

***Independent Cost Estimates (ICE)
Cost Price Analysis (CPA)
Why We Do Them and How They Benefit Us
Michael S. Gifford, C.P.M., CPSD 2019©***

Instructor

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What will we accomplish during this seminar?

- **A renewed commitment to conduct all housing agency (HA) procurement and contract activities in an open, fair, reasonable, justifiable and HUD-compliant manner; especially as pertains to ICE's and CPA's.**
- **An ability to locate in the Handbooks and regulations what HUD wants and requires; hence, a better understanding of the applicable law(s).**
- **Be more prepared for a HUD/OIG audit.**
- **ICE's and CPA's that better meet the needs of the HA.**
- **Learn and implement "Gifford's Gospels."**

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Gifford's Gospels

- No. 1: "If it ain't written, it don't exist."**
- No. 2: "There are no coincidences in life—everything happens for a reason."**
- No. 3: "Whatever we do must be open, fair, reasonable and justified."**
- No. 4: "Contractors are not our friends—they are our partners."**
- No. 5: "Nothing is free—there is a price to pay for everything."**
- No. 6: "Be prepared—if something can go wrong, it will happen at the worst possible moment."**
- No. 7: "Luck is where preparation and opportunity meet."**
- No. 8: "He/she who writes the contract, the contract is in favor of."**

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Herein:

- **HUD Handbook 7460.8 REV 2:**
 - **7460.8 issued by HUD to explain 2 CFR §200 in further detail.**
 - **Hereinafter “7460.8” or “HPH.”**
 - **Specific references herein within “[].”**

 - **2 CFR §200.317 - §200.326:**
 - **aka the Common Rule.**
 - **Issued by HUD.**
 - **Hereinafter “§200.”**
 - **Specific references herein within “{ }.”**

 - ❖ **HAPA Sample Documents:**
 - **Within the “Documents” area of procurementassistance.org**
 - **Directly from Mike Gifford @ gifford52@yahoo.com**
 - **Specific references herein within “< >.”**
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- **Important!!!! Remember, herein:** [HPH: 1.2]
- **“Shall” and “must” mean that an action or item is mandatory and is required by statute or regulation.**
 - **“Should” and “may” mean that the action or item serves to provide guidance and/or best practices but is not mandatory.**

!!!PLEASE NOTE-BEWARE!!!

- **HUD has used the term “should” a number of times in the HPH and then in another part of the HPH use the term “shall” or “must” in reference to the same issue—an auditor will most likely go with the stricter reference as the requirement.**

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- **PHAs must comply with the stricter of Federal rules and State/local rules.** [HPH: 1.5]
- **States.** {§200.317}
 - **“When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations.”**
 - **Therefore, one procurement policy only!**

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➤ Independent Cost Estimate (ICE)

[HPH: 3.2] {§200.323(a)}

- **HA's pre-solicitation estimate of cost.** [HPH: 3.2.A]
- **"Yardstick" for evaluating reasonableness of cost.** [HPH: 3.2.A]
- **Helps the CO to determine the solicitation method (e.g. QSP, IFB; RFP; etc).** [HPH: 3.2.B]
- **May be prepared by HA personnel or may be prepared by a contractor (e.g. consultant; architect; etc.) or a combination of the two.** [HPH: 3.2.C]
 - ✓ **In any case, HA must ensure confidentiality is maintained.**

❖ <See HAPA Sample Forms: *Independent Cost Estimate (ICE)*>

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➤ Independent Cost Estimate (ICE) (con'd)

- **Except in extreme cases, ICE is NOT shared with prospective offerors.**
 - ✓ **HA can give a range (e.g. \$100,000 to \$500,000) but such is really not of much use to potential offerors and I don't do it.**
 - ✓ **Very important that contractors develop their cost bids/proposals based on their own business conditions, NOT based on any targets that the HA sets (helps the HA evaluate if the contractor is responsible).**
- **Micro Purchases (<\$10,000): ICE not necessary. [HPH: 3.2.D.1] (NOTE: <\$2,000 for construction)**
- **Small Purchases (\$3,000-\$150,000, or lower if set by State law): "Documentation should be kept to a minimum."**

[HPH: 3.2.D.2]
- **Formal Purchases (>\$150,000, or lower if set by State law): ICE probably more complex.**

[HPH: 3.2.D.3]

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- **Where can we get ICE info?** [HPH: 3.2.D]
 - ✓ **"Prior purchases" or "historical prices paid" by HA for exact or similar items/services**
 - ✓ **"Commercial catalog prices"**
 - ✓ **Internet search**
 - ✓ **Prices received/paid by other governmental agencies**
 - ✓ **Proposed costs received as a result of prior competitive solicitations**
 - ✓ **Proposal received from potential contractor**
 - ✓ **Architect-developed**
 - ✓ **Estimating software (e.g. R.S. Means, etc.)**
 - ✓ **If all else fails, WAG/SWAG**

