

# TITLE 70: DEPARTMENT OF FINANCE

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## SUBCHAPTER 70-30.1 COST AND PRICE ANALYSIS REGULATIONS

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Subchapter Authority: 1 CMC § 2553(j); 1 CMC § 2557.

Subchapter History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: 1 CMC § 2551 creates the Department of Finance within the Commonwealth government. 1 CMC § 2553(j) authorizes the Department to be in control of and be responsible for procurement and supply in the Commonwealth. The Department is authorized to adopt rules and regulations regarding those matters within its jurisdiction. See 1 CMC § 2557.

On July 29, 2010, the Department of Finance proposed to re-promulgate the Procurement Regulations subchapter 70-30.3 with comprehensive amendments. See 32 Com. Reg. 30602 (Aug. 16, 2010). A notice of adoption has not been published to date.

### **Part 001 -      General Provisions**

#### **§ 70-30.1-001 Overview and Summary**

(a) The regulations in this subchapter provide procedures to ensure that all procurements funded by the Commonwealth of the Northern Mariana Islands and grants subject to OMB Cir. A-102, that the Commonwealth will pay a fair and reasonable price for negotiated contracts or contract modifications.

(b) Accordingly, the regulations require that, contractors submit certified cost and pricing data where negotiated contracts or contract modifications are entered into. Sections 70-30.1-110 and 70-30.1-115 set forth the conditions under which such data shall be required. Where the price of the negotiated contract or modification is expected to exceed \$1,000,000.00 such data may be required. In actions not expected to exceed \$1,000,000.00 such data may be required. Where there is adequate competition, as defined in § 70-30.1-115(b), neither submission of data nor cost and price analysis is required, although the contracting officer should still determine in competitive procurements that the prices submitted by offerors are reasonable before making award. If required, cost and pricing data should normally be furnished in the format prescribed in table 100-1.

(c) Where cost and pricing data are furnished, the Commonwealth has the right to secure a contract-price adjustment if the data are subsequently found to be inaccurate, as provided in § 70-30.1-135.

(d) As provided in § 70-30.1-201, the contracting officer should, with such expert assistance as is required, analyze modification to determine that the cost and price are reasonable.

(e) Further guidance regarding subcontract price analysis, prenegotiation objectives, documentation of the negotiations, and profit analysis, are provided in §§ 70-30.1-225, 70-30.1-230, 70-30.1-235, and 70-30.1-301, respectively.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (e).

The July 1985 notice of adoption changed the proposed numbering for the Cost and Price Analysis Regulations. However, the original cross-references in the regulations were not changed to reflect the renumbering. Where the intended reference is clear, the Commission corrected the cross-references in this subchapter.

### **§ 70-30.1-005 Scope**

This subchapter prescribes the policies and procedures applicable to cost and price analysis of

(a) Negotiated prime contracts (including subcontract pricing under them when required) and

(b) Contract modifications (including modifications to contracts awarded by a sealed bid procedure).

Modified, 1 CMC § 3806(f).

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History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The Commission changed the phrase “This subpart” to “This subchapter” pursuant to 1 CMC § 3806(d).

### § 70-30.1-010 Definitions

(a) “Cost analysis” means the review and evaluation of the separate cost elements and proposed profit of (1) an offeror’s or contractor’s cost or pricing data and (2) the judgmental factors applied in projecting from the data to the estimated costs, in order to form an opinion on the degree to which the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency.

(b) “Cost or pricing data” means all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly, including all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.

(c) “Price” as used in this subpart, means cost plus any fee or profit applicable to the contract type.

(d) “Price analysis” means the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

(e) “Technical analysis,” as used in this subpart, means the examination and evaluation by personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management of proposed quantities and kinds of materials, labor, processes, special tooling, facilities, and associated factors set forth in a proposal in order to determine and report on the need for and reasonableness of the proposed resources assuming reasonable economy and efficiency.

Modified, 1 CMC § 3806(g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: In subsection (e), the Commission moved the comma after “analysis” inside of the closing quotation mark.

### Part 100 - Policy; Cost or Pricing Data

#### § 70-30.1-101 Policy

Contracting officers shall:

(a) Purchase supplies and services from responsible sources at fair and reasonable prices;

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- (b) Price each contract separately and independently and not
  - (1) Use proposed price reductions under other contracts as an evaluation factor or
  - (2) Consider losses or profits realized or anticipated under other contracts; and
- (c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for price adjustment based upon the occurrence of that contingency.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

### **§ 70-30.1-105 General**

(a) Commonwealth personnel shall not disclose to an offeror or contractor any conclusions, recommendations, or portions of administrative contracting officer or auditor reports regarding the offeror's or contractor's proposal without the concurrence of the contracting officer, responsible for negotiation. This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data supporting the proposal.

