

DEFECTIVE PRICING AUDIT READINESS: ARE YOU PREPARED

February 18, 2021



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AGENDA

- Introduction: What is defective pricing?
- What is DCAA saying about defective pricing?
- What are the situations in which your contracts could be subject to a defective pricing audit?
- What are the steps that DCAA will perform in a defective pricing audit?
- Court cases related to defective pricing
- Best practices to minimize risk relative to defective pricing audits



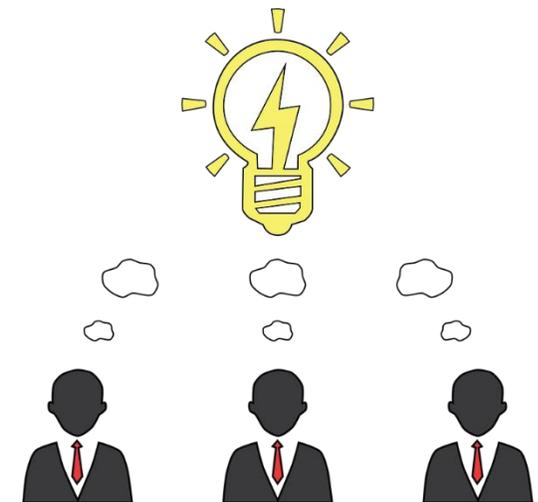
INTRODUCTION: WHAT IS DEFECTIVE PRICING?



CERTIFIED COST OR PRICING DATA

To understand what defective pricing is, we must first understand certified cost or pricing data.

- FAR 2.101 Defines **Certified cost or pricing data** as "cost or pricing data" that were required to be submitted in accordance with FAR 15.403-4 and 15.403-5 and have been certified, or is required to be certified, in accordance with 15.406-2. **This certification states that, to the best of the person's knowledge and belief, the cost or pricing data is accurate, complete, and current as of a date certain before contract award.** Cost or pricing data is required to be certified in certain procurements (10 U.S.C. 2306a and 41 U.S.C. chapter 35).





CERTIFIED COST OR PRICING DATA

- FAR 15.403-4 - If none of the exceptions in FAR 15.403 apply to your organization, then you are required submit certified cost or pricing data in accordance with the instructions at FAR 15.403-5, which ultimately points you to FAR 15.408, Table 15-2.

CERTIFIED



CERTIFIED COST OR PRICING DATA

Table 15-2, Note 1:

“There is a clear distinction between submitting certified cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of certified cost or pricing data is met when all accurate certified cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer or an authorized representative. As later data come into your possession, it should be submitted promptly to the Contracting Officer in a manner that clearly shows how the data relate to the offeror’s price proposal. The requirement for submission of certified cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.”



CERTIFIED COST OR PRICING DATA

Table 15-2(9) indicates that your proposal must include the following statement:

“This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.403-5(b)(1) and Table 15-2. By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.”



CERTIFIED COST OR PRICING DATA

- FAR 15.406-2(a) - When certified cost or pricing data are required, the contracting officer shall require the contractor to **execute a Certificate of Current Cost or Pricing Data**, using the format in this paragraph, and must include the executed certificate in the contract file.



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 (as defined in section [2.101](#) of the Federal Acquisition Regulation (FAR) and required under FAR subsection [15.403-4](#)) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of _____* are accurate, complete, and current as of _____**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm _____

Signature _____

Name _____

Title _____

Date of execution*** _____

* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

***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)



CERTIFIED COST OR PRICING DATA

Exceptions:

FAR 15.403-1 provides exceptions to certified cost or pricing data requirements and indicates that contracting officers shall not require such data when one of the exemptions is met, such as:

When prices agreed upon are based on adequate price competition

When prices are set by law or regulation

When a commercial item is being acquired

When a waiver has been granted

When modifying a contract or subcontract for commercial items



If any of these scenarios could apply, it is very important that this is communicated to the contracting officer so that they can avoid certification of cost or pricing data and, in doing so, avoid potential future defective pricing findings.





