

### SECTION 3: *Fair Market Price Procedures*

1. Fair market price shall be determined for an initial price when awarding a new contract, or for any price increases to an existing contract not provided for within the contract.
2. A CNA member shall be required to complete a cost analysis worksheet, unless there is prior mutual price agreement with the purchaser.
3. When a CNA member requests a price increase for continuation of a service, it shall complete and submit the Cost Analysis Worksheet to the central nonprofit agency.
4. The contracting entity may:
  - a. Request any additional or back-up information necessary to clarify the cost analysis worksheet.
  - b. Review the cost analysis worksheet using the following criteria, as well as other market indicators to determine fair market price:
    - i. The cost of services if purchased in similar quantities from a non-State Use contractor that is currently selling similar services; for example current state contract prices .
    - ii. The average of bids or the most advantageous proposals, including the low bid, on the most recent solicitation.
    - iii. The usual, customary, and reasonable costs.
    - iv. Appropriate indices for general inflationary or deflationary trends such as the consumer price index, the consumer price index for urban wage earners, or similar indices. If the tendered price compares favorably to the fair market price, and the work meets the appreciable contribution requirements, then the contracting entity shall enter into a contract or amend an existing contract with the central nonprofit agency.
  - c. If the state or local government purchaser disputes the central nonprofit agency's price, the purchaser may utilize appeals procedures as specified in 2.40.5.14 B of the rules.
  - d. If the provider's price is not considered to be at fair market price by the central nonprofit agency, the central nonprofit agency shall:
    - i. Inform the provider it has not met the fair market price criteria;
    - ii. Provide evidence related to the calculation of the fair market price;
    - iii. Specify a response date by which the provider shall challenge the fair market price calculation or lower their price; and
    - iv. Negotiate with the provider if they receive a written response challenging their fair market price calculation. If they cannot reach an agreement, the central nonprofit agency will provide a notification to the Council.

- e. For disputes between the provider and the central nonprofit agency regarding fair market price, the provider may utilize the appeals process procedures as specified in 2.40.5.14 B of the rules.

5. Cost Analysis Worksheet

- a. The Cost Analysis Worksheet (see Appendix) will provide the council with a producing member business plan that documents the costs of a service contract for purposes of pricing service contracts for the State Use Program. The Cost Analysis Worksheet will provide the council and the central nonprofit agency a complete breakdown of the costs associated with a specific contract. The Cost Analysis Worksheet will show costs in the areas of labor, payroll taxes, employee benefits, insurance, equipment costs, supplies and materials, administrative overhead, contingency, and the central nonprofit fee.
- b. For initial pricing of contracts, the producing member shall provide the central nonprofit agency with a completed cost analysis worksheet. The central nonprofit agency shall review the cost data for completeness, supportability and accuracy of computations; ensure that the value relationship of dollars for the contract to be performed is evenly balanced; and then present the cost data to the procuring agency. If the proposed price is acceptable to both the producing member and the procuring agency, then the central nonprofit agency shall present this data to the council for consideration as the fair market price. If this proposed price is not acceptable by the producing member and/or the procuring agency, then the central nonprofit agency shall facilitate negotiations. Once the proposed price is established, then the central nonprofit agency shall present this data to the council.
- c. The central nonprofit agency shall provide the council with any relevant data available to assist with establishing the fair market price of a contract.

6. When the council establishes a price, it shall remain in effect until the council approves a new price. The new price shall be based on:

- a. any changes in the scope of work or in tasks required by the procuring agency; and
- b. changes resulting from a pass through of any changes in other elements of the provider's costs

7. The price established by the council shall usually apply for a period of one year, the "service period." Until the council has approved a new price, the producing member shall continue to provide the contract in accordance with the scope of work, which was the basis for establishing the original price. Any implementing agreements entered into by the procuring agency and the producing member regarding the details of the provision of a service under the authority of the State Use Program shall conform to the price and conditions approved by the council. The procuring agency has no legal authority to pay or to contract to pay any price other than that approved by the council except as authorized.

During the service period, the procuring agency and the central nonprofit agency may, by mutual agreement, make minor modifications in the scope of the work and total price of the contract, provided that the total price adjustment resulting from such modifications during the normal contract period does not affect the price approved by the council by more than ten percent (10%) of the total annual price. Changes in scope, which result in a change of more than ten percent (10%) of the total annual price, shall be processed as a price change for approval by the council. Changes of this nature will be reported by the central nonprofit agency to the council at the next regularly scheduled council meeting.

8. The central nonprofit agency is the exclusive designated agent to represent CNA members to the council and procuring agencies. The central nonprofit agency is solely authorized to negotiate prices and terms with the procuring agencies of contracts procured.
9. The council shall review the information submitted and determine the fair market price.
10. The central nonprofit agency shall transmit the notice of the approved price to the procuring agency and the producing provider.
11. The prevailing wage utilized to determine provider member labor costs shall be determined in accordance with the requirements of any applicable United States Department of Labor regulations or, in any case, shall be based upon the prevailing wages of non-disabled workers in industry in the vicinity for essentially the same type, quality, and quantity of work.