(b) Before issuing a solicitation, the contracting officer shall (when it is feasible to do so) develop an estimate of the proper price level or value of the supplies or services to be purchased. Estimates can range from simple budgetary estimates to complex estimates based on inspection of the product itself and review of such items as drawings, specifications, and prior data.

(c) Price negotiation is intended to permit the contracting officer and the offeror to agree on a fair and reasonable price. Price negotiation does not require that agreement be reached on every element of cost. Reasonable compromises may be necessary, and it may not be possible to negotiate a price that is in accord with all the contributing specialists' opinions or with the contracting officer prenegotiation objective. The contracting officer is responsible for exercising the requisite judgment and is solely responsible for the final pricing decision. The recommendations and counsel of contributing specialists, including auditors, are advisory only. However, the contracting officer should include comments in a price negotiation memorandum when significant audit or other specialists recommendations are not adopted.

(d) The contracting officer's primary concern is the price the Commonwealth actually pays; the contractor's eventual cost and profit or fee should be a secondary concern. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Commonwealth. Therefore the contracting officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result and price fair and reasonable to both the Commonwealth and the contractor. If,

however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer shall refer the contract action to the Director. Disposition of the action by the Director should be documented.

Modified, 1 CMC § 3806(f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

### **§ 70-30.1-110 Cost or Pricing Data**

(a) General

Except as provided in § 70-30.1-115, certified cost or pricing data may be required before accomplishing any of the following actions:

- (1) The award of any negotiated contract (except for unpriced actions such as letter contracts) expected to exceed \$1,000,000.
- (2) The modification of any formally advertised or negotiated contract (whether or not cost or pricing data were initially required) when the modification involves a price adjustment expected to exceed \$1,000,000.
- (3) The award of a subcontract at any tier, if the contractor and each higher tier subcontractor have been required to furnish certified cost or pricing data, when the subcontract is expected to exceed \$1,000,000.
- (4) The modification of any subcontract covered by subsection (a)(3) above, when the price adjustment (see subsection (a)(2) above) is expected to exceed \$1,000,000.

(b) If cost or pricing data are needed for pricing actions over \$1,000,000 certified cost or pricing data may be obtained. The amount of data required to be submitted should be limited to that data necessary to allow the contracting officer to determine the reasonableness of the price.

(c) When certified cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

- (1) The cost or pricing data.
- (2) A certificate of current cost or pricing data, in the format specified in § 70-30.1-120, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of final agreement on price.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The July 1985 notice of adoption changed the proposed numbering for the Cost and Price Analysis Regulations. However, the original cross-references in the regulations were not changed to reflect the renumbering. Where the intended reference is clear, the Commission corrected the cross-references in this subchapter.

**§ 70-30.1-115 Exemptions from or Waiver of Submission of Certified Cost or Pricing Data**

(a) General. Except as provided in subsections (b) and (c) below, the contracting officer may not require submission or certification of cost or pricing data when the contracting officer determines that prices are:

- (1) Based on adequate price competition (see subsection (b) below);
- (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public (see subsection (c) below); or
- (3) Set by law or regulation (see subsection (d) below).

(b) Adequate price competition

(1) Price competition exists if --

- (i) Offers are solicited;
- (ii) Two or more responsible offerors that can satisfy the Commonwealth's requirements submit priced offers responsive to the solicitation's expressed requirements; and
- (iii) These offerors compete independently for a contract to be awarded to the responsible offeror submitting the lowest evaluated price.

(2) A price is "based on" adequate price competition if it results directly from price competition or if price analysis alone clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or substantially the same items purchased in comparable quantities, terms, and conditions under contracts that resulted from adequate price competition.

(c) Established catalog or market price

A proposal is exempt from the requirement for submission of certified cost or pricing data if the prices are, or are based on, established catalog or established market prices of commercial items sold in substantial quantities and on similar terms to the general public. Even though there is an established catalog or market price of commercial items sold in substantial quantities to the general public, the contracting officer may require cost or pricing data if the contracting officer makes a written finding that the price is not reasonable, including the facts upon which the finding is based.

(d) Prices set by law or regulation

A price set by applicable law or regulation is exempt from the requirement for submission of certified cost or pricing data.

(e) Verification

When a prospective contractor requests exemption from submission of certified cost or pricing data, the contracting officer shall ensure that applicable criteria in either subsection (c) or (d) above, as appropriate, are satisfied before issuing the exemption.

(f) Price analysis

Even though an item qualifies for exemption from the requirement for submission of certified cost or pricing data, the contracting officer shall make a price analysis to

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determine the reasonableness of the price and any need for further negotiation. It may be necessary to obtain from the prospective contractor information such as that regarding--

- (1) The supplier's marketing system (e.g., use of jobbers, brokers, sales agencies, or distributors);
- (2) The services normally provided commercial purchasers (e.g., engineering, financing, or advertising or promotion);
- (3) Normal quantity per order; and
- (4) Annual volume of sales to largest customers.