WHAT IS DEFECTIVE PRICING?

DEFECTIVE COST OR PRICING DATA

If you recall earlier, we explained that **certified cost or pricing data** certifies that to the best of the person's knowledge and belief, the cost or pricing data is **accurate, complete, and current** as of a specified date.

So in contrast, **defective cost or pricing data (or defective pricing)** occurs when cost or pricing data is certified to be accurate, complete, and current but is actually, **inaccurate, incomplete, or not current**.





**WHAT IS DCAA SAYING
ABOUT DEFECTIVE
PRICING?**



TINA AND FALSE CLAIMS ACT

Truthful
Cost and
Pricing
Data

- Aka TINA (Truth in Negotiations Act)

False
Claims
Act

- Certain types of proposals are considered claims – be careful

Defective
Pricing

- DCAA audits increasing in this area



DCAA PLANS FOR 2021

DCAA Budget

- DCAA 2021 budget reflects significant increase in defective pricing audits
- Planned increase in defective pricing/systems as compared to 2018/2019 levels is approximately 250 audits

Auditor Guidance

- Defective pricing audit program delineates specific steps
- DCAA CAM (chapter 14) provides additional guidance to auditors

DCAA Approach

- DCAA remains very aggressive in pursuing defective pricing findings
- Court cases discussed later will show that DCAA is often not successful once taken to ASBCA but that is to be avoided by contractors if possible



SPECIFIC AREAS OF FOCUS BY DCAA

Submission Versus Availability of Data (DCAA CAM 14-105)

- DCAA's position is that availability of books, records and other documents for audit does not constitute submission of certified cost or pricing data.
- The adequacy of a given submission or disclosure depends on whether the data is disclosed in a way that places the Government on essentially equal footing with the contractor in regards to making pricing decisions.
- **THEREFORE:** If analysis has been performed of data, that could impact pricing decisions, the analysis must be disclosed and provided to the government.



SPECIFIC AREAS OF FOCUS BY DCAA

Natural and Probable Consequences of Defective Data (DCAA CAM14-109)

- DCAA's position is that the natural and probable consequence of defective data is an increase in the contract price
- The presumption, unrebutted, relieves the contracting officer of the burden or reconstructing negotiations
- **THEREFORE:** Contractors must understand that they need to rebut this presumption as soon as they are aware of DCAA's identification of potential defective pricing.
- **KEY POINT:** Just because defective data was provided, this does not mean that the government relied upon the data to its detriment.



SPECIFIC AREAS OF FOCUS BY DCAA

Government's Right of Access to Record (DCAA CAM14-110)

- The right to examine contractor records expires 3 years after final payment under the contract or subcontract
- Therefore, DCAA auditors are reminded to conduct any defective pricing audit before their ability to do so expires
- **THEREFORE:** Contractors should be aware of the limit to the ability of audits to perform defective pricing audits and to remind DCAA regarding this time limit in instances when it is confirmed that the three year period has expired



SPECIFIC AREAS OF FOCUS BY DCAA

Contract Clauses (DCAA CAM14-112)

- The clauses which enables the government to conduct defective pricing audits are the FAR 52.215-10,11, 12 and 13 clauses
- DCAA does not consider the absence of these clauses from subject contracts to prevent it from performing defective pricing audits. DCAA sites the “Christian Doctrine” to defend its position that audits can be conducted when the clause is not present
- **KEY POINT:** Contractors should not assume DCAA is correct that the “Christian Doctrine” enables it to conduct audits when these clauses are not present.



SPECIFIC AREAS OF FOCUS BY DCAA

Fraud (DCAA CAM14-118)

- During defective pricing audits, any findings which might suggest wrongdoing against the government should be referred to investigative organizations.
- Defective pricing may result in criminal acts under two statutory sections: 18 U.S.C. 287 False Claims. It may also be subject to civil penalties under 31 U.S.C. 3729, the civil False Claims Act.