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- **Be aware that if “market conditions” change between when the ICE is prepared and when bids/proposals are received, then the ICE may need to be adjusted. [HPH: 3.2.E]**
 - ✓ **Also, addendums issued may have an affect on the ICE—if so, revise it.**
 - **Why must we do an ICE? Because, per 2 CFR §200.323(a) and Handbook Section 3.2, it is required!**
 - ✓ **If you don't believe me, check hud.gov, then IG findings for any state. Almost every procurement-related audit finding includes the lack of any ICE.**
 - **How does doing an ICE benefit us? Helps us decide:**
 - ✓ **Do we have enough funds available to purchase the items/services? (So, if not, we don't waste resources with an unrealistic competitive solicitation.)**
 - ✓ **Later, determine if the proposed costs received are realistic/appropriate.**
-

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- **Evaluating Cost and Price (For Purchases above the Federal Small Purchase Threshold).** [HPH: 10.3]
 - **General.** [HPH: 10.3.A]
 - ✓ “For every procurement, PHA’s are required to perform a cost or price analysis to determine that the price is reasonable.”
 - ✓ For competitive solicitations (QSP; IFB; RFP), “the force of competition is usually adequate to allow the PHA to make a price reasonableness determination based simply on a comparison of the offered prices.”
 - ✓ Always “compare the prices offered with the ICE.”
 - ✓ **Cost Analysis:** Must be conducted for all non-competitive procurements. As such procurements are limited, the need for cost analysis will probably “be limited.”
- ❖ **<See HAPA Sample Forms: *Cost Price Analysis; Price Analysis (PA)*>**

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➤ Evaluating Cost and Price (con'd)

- **Alternate Methods of Determining that a Price is Reasonable (Other than Cost Analysis).** [HPH: 10.3.B]
 - ✓ **Compare to prior proposed prices.**
 - ✓ **Compare to competitive price lists, published catalog or market prices.**
 - ✓ **Compare to a professional estimate prepared by the PHA or a consultant.**
 - ✓ **I'm not sure what HUD is saying because these items are the about the same as comparing the proposed costs with the ICE.**

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➤ Evaluating Cost and Price (con'd)

- **Situations Requiring a Cost Analysis.** [HPH: 10.3.C]
 - ✓ **All sole source and non-competitive proposals.**
 - ✓ **If only one offer is received in response to a competitive solicitation.**
 - ✓ **If, in response to an IFB, a "sufficient number of bids (e.g. less than three) were not received.**
 - ✓ **If, in response to an RFP, the proposers were required to submit "separate elements of their costs (e.g. Labor; materials; overhead; profit; etc.).**
 - ✓ **All contract modifications.**
 - ✓ **All contract termination payments.**
 - ✓ **All construction contracts that were obtained by other than the IFB method.**

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➤ Evaluating Cost and Price (con'd)

- **Cost Analysis Technologies.** [HPH: 10.3.D]
 - ✓ **HUD states: “The number of instances where a PHA will be required to conduct a formal cost analysis will be limited.” Which means that the more simplified price analysis will suffice.**
 - ✓ **Commercial Yardsticks.** [HPH: 10.3.D.1]
 - **May be used “in lieu of a formal cost analysis.”**
 - **How: conduct a survey; establish a reasonable hourly fee that is “normally charged in the community;” compare to the proposed fee; justify in writing.**

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- **Cost Analysis Technologies.** [HPH: 10.3.D.3.a.i]
 - ✓ **All procurements “must meet three critical tests:**
 - **Allowable: meaning it is within or allowed by the law (e.g. the purchase of liquor and entertainment is not allowed with HUD monies);**
 - **Allocable: meaning, the procurement is listed within the applicable PHA budget as an available expense; and**
 - **Reasonable: meaning, the proposed cost have been analyzed and found to be fair and reasonable.**
 - **Each of the above MUST be justified in writing in the file prior to contract aware.**

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➤ Evaluating Cost and Price (con'd)

- **Documentation (with respect to price reasonableness).**

[HPH: 10.3.E]

- ✓ **IFB: Typically, bid tabulation may be adequate. Strongly recommend that you also show comparison of low bid to the ICE.**
- ✓ **RFP: Ditto above.**
- ✓ **Lack of adequate competition—receipt of only one offer—the price obtained varied significantly from the ICE: conduct full cost analysis, including why the difference as compared with the ICE.**

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➤ Evaluating Cost and Price (con'd)

- **Audit (with respect to price reasonableness). [HPH: 10.3.F]**
 - ✓ **In certain extreme cases (as detailed within 10.3.F), if the HA feels it must audit the offeror's financial records, "the review <shall> be limited to the needs of the immediate procurement action . . . and not be overly broad in scope or intrusive."**
 - ✓ **Offeror (bidder) does not agree to the audit? May need to allow them to withdraw. In any case, "seek advice from legal counsel before proceeding."**

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➤ Evaluating Cost and Price (con'd)

- **Review of Handbook Appendix 12**
 - ✓ **Compacted review of Who, What, When, Where, Why.**
 - ✓ **A Gem: "In analyzing profit, consideration should be give to (see the sample Cost Analysis Forms):"**
 - **"Complexity of the work to be performed;"**
 - **"Contractor's risk in performing the contract;"**
 - **"Contractor's investment in the contracted effort;"**
 - **"Amount of subcontracting;"**
 - **"Contractor's record of past performance."**

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I hope this information is of a
help!

Thank you!