(g) Waiver for exceptional cases

The head of the contracting activity may, in exceptional cases, waive the requirement for submission of certified cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing.

Modified, 1 CMC § 3806(c), (d), (g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: In subsection (g), the Commission deleted the repeated word "may" to correct a manifest error.

**§ 70-30.1-120 Certificate of Current Cost or Pricing Data**

(a) When certified cost or pricing data are required under § 70-30.1-110, the contracting officer shall require the contractor to execute a certificate of current cost or pricing data, shown below, and shall include the executed certificate in the contract file. The certificate states that the cost or pricing data are accurate, complete, and current as of the date the contractor and the Commonwealth agreed on a price. Only one certificate shall be required, the contractor shall submit it as soon as practicable after price agreement is reached, but prior to serving final notice of contract award.

**Certificate of Current Cost or Pricing Data**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the contracting officer in support of \_\_\_\_\_<sup>1</sup> are accurate, complete, and current as of \_\_\_\_\_<sup>2</sup>. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Commonwealth that are part of the proposal.

Firm \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date of execution<sup>3</sup> \_\_\_\_\_

<sup>1</sup> Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP no.).

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<sup>2</sup> Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

<sup>3</sup> Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(End of certificate)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It does apply to the data upon which the judgment or estimate was based.

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal. Certain data may not be reasonably available before normal periodic closing date (e.g., actual indirect costs). Before agreement on price, the contractor shall update all data as of the latest dates for which information is reasonably available. Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Commonwealth will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a certificate of current cost or pricing data is not a substitute for examining and analyzing the contractor's proposal.

(e) Even though the solicitation may have requested cost or pricing data, the contracting officer shall not require a certificate of current cost or pricing data when the resulting award is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation (see § 70-30.1-115 through § 70-30.1-120).

(f) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require re-certification.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: In subsection (c), the Commission corrected the spelling of "subcontractor."

The July 1985 notice of adoption changed the proposed numbering for the Cost and Price Analysis Regulations. However, the original cross-references in the regulations were not changed to reflect the renumbering. Where the intended reference is clear, the Commission corrected the cross-references in this subchapter.

### § 70-30.1-125

[Reserved.]

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

**§ 70-30.1-130 Procedural Requirements**

- (a)(1) The contracting officer shall specify
- (i) Whether or not cost or pricing data are required,
  - (ii) Whether or not certification will be required,
  - (iii) The extent of cost or pricing data required if complete data are not necessary, and
  - (iv) The form (see subsection (b) below) in which the cost or pricing data shall be submitted.
- (2) Even if the solicitation does not so specify, however, the contracting officer is not precluded from requesting such data if they are later found necessary.

(b) Cost or pricing data should normally be prepared to satisfy the instructions and appropriate format of table 100-1. In procurements conducted in cooperation with agencies of the United States government, appropriate equivalent forms prepared by such agencies may be used instead.

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal. If possible, the contracting officer and offeror should reach a prior understanding on criteria for establishing closing or cutoff dates.

(d) The requirement for submission of cost or pricing data is met if all cost or pricing data reasonably available to the offeror are either submitted or identified in writing by the time of agreement on price. However, there is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The latter does not constitute “submission” of cost or pricing data.

(e) If cost or pricing data are required and the offeror initially refuses to provide necessary data, the contracting officer shall again attempt to secure the data. If the offeror persists in the refusal, the contracting officer shall withhold the award or price adjustment and refer the contract action to higher authority, including details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or service from another source.

(f) Preproduction and startup costs include costs such as preproduction engineering, special tooling, special plant rearrangement, training programs, and such nonrecurring costs as initial rework, initial spoilage, and pilot runs. When these costs may be a significant cost factor in an acquisition, the contracting officer shall require in the solicitation that the offeror provide

- (1) An estimate of total preproduction and startup costs,
- (2) The extent to which these costs are included in the proposed price, and
- (3) The intent to absorb, or plan for recovery of, any remaining cost. If a successful offeror has indicated an intent to absorb any portion of these costs, the contract shall expressly provide that such portion will not be charged to the Commonwealth in any future noncompetitive pricing action.

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(g)(1) The requirement for contractors to obtain cost or pricing data from prospective subcontractors is prescribed at § 7030.1-225. However, these data do not have to be submitted to the Commonwealth unless called for under subsection (g)(2) below.

(2) The contracting officer shall require a contractor that is required to submit certified cost or pricing data also to submit to the Commonwealth (or cause the submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is

(i) More than 10 percent of the prime contractor's proposed price, or

(ii) Considered to be necessary for adequately pricing the prime contract.

(3) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the exemptions in § 70-30.1-115, the contracting officer normally shall not require submission of subcontractor cost or pricing data.