SPECIFIC AREAS OF FOCUS BY DCAA

Fraud (DCAA CAM14-118)

- Thus, submitting an invoice on a contract that is defectively priced can be considered a false claim if the submitter:
 - (1) has actual knowledge,
 - (2) acts in deliberate ignorance of the truth or falsity of the information, or
 - (3) acts in reckless disregard of the truth or falsity of the information.

Unlike the criminal statutes, the civil statute provides that “...no proof of specific intent to defraud is required.”



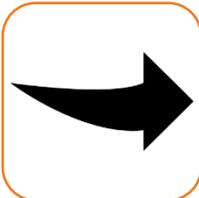
**SITUATIONS WHERE
CONTRACTS MAY BE
SUBJECT TO DEFECTIVE
PRICING AUDIT**



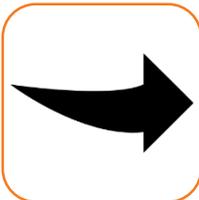
COPD – AGAIN...

FAR 15.403-4 Requiring certified cost or pricing data

The threshold for obtaining certified cost or pricing data is:

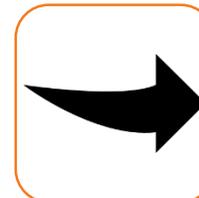


\$750,000 for prime contracts awarded before July 1, 2018

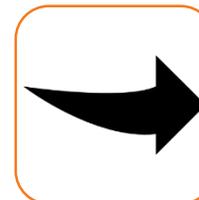


\$2 million for prime contracts awarded on or after July 1, 2018

Audits are initiated in 2 ways:



As part of the routine DCAA annual requirements and selection plans



Specific requests from COs and other authorized persons



MATERIALITY AND OTHER FACTORS

- Other factors that will impact whether or not DCAA proceeds with the audit:
 - The Price Reduction for Defective Certified Cost or Pricing Data, FAR 52.215-10, 11, 12, and 13 are present,
 - The Price Negotiation Memorandum (PNM) explicitly states that the Government relied on COPD in negotiating the contract,
 - They are more likely to proceed on an FFP contract than a CPFF contract,
 - Amount...The bigger the pricing action, the bigger the potential findings,
 - Whether or not a pre-award audit was performed,
 - History of defective pricing on other contracts.

*If you are a subcontractor, you are not off the hook. All these factors flow down to subcontractors that are required to submit COPD.



**STEPS DCAA WILL
PERFORM IN DEFECTIVE
PRICING AUDIT**



THE AUDIT

Getting Ready

Once DCAA has been engaged to audit and has determined that all of the appropriate risks and factors are present, they will proceed with the audit.

Getting Ready

Expect to hear from the lead auditor announcing the intent to audit. You may initially receive informal communications to ensure the correct contact information and then you will likely receive a notification letter that includes an initial data request and a request for a walk through of the data.



THE AUDIT – GET PREPARED

Some of the items you can review to get ready are:

- **The Audit Program**
 - The DCAA Website includes a directory of audit programs.
 - Take a look at Activity Code 42000 Audit Program for Truth in Negotiations Audits
- **The DCAA Contract Audit Manual or DCAM**
 - Chapter 14, Section 1 Truth in Negotiation Compliance Audits of Certified Cost or Pricing Data
 - Chapter 4-304.3, Postaward Audits of Certified Cost or Pricing Data for Possible Defective Pricing



THE AUDIT – DATA REQUEST

Some of the items you can expect to see in an initial data request are:

- A copy of the full proposal file, including the proposal and the Final Certificate of Current Cost or Pricing Data
- Major subcontractors,
- Major inter-organizational transfers,
- All certified cost or pricing data submitted before or during negotiations,
- Any additional data submitted between the date of price agreement and the date of the Certificate of Current Cost or Pricing Data;
- Incurred costs and EAC by cost element



THE AUDIT – WALK THROUGH

Once all of the data has been collected and the audit team has had a chance to perform an initial review of the information, they will request a walk through. The walk through will generally include a discussion and review of:

- The latest certified data and any subsequent data submitted up to the time of price agreement,
- TINA sweep data in one was conducted,
- Any documentation of negotiations,
- The processes and internal controls in place at the time of negotiations,
- Explanation of how costs are accumulated in the system (WBS mapping, project numbers, etc.)



