, during performance and delivery. As a result, many COTRs will pre-approve pricing (and even provide “approved” quotes) for immediate processing if that pricing is in line with their expectations. Contractor validation via cost trend analysis is then the only control used.

Issue: Use of internal price history is not a price analysis technique set forth in FAR 15.404-1(b).

Solution?

Price Analysis Myths (Contractor)

2. **At least 80% of a proposed Bill of Materials (BOM) must be analyzed prior to a determination that a fixed price proposals is F&R (5)**

Myth: Contractors assume that the majority of line items proposed in an FP proposal must be analyzed, or the proposal cannot correctly be deemed fair and reasonable.

Issue: Analysis of every element of a fixed price proposal is cost analysis, not price analysis. The price to be analyzed is the total price proposed; there is no requirement that says every element of that price needs to be analyzed.

Solution?

Price Analysis Myths (Contractor)

3. Three bids are required to document a competitive procurement (1)

Myth: Just to be safe, contractors should obtain three (3) quotes to adequately document a competitive procurement. Can be a contract requirement with Army customers.

Issue: That's ... not what the FAR says. FAR 15.403-1(c)(1)(i) requires two or more quotes. FAR 15.403-1(c)(ii)(A) and (B) only require one quote to document competition.

Solution? (Spoiler Alert: this is a really easy one ...)

Price Analysis Myths (Contractor)

4. **Prices that are more than 30% lower than the highest bid cannot be deemed fair and reasonable (3)(4)**

Myth: A 30%+ delta on a competitive procurement is an unacceptably risky delta that compromises technical sufficiency. If the price is too low, then the risk of nonperformance increases.

Issue: That is an over-interpretation of the intent of FAR 15.404-1(d)&(g). Also ... that assumption is incorrect in most situations, including when resumes are available for review or the proposal is for commercial / COTS products.

Solution?

Price Analysis Myths (Contractors & DCMA)

1. Price analyses must be signed and dated. (3)

Myth: In order to be adequate, a price analysis must be signed and dated by the SCA/Buyer.

Issue: There are three levels of documentation in the FAR: document (write it down); acknowledgement (affirmatively accept document in writing); and certification (sign and date document). No FAR or DFARS clause requires the certification or acknowledgement of contractor internal documentation, including but not limited to evaluative documentation.

Solution? (Spoiler Alert: it's another easy one!)

Price Analysis Myths (DCMA)

1. **Contractors cannot use Federal Supply Schedules for price analysis purposes. (2)**

Myth: Class Deviation 2014-O0011 deviates from FAR 8.404(d), limiting DoD Contracting Officers' ability to use Federal Supply Schedules for price analysis purposes unless the schedule rates are independently determined fair and reasonable.

Issue: By its terms, 2014-O0011 only applies to DoD contracting offices. The Deviation does not even mention contractors.

Solution?

Price Analysis Myths (DCMA)

2. **Prices Previously Paid (invoices, purchase orders, etc.) require independent validation prior to use for price analysis purposes per FAR 15.404- 1(b)(2)(ii). (2)**

Myth: DFARS 215.403-3 and 215.404-1(b)(ii) are being revised to require DoD contracting officers to independently evaluate historical pricing as fair and reasonable prior to use for price analysis purposes.

Issue: Neither of those clauses apply to contractors. FAR 15.404-1(b)(2)(ii) doesn't require independent analysis of prices previously paid.

Solution? (Spoiler!)

Price Analysis Myths (DCMA)

3. Contractors cannot use attempted competition to document adequate price competition. (2)

Myth: DFARS 215.371-3 prevents DoD Contracting Officers from using FAR 15.403-1(c)(ii)(A) to document competition adequate price competition if two or more quotes are not received. DCMA applies this rule to contractors during CPSRs.

Issue: Look at the number. 215 clauses do not flow down to contractors. FAR 15.403-1(c)(ii)(A) doesn't apply to DoD contracting officers, but it does apply to literally everybody else.

Solution?

Price Analysis Myths (DCMA)

4. Price analysis is required for lower tier subcontractors. (3)

Myth: DCMA requests lower tier subcontracts for review during CPSRs. During those reviews, DCMA will comment – and issue deficiencies on – evaluative documentation including but not limited to price analysis.

Issues: Neither FAR 52.244-2 (the clause that allows DCMA to conduct CPSRs) nor DFARS 252.244-7001 (the clause that applies evaluative documentation requirements on contractors) flow below the prime tier. There is no clause that requires contractors to include lower tier subcontracts in a CPSR data call or subcontractors to document price analysis at lower tiers.

Solution(s)?

Price Analysis Myths (DCMA)

5. **Negotiations are required for all noncompetitive procurements exceeding the simplified acquisition threshold. (3)**

Myth: DCMA expects at least an attempt at negotiation for all noncompetitive procurements regardless of the outcome of the price analysis.

Issue: DFARS 252.244-7001(c)(9) requires completion of either price or cost analysis for all noncompetitive procurements. (c)(10) requires negotiations IAW FAR 15.406-3. The FAR 15.406 series requires negotiation when pricing was not found F&R in whole or in part during proposal analysis.

Solution?

Price Analysis Myths (DCMA)

6. There is no such thing as Competitive Range analysis in the FAR. (2)

Myth: According to most CPSR Teams, competitive range analysis is not referenced in the FAR and is therefore not a legitimate price analysis technique for determining pricing fair and reasonable via competition.

Issue: I mean ... tell that to GSA, NITAAC, DoD, DHS ... At the IDIQ RFP level, there is no specific performance anticipated. As a result, neither LPTA nor Best Value can be applied to labor rates where performance is not anticipated. In addition, the FAR *does* support contractors using competitive range during IDIQ proposal efforts (*see* FAR 52.244-5(a)).

Solution?



Thank You!

Questions?