(4) The contracting officer shall require the prospective contractor to support subcontractor cost estimates below the threshold in § 70-30.1-225(b) with any data or information (including other subcontractor quotations) needed to establish a reasonable price.

(h) Subcontractor cost or pricing data shall be accurate, complete, and current as of the date of final price agreement given on the contractor's certificate of current cost or pricing data. The prospective contractor shall be responsible for updating a prospective subcontractor's data.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The original paragraphs of subsections (a) and (b)(1) were not designated. The Commission designated subsections (a)(1) and (a)(2) and (b)(1)(i) through (x).

The July 1985 notice of adoption changed the proposed numbering for the Cost and Price Analysis Regulations. However, the original cross-references in the regulations were not changed to reflect the renumbering. Where the intended reference is clear, the Commission corrected the cross-references in this subchapter.

Table 100-1 was originally located after subsection (b) of this section. It has been relocated to a separate table for ease of use pursuant to 1 CMC § 3806(a).

In subsection (f)(2), the Commission changed "extend" to "extent" to correct a manifest error.

### **Table 100-1 Instructions for Submission of a Contract Pricing Proposal**

(a) A cost-element breakdown, using the applicable format prescribed in (g)(1), (2) or (333) below, shall be attached for each proposed line item and must reflect any specific requirements established by the Chief. Supporting breakdowns must be furnished for each cost element, consistent with offeror's cost accounting system. When more than one contract line item is proposed, summary total amounts covering all line items must be furnished for each cost element. Depending on offeror's system, breakdowns shall be provided for the following basic elements of cost, as applicable:

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(1) Materials - provide a consolidated pricing summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Subcontracted items - include parts, components, assemblies, and services that are to be produced or performed by others in accordance with offeror's design, specifications, or direction and that are applicable only to the prime contract. For each subcontract over \$100,000, the support should provide a listing by source, item, quantity, price, type of subcontract, degree of competition, and basis for establishing source and reasonableness of price, as well as the results of review and evaluation of subcontract proposals when required by the contracting officer.

(2) Standard Commercial Items - Consists of items that offeror normally fabricates in whole or in part, and that are generally stocked in inventory. Provide an appropriate explanation of the basis for pricing. If price is based on cost, provide a cost breakdown; if priced at other than cost, provide justification for exemption from submission of cost or pricing data.

(3) Interorganizational Transfer (at other than cost) - Explain pricing method used.

(4) Raw Materials - Consists of material in a form or state that requires further processing. Provide priced quantities of items required for the proposal.

(5) Purchased Parts - Includes material items not covered above. Provide priced quantities of items required for the proposal.

(6) Interorganizational Transfer (at cost) - Include separate breakdown of cost by element.

(7) Direct Labor - Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

(8) Indirect Costs - Indicate how offeror has computed and applied offeror's indirect costs, including cost breakdowns, and showing trends and budgetary data, to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

(9) Other Costs - List all costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework) and provide bases for pricing.

(10) Royalties - If more than \$250, provide the following information on a separate page for each separate royalty or license fee: name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part or model numbers of each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties. In addition, if specifically requested by the contracting officer, provide a copy of the current license agreement and identification of applicable claims of specific patents.

(b) As part of the specific information required, the offeror must submit with offeror's proposal, and clearly identify as such, cost or pricing data (that is, data that are verifiable and factual and otherwise as defined at § 70-30.1-010(b) of this article). In addition, submit with offeror's proposal any information reasonably required to explain offeror's estimating process, including

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- (1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and
- (2) The nature and amount of any contingencies included in the proposed price.

(c) There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the contracting officer. As later information comes into the offeror’s possession, it should be promptly submitted to the contracting officer. The requirement for submission of cost or pricing data continues up to the time of final agreement on price.

(d) In submitting offeror’s proposal, offeror must include an index, appropriately referenced, or all the cost or pricing data and information accompanying or identified in the proposal. In addition, any future additions and/or revisions, up to the date of agreement on price, must be annotated on a supplemental index.

(e) By submitting offeror’s proposal, the offeror, if selected for negotiation, grants the contracting officer or an authorized representative the right to examine those books, records, documents, and other supporting data that will permit adequate evaluation of the proposed price. This right may be exercised at any time before award.

(f) As soon as practicable after agreement on the price, but before the award resulting from the proposal, the offeror shall, under the conditions stated in § 70-30.1-120 of this subchapter submit a certificate of current cost or pricing data.

(g) Headings for Submission of Line-item Summaries.

(1) New Contracts (including letter contracts).

Cost Elements	Proposed Contract Estimate (Total Cost)	Proposed Contract Estimate (Unit Cost)	Reference
(1)	(2)	(3)	(4)

Under column (1) - Enter appropriate cost elements.