THE AUDIT – BASELINE

The auditor will create an initial baseline by:

- Organizing the initially submitted proposal amounts by significant cost elements
- Refreshing the amounts for any additional COPD provided
- Adjusting for any final TINA sweeps
- Reviewing the PNM for amounts any adjustments

- They will use this data to determine materiality of cost elements and may perform overrun/underrun analysis. This will allow them to start focusing in on the risky areas of the audit.



THE AUDIT – BASELINE

- **Baselines for material / significant cost elements / sub-elements:**
 - Direct labor hours / rates,
 - Material categories / parts,
 - Subcontracts / IOTs,
- **Overrun/underrun analysis:**
 - Depends on how far along the actual project is.
 - If there is still significant ETC, they may perform additional procedures to evaluate the ETC.
 - If the project is complete or close to complete they may perform analysis over the incurred costs.
 - They will compare the baseline to the incurred costs / EAC to determine if there is risk of overrun/underrun





THE AUDIT – GO/NO-GO

- **The audit team will review:**
 - The walk throughs
 - Baselines
 - Materiality/Sensitivity factors
 - Over/underrun analysis
 - Other planning procedures



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- **They will determine at this point if there is enough risk of defective COPD to perform the audit.**
 - If no material risk is not identified, they will discuss with the contractor and PCO and issue a memo indicting that the assignment will be closed without further procedures.
 - If material risk is identified, the audit will move into the fieldwork phase.



THE AUDIT – FIELDWORK

- The audit team will revisit the baselines and over/underrun analysis for each material / significant cost elements where the risk of potential defective COPD was identified.
 - They will evaluate the initial analysis for areas of significant variances and perform procedures over those variances to try and determine if the cause of the variances are based on data that was known and not disclosed to the government.
 - See DCAA Audit program 42000 Truth in Negotiations Audit (Post Award) for detailed steps that will likely be completed.
- While DCAA does not design its procedures to look for offsets, if it finds any during its procedures, and they are certified, they should also be reported.



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THE AUDIT – FINDINGS

- In order to recommend a contract price adjustment for defective COPD, DCAA must show that:

1) The information in question fits the definition of cost or pricing data.

2) Accurate, complete, and current data existed and were reasonably available to the contractor before the agreement on price or another date agreed upon by the parties.

3) Accurate, complete, and current data were not submitted or disclosed to the contracting officer or one of the designated representatives of the contracting officer and that these individuals did not have actual knowledge of such data or its significance to the proposal.

4) The Government relied on defective certified cost or pricing data in negotiating with the contractor.

5) The Government's reliance on defective certified cost or pricing data caused an increase in the contract price.



**COURT CASES RELATED
TO DEFECTIVE PRICING**



ASBCA CASES FOR DISCUSSION



*Alliant
Techsystems, Inc.,
ASBCA Nos. 47626,
51280, 2000 WL
1049163 (July 25,
2000)*

*Alloy Surfaces
Company ASBCA
No. 59625 (April 9,
2020)*





ALLOY SURFACES COMPANY (ASBCA 59625)

Background

- Alloy manufactured M211 infrared countermeasure decoy flares under Army contract.
- Proposal requested in 2006 for additional M211 flares under Delivery Order (DO) 14
- Alloy's proposal did not contain labor and material usage data related to DO13; rather it provided data from earlier jobs which were produced without the automated processes utilized in DO 13



ALLOY SURFACES COMPANY (ASBCA 59625)

Government's Position

- DCAA concluded defective pricing occurred due to the use of the earlier data rather than having DO 13 data prior to negotiations. This was the government's position
- The Army demanded \$15,920,212 plus interest be awarded due to the impact of defective pricing



ALLOY SURFACES COMPANY (ASBCA 59625)

Decision

- The court indicated that the government was aware of the effect of automation on the pricing for the flares, but chose instead to rely on the earlier manufacturing data from prior to DO 13
- The court stated that the Army acknowledged during negotiations that the pricing of the non-automated jobs best reflected a compromise between increased efficiency of automation and the inefficiency of increasing production. Therefore, the ASBCA sided with Alloy

Key Point: Be wary of the government performing comparative analysis to identify cost under-runs and using that to support a defective pricing claim. In this case, the government chose to ignore relevant data and cannot then expect to be made whole for that decision.