Under column (2) - Enter those necessary and reasonable costs that in offeror’s judgment will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (e.g., under a letter contract or unpriced order), describe them on an attached, supporting schedule. When preproduction or startup costs are significant, or when specifically requested to do so by the contracting officer, provide a full identification and explanation of them.

Under column (3) - Optional, unless required by the contracting officer.

Under column (4) - Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

(2) Change Orders (modifications).

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Cost Elements	Estimated Cost of All Work Deleted	Cost of Deleted Work Already Performed	Net Cost to be Deleted	Cost of Work Added	Net Cost of Change	Reference
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Under column (1) - Enter appropriate cost elements.  
 Under column (2) - Include (i) current estimate of what the cost would have been to complete deleted work not yet performed, and (ii) the cost of deleted work already performed.  
 Under column (3) - Include the incurred cost of deleted work already performed, actually computed if possible, or estimated in the contractor's accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if offeror desires to retain these lines or any portion of them, indicate the amount offered for them.  
 Under column (4) - Enter the net cost to be deleted which is the estimated cost of all deleted work less the cost of deleted work already performed. (Column (2) less column (3) = column (4)).  
 Under column (5) - Enter the offeror's estimate for cost of work added by the change. When nonrecurring costs are sufficient, or when specifically requested to do so by the contracting officer, provide a full identification and explanation of them.  
 Under Column (6) - Enter the net cost of change which is the cost of work added, less the net cost to be deleted. When this result is negative, place the amount in parentheses. (Column (4) less column (5) = column (6)).  
 Under column (7) - Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

(3) Price Revision/Redetermination

Cutoff date	Number of units completed	Number of units to be completed	Contract Amount	Redetermination proposal amount	Difference
(1)	(2)	(3)	(4)	(5)	(6)

  

Cost elements	Incurred cost-preproduction	Incurred cost-completed units	Incurred cost - work in progress	Total incurred cost	Estimated cost to complete
(7)	(8)	(9)	(10)	(11)	(12)

Estimated total Reference cost

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(13)

(14)

- Under column (1) - Enter the cutoff date required by the contract, if applicable.
- Under column (2) - Enter the number of units completed during the period for which experienced costs of production are being submitted.
- Under column (3) - Enter the number of units remaining to be completed under the contract.
- Under column (4) - Enter the cumulative contract amount.
- Under column (5) - Enter the offeror's redetermination proposal amount.
- Under column (6) - Enter the difference between the contract amount and the redetermination proposal amount. When this result is negative, place the amount in parenthesis. (Column (4) less column (5) = column (6)).
- Under column (7) - Enter appropriate cost elements. When residual inventory exists, the final costs established under fixed-price incentive and fixed-price- redetermination arrangements should be net of the fair market value of the inventory. In support of subcontract costs, submit a listing of all subcontracts subject to repricing action, annotated as to their status.
- Under column (8) - Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from offeror's books and records as of the cutoff date. These include such costs as preproduction engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from offeror's records, enter in this column offeror's best estimates. Explain the basis for each estimate and how the costs are charged on offeror's accounting records (e.g., included in production costs as direct engineering labor, charged to manufacturing overhead, etc.). Also show how the costs would be allocated to the units at their various stages of contract completion.
- Under columns (9) and (10) - Enter in column (9) the production costs from offeror's books and records (exclusive of preproduction costs reported to column (8)) of the units completed as of the cutoff date. Enter in column (10) the costs of working process as determined from offeror's records or inventories at the cutoff date. When the amounts for work in process are not available in contractor's record but reliable estimates for them can be made, enter the estimated amounts in column (10) and enter in column (9) the differences between the total incurred costs (exclusive of preproduction costs) as of the cutoff date and these estimates. Explain the basis for the estimates, including identification of any provision for experienced or anticipated allowances, such as shrinkage, rework, design changes, etc. Furnish experienced unit or lot costs (or labor hours) from inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which offeror's proposal relates.
- Under column (11) - Enter total incurred costs (total of columns (8), (9) and (10)).
- Under column (12) - Enter those necessary and reasonable costs that in contractor's judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which contractor's proposal relates.
- Under column (13) - Enter total estimated cost (total of columns (11) and (12)).

Under column (14) - Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The Commission moved this table out of section 70-30.1-130. The Commission corrected the capitalization of "column" in subsection (g)(3) and inserted the word "column" before "(13)" in subsection (g)(3) pursuant to 1 CMC § 3806(g). In paragraph 3, the Commission corrected the spelling of "identification."

**§ 70-30.1-135 Defective Cost or Pricing Data**

(a) If, before agreement on price, the contracting officer learns that any cost or pricing data submitted are inaccurate, incomplete, or noncurrent, the contracting officer shall immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price. The contracting officer shall negotiate, using any new data submitted or making satisfactory allowance for the incorrect data. The price negotiation memorandum shall reflect the revised facts.