ALLIANT TECHSYSTEMS, INC., (ASBCA NOS. 47626, 51280, 2000 WL 1049163)

Background

- Alliant was awarded a contract by the Air Force on 19 June 1987 (FY 87 contract) to produce 1,313,000 bomblets (part of the Combined Effect Munitions (CEM) systems) at a unit price of \$42.40.
- Alliant was awarded an FY 88 contract to provide 15,683 CEM systems, which included 3,167,966 bomblets at a unit price of \$31.45.
- In 1988, the Special Activities Office at Hill AFB issued a sole source solicitation for a special procurement of 50,400 bomblets
- Alliant used cost data from its FY 87 CEM systems BAFO which it adjusted for the substantial difference in quantities. Alliant disclosed this pricing approach to the government.



ALLIANT TECHSYSTEMS, INC., (ASBCA NOS. 47626, 51280, 2000 WL 1049163)

Background

The Government's Price Negotiation Memorandum states the following in a paragraph identified as "UNIQUE FEATURES:"

The time constraints of this procurement did not permit the use of a "bottoms-up" estimate for the purchase of the items. As an alternative, the [Government] used a comparison to the FY 87 CEM BAFO. Current actuals were projecting costs higher than could be negotiated due to the timing of the contract. It was the [Government's] opinion that a "bottoms-up" estimate for our stand-alone purchase would result in a higher cost and longer lead-time than as presently negotiated.



ALLIANT TECHSYSTEMS, INC., (ASBCA NOS. 47626, 51280, 2000 WL 1049163)

Background

Mr. Pierce responded on 7 September 1988 in a letter which tracked the Government's Price Negotiation Memorandum and stated in pertinent part:

It is understood that time did not permit a "bottoms-up" estimate and as an alternative we used the FY 87 CEM BAFO. We elected to use the cost data presented in the BAFO because the current actuals were projecting costs higher than we were negotiating due to the timing of the contract, the quantity required, and the required delivery. In addition it was our opinion a "bottoms-up" estimate for our quantity "stand alone" would also be higher. In short, we feel there should be no basis for any future defective pricing action.



ALLIANT TECHSYSTEMS, INC., (ASBCA NOS. 47626, 51280, 2000 WL 1049163)

Government's Position

- DCAA issued a defective pricing report (a 420 report) on 8/1/90.
- DCAA asserted that Alliant should have used the FY 88 CEM systems contract to estimate the unit prices for the Hill contract.
- DCAA computed a \$5.41 per unit reduction to the bomblet cost and recommended a contract price adjustment of \$355,179.



ALLIANT TECHSYSTEMS, INC., (ASBCA NOS. 47626, 51280, 2000 WL 1049163)

Government's Position

- A DCAA follow up report concluded:

We believe [appellant] was obligated to disclose to the government that use of the FY 1987 CEM BAFO to price this buy of BLU-97A/Bs substantially overstated the cost of material when compared to actual FY 1987 and FY 1988 combined material purchases. These reduced material prices were reflected in the FY 1988 CEM BAFO and, therefore, [appellant] should have used the FY 1988 CEM BAFO to price this buy.

The contracting officer sided with DCAA



ALLIANT TECHSYSTEMS, INC., (ASBCA NOS. 47626, 51280, 2000 WL 1049163)

Discussion

The Government has the burden of proving that appellant violated TINA by failing to disclose accurate, complete and current pricing data that was relevant to the price negotiation for the Hill contract and that it relied upon defective data to its detriment. *See McDonnell Douglas Helicopter Systems*, ASBCA No. 50341, 99-2 BCA ¶ 30,546. The objective is to place the Government in a position equal to the contractor with respect to making judgments on pricing. *Litton Systems, Inc., Amecom Division*, ASBCA No. 36509, 92-2 BCA ¶ 24,842 at 123,944.