(b) If, after award, cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price given on the contractor's or subcontractor's certificate of current cost or pricing data, the Commonwealth is entitled to a price adjustment, including profit or fee, or any significant amount by which the price was increased because of the defective data. This entitlement is ensured by including in the contract a clause giving the Commonwealth the right to a price adjustment for defects in cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

(c) For each advisory audit received based on a post-award review which indicates defective pricing, the contracting officer shall make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, the contracting officer should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question.

(1) The contracting officer shall prepare a memorandum indicating

(i) The contracting officer's determination as to whether or not the submitted data were accurate, complete, and current as of the certified date and whether or not the Commonwealth relied on the data, and

(ii) The results of any contractual action taken.

(2) The contracting officer shall send one copy of the memorandum to the Public Auditor and, if the contract has been assigned for administration, one copy to the administrating contracting officer (ACO). The contracting officer shall notify the contractor by copy of this memorandum, or otherwise, of the determination.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

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Commission Comment: The original paragraphs of subsection (c) were not designated. The Commission designated subsections (c)(1) and (c)(2).

In subsection (c)(2), the Commission corrected the spelling of “contracting.”

### **Part 200 - Cost and Price Analysis**

#### **§ 70-30.1-201 General**

(a) The contracting officer, exercising sole responsibility for the final pricing decision, shall, as appropriate, coordinate a team of experts to assist in proposal analysis. The contracting officer should have appropriate specialists attend the negotiations when complex problems involving significant matters will be addressed. The contracting officer may assign responsibility to a negotiator or price analyst for

- (1) Determining the extent of specialists’ advice needed and evaluating that advice,
- (2) Coordinating a team of experts,
- (3) Consolidating pricing data and developing a prenegotiation objective, and
- (4) Conducting negotiations.

(b) When cost or pricing data are required, the contracting officer shall make a cost analysis to evaluate the reasonableness of individual cost elements. In addition, the contracting officer should make a price analysis to ensure that the overall price offered is fair and reasonable. When cost or pricing data are not required, the contracting officer may make a price analysis to ensure that the overall price offered is fair and reasonable.

(c) The contracting officer shall require prospective contractors to perform

- (1) Price analysis for all significant proposed subcontracts and purchase orders and
- (2) Cost analysis when the prospective subcontractor is required to submit cost or pricing data or the contractor is unable to perform an adequate price analysis (see § 70-30.1-225(a)).

Modified, 1 CMC § 3806(c), (f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

#### **§ 70-30.1-205 Price Analysis**

The contracting officer is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. One or more of the following techniques may be used to perform price analysis:

- (a) Comparison of price quotations received in response to the solicitation.
- (b) Comparison of prior quotations and contract prices with current quotations for the same or similar end items.

- (c) Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.
- (d) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
- (e) Comparison of proposed prices with independent Commonwealth cost estimates (see § 70-30.1-105(b)).

Modified, 1 CMC § 3806(c).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The July 1985 notice of adoption changed the proposed numbering for the Cost and Price Analysis Regulations. However, the original cross-references in the regulations were not changed to reflect the renumbering. Where the intended reference is clear, the Commission corrected the cross-references in this subchapter.

### **§ 70-30.1-210 Cost Analysis**

The contracting officer shall, as appropriate, use the techniques and procedures outlined in subsections (a)(1) through (a)(4) below to perform cost analysis:

- (a) Verification of cost or pricing data and evaluation of cost elements, including -
  - (1) The necessity for and reasonableness of proposed costs, including allowances for contingencies;
  - (2) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;
  - (3) A technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors; and
  - (4) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.
- (b) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the contacting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future.
- (c) Comparison of costs proposed by the offeror for individual cost elements with -
  - (1) Actual costs previously incurred by the same offeror;
  - (2) Previous cost estimates from the offeror or from other offerors for the same or similar items;
  - (3) Other cost estimates received in response to the Commonwealth's request;
  - (4) Independent Commonwealth cost estimates by technical personnel; and
  - (5) Forecasts or planned expenditures.
- (d) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or

identified in writing by the contractor. If there are such data, the contracting officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

**§ 70-30.1-215 Technical Analysis**

When cost or pricing data are required, the contracting officer should, where practicable, request a technical analysis of proposals, asking that requirements, logistics, or other appropriate qualified personnel review and assess, as a minimum:

- (a) The quantities and kinds of material proposed;
- (b) The need for the number and kinds of labor hours and the labor mix;
- (c) The special tooling and facilities proposed;
- (d) The reasonableness of proposed scrap and spoilage factors; and
- (e) Any other data that may be pertinent to the cost or price analysis.

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

**§ 70-30.1-220 Field Pricing Support**

(a) When cost or pricing data are required, contracting officer should, where practicable, request a field pricing report. Field pricing reports are intended to give the contracting officer a detailed analysis of the proposal, for use in contract negotiations. Field pricing support personnel include, but are not limited to, administrative contracting officers, contract auditors, price analysts, quality assurance personnel, engineers, and legal specialists.

(b) The contracting officers should not request field pricing support for proposed contracts or modifications of an amount less than \$1,000,000.

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

**§ 70-30.1-225 Subcontract Pricing Considerations**

(a) Subcontractors must submit to the contractor or higher tier subcontractor cost or pricing data or claims for exemption from the requirement to submit them. The contractor and higher tier subcontractor are responsible for

(1) Conducting price analysis and, when the subcontractor is required to submit cost or pricing data or if the contractor or higher tier subcontractor is unable to perform an adequate price analysis, cost analysis for all subcontracts and

(2) Including the results of subcontract reviews and evaluations as part of their own cost or pricing data submission.

(b) Except when the subcontract prices are based on adequate price competition or on an established catalog or market prices of commercial items sold in substantial quantities to the general public or are set by law or regulation, any contractor required to submit certified cost or pricing data also shall obtain certified cost or pricing data before awarding any subcontract or purchase order expected to exceed \$1,000,000 or issuing any modification involving a price adjustment expected to exceed \$1,000,000 or 10 percent of the total prime contract.

(c) The requirements in subsections (a) and (b) above, modified to relate to higher tier subcontractors rather than to the prime contractor, shall apply to lower tier subcontracts for which subcontractor cost or pricing data are required.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: In subsection (b), the Commission corrected the spelling of “purchase.”

### **§ 70-30.1-230 Prenegotiation Objectives**

(a) The process of determining prenegotiation objectives helps the contracting officer to judge overall reasonableness of proposed prices and to negotiate a fair and reasonable price or cost and fee. In setting the prenegotiation objectives, the contracting officer shall analyze the offeror’s proposal, taking into account the field pricing report, if any; any audit report and technical analysis whether or not part of a field pricing report; and other pertinent data such as independent Commonwealth cost estimates and price histories. This process may include fact-finding sessions with the offeror when the contracting officer deems appropriate.

(b) The contracting officer shall establish prenegotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar action. When cost analysis is required, the analysis shall address

- (1) The pertinent issues to be negotiated,
- (2) The cost objectives, and
- (3) A profit or fee objective.

(c) The Commonwealth’s cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, the contracting officer shall not agree on profit or fee without concurrent agreement on cost and type of contract. Specific agreement on the exact values or

weights assigned to individual profit-analysis factors (§ 70-30.1-310) is not required during negotiations and should not be attempted.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: In subsection (a), the Commission corrected the spelling of “independent.”

### **§ 70-30.1-235 Price Negotiation Memorandum**

(a) At the conclusion of each negotiation of an initial or revised price, the contracting officer shall promptly prepare a memorandum of the principal elements of the price negotiation. The memorandum shall be included in the contract file and shall contain the following minimum information:

- (1) The purpose of the negotiation.
- (2) A description of the acquisition, including appropriate identifying numbers (e.g., RFP no.).
- (3) The name, position, and organization of each person representing the contractor and the Commonwealth in the negotiation.
- (4) The current status of the contractor’s purchasing system when material is a significant cost element.
- (5) If certified cost or pricing data were required, the extent to which the contracting officer -
  - (i) Relied on the cost or pricing data submitted and used them in negotiating the price; and
  - (ii) Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated.
- (6) If cost or pricing data were not required in the case of any price negotiation over \$1,000,000 the exemption or waiver used and the basis for claiming or granting it.
- (7) A summary of the contractor’s proposal, the field pricing report recommendations, if any, and the reasons for any pertinent variances from the field pricing report recommendations.
- (8) The most significant facts or considerations controlling the establishment of the prenegotiation price objective and the negotiated price including an explanation of any significant differences between the two positions.
- (9) The basis for determining the profit or fee prenegotiation objective and the profit or fee negotiated.

(b) Whenever a field pricing report has been submitted, the contracting officer shall forward a copy of the price negotiation memorandum (PNM) to the cognizant audit office and a copy to the cognizant administrative contracting officer. When appropriate, information on how the advisory services of the field pricing support team can be made more effective should be provided separately.

Modified, 1 CMC § 3806(f).

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History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

### § 70-30.1-240

[Reserved.]

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

### Part 300 - Profit

#### § 70-30.1-301 Profit

- (a) This part
- (1) Prescribes policies for establishing the profit or fee portion of the Commonwealth prenegotiation objective;
  - (2) Applies to price negotiations based on cost analysis; and
  - (3) Specifies
    - (i) Situations requiring the contracting officer to analyze profit and
    - (ii) Considerations for that analysis.
- (b) Profit or fee prenegotiation objectives do not necessarily represent net income to contractors. Rather, they represent that element of the potential total remuneration that contractors may receive for contract performance over and above allowable costs. This potential remuneration element and the Commonwealth's estimate of allowable costs to be incurred in contract performance together equal the Commonwealth's total prenegotiation objective. Just as actual costs may vary from estimated costs, the contractor's actual realized profit or fee may vary from negotiated profit or fee, because of such factors as efficiency of performance, incurrence of costs, the Commonwealth does not recognize as allowable, and contract type.
- (c) It is in the Commonwealth's interest to offer contractors opportunities for financial rewards sufficient to
- (1) Stimulate efficient contract performance,
  - (2) Attract the best capabilities of qualified large and small business concerns to Commonwealth contracts, and
  - (3) Maintain a viable industrial base.
- (d) Both the Commonwealth and contractors should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at reducing prices by reducing profit, without proper recognition of the function of profit, are not in the Commonwealth's interest. Negotiation of extremely low profits, use of historical averages, or automatic application of predetermined percentages to total estimated costs do not provide proper motivation for optimum contract performance. With the exception of statutory ceilings in subsection (d) on profit and fee, agencies should not
- (1) Establish administrative ceilings or

(2) Create administrative procedures that could be represented to contractors as de facto ceilings.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The cross-reference in subsection (d) to subsection (d) is unclear. The original regulations cite 1-200(4), which is codified at § 70-30.1-301(d). See 7 Com. Reg. at 3718 (May 21, 1985).

### **§ 70-30.1-305 Contracting Officer Responsibilities**

(a) When the price negotiation is not based on cost analysis, the contracting officers are not required to analyze profit.

(b) When the price negotiation is based on cost analysis, the contracting officers with the use of structured approach shall use it to analyze profit. When not using a structured approach, the contracting officers shall comply with § 70-30.1-310 in developing profit or fee prenegotiation objectives.

(c) The contracting officers shall use the Commonwealth prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective.

(d) The contracting officer generally shall not negotiate a price or fee that exceeds the following limitations:

(1) For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee shall not exceed 15 percent of the contract's estimated cost, excluding fee.

(2) For architect-engineering services for public works or utilities; the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

(3) For other cost-plus-fixed-fee contracts, the fee shall not exceed 10 percent of the contract's estimated cost, excluding fee.

(e) The contracting officer shall not require any prospective contractor to submit details of its profit or fee objective but shall consider them if they are submitted voluntarily.

(f) If a change or modification

(1) Calls for essentially the same type and mix of work as the basic contract and

(2) Is of relatively small dollar value compared to the total contract value, the contracting officer may use the basic contract's profit or fee rate as the prenegotiation objective for that change or modification.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

**§ 70-30.1-310 Profit-analysis Factors**

Unless it is clearly inappropriate or not applicable, each factor outlined in subsections (a) through (f) following shall be considered by agencies in developing their structured approaches and by the contracting officers in analyzing profit whether or not using a structured approach.

(a) Contractor effort. This factor measures the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance.

(b) Contract cost risk

(1) This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume

(i) As a result of the contract type contemplated and

(ii) Considering the reliability of the cost estimate in relation to the complexity and duration of the contract task. Determination of contract type should be closely related to the risks involved in timely, cost-effective, and efficient performance.

(2) The contractor assumes the greatest cost risk in the closely priced firm-fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. Some firm-fixed-price contracts may entail substantially less cost risk than others because, for example, the contract task is less complex or many of the contractor's costs are known at the time of price agreement, in which case the risk factor should be reduced accordingly. The contractor assumes the least cost risk in a cost-plus-fixed-fee level-of-effort contract, under which it is reimbursed those costs determined to be allocable and allowable, plus the fixed fee.

(c) Capital investments. This factor takes into account the contribution of contractor investments to efficient and economical contract performance.

(d) Cost-control and other past accomplishments. This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to

(1) Measures taken by the prospective contractor that result in productivity improvements and

(2) Other cost-reduction accomplishments that will benefit the Commonwealth in follow-on contracts.

(e) Independent development. Under this factor, the contractor may be provided additional profit opportunities in recognition of independent development efforts relevant to the contract end item without Commonwealth assistance. The contracting officer should consider whether the development cost was recovered directly or indirectly from Commonwealth sources.

(f) Additional factors. In order to foster achievement of program objectives, the contracting officer may include additional factors in the profit analysis of individual contract actions.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: In the opening paragraph, the Commission deleted the word “the” to correct a manifest error. In subsection (a), the Commission inserted the final period.

## **Part 400 - Miscellaneous Provisions**

### **§ 70-30.1-401 Effective Date**

The regulations in this subchapter shall take effect upon publication in the Commonwealth Register and adoption thereafter.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 7 Com. Reg. 3772 (July 22, 1985); Proposed 7 Com. Reg. 3695 (May 21, 1985).

Commission Comment: The Commission changed “adopted” to “adoption” to correct a manifest error.