ALLIANT TECHSYSTEMS, INC., (ASBCA NOS. 47626, 51280, 2000 WL 1049163)

Discussion

“Disclosure is not confined to a formal, written submission. Instead the contractor’s disclosure obligation is fulfilled if the Government obtains the data in question in some other manner or had knowledge. . . . [It] must be meaningful, regardless of the form it takes.” *Aerojet Ordnance Tennessee*, ASBCA No. 36089, 95-2 BCA ¶ 27,922 at 139,437. Whether there has been meaningful disclosure depends upon application of a “rule of reason” to the particular circumstances of the each case. *Plessey Industries*, ASBCA No. 16720, 74-1 BCA ¶ 10,603. On the facts of this case, we are satisfied that appellant fulfilled its disclosure obligation with respect to the FY 88 pricing. *See Motorola, Inc.*, ASBCA No. 41528, 94-2 BCA ¶ 26,596.



ALLIANT TECHSYSTEMS, INC., (ASBCA NOS. 47626, 51280, 2000 WL 1049163)

Decision

- The ASBCA sided with Alliant. The primary reasons were:
 - Disclosure is not limited to information provided at the time of negotiations of the subject award
 - The government had actual knowledge of FY 88 pricing because it had received the data as part of the FY 88 BAFO

Key Point: Contractor's faced with defective pricing allegations should consider all of the ways that information was disclosed to the government rather than accept the silo'd approach that a DCAA auditor may wish to take.



**BEST PRACTICES TO
MINIMIZE RISK
RELATIVE TO DEFECTIVE
PRICING**



BEST PRACTICES TO MANAGE RISK

Contracting

- Avoid submission of certified cost or pricing data
- Conduct review prior to concluding negotiations of any additional data
- Disclose all applicable information, include analysis of
- Keep detailed records of all interactions with government personnel

Prior to Audit

- Review DCAA CAM Chapter 14 and the defective pricing audit program
- Ensure data that is provided to DCAA to be fully responsive and correct
- Perform comparative analysis of actuals to negotiated amounts and understand the reasons for any significant differences

During/After Audit

- Understand the applicable defenses to any DCAA assertion of defective pricing
- Be proactive in responding to DCAA assertions in a timely and detailed manner
- If DCAA asserts defective pricing, review the records of negotiations and any interactions with the government to assess potential defenses
- Engage with legal counsel early upon any assertion by DCAA of potential defective pricing.



— /
SCENARIOS



SCENARIO 1

Background

- XYZ Co submitted certified cost or pricing data that includes a \$1,000,000 quote from a prospective subcontractor.
- At the time of submission of the proposal, the quote was current and represented the subcontractors offer to perform services specified in the RFP.
- XYZ provides its certificate of current cost or pricing data to the government at the completion of negotiations.
- During negotiations, the \$1,000,000 quote is used by the government to establish the negotiated prime contract amount.



SCENARIO 1

- During negotiations with the government, a buyer for XYZ discusses the quote with the subcontractor and learns that the subcontractor is willing to reduce its quote by \$100,000 to perform the services. The buyer does not alert the negotiators to this change.
- After negotiations are complete, the negotiators for XYZ Co learn about the price reduction. Since the negotiators learn of this after the final certification, and negotiations are complete, the government is not alerted to the new information.

Question: In this scenario, is XYZ Co at risk of a finding of defective pricing?



SCENARIO 1

Answer: XYZ Co at risk of a finding of defective pricing because it certified before performing a final sweep to determine whether any pertinent facts changed during negotiations.

XYZ should implement robust controls to ensure a full TINA sweep occurs before final certification.



SCENARIO 2

Background

- XYZ Co submitted a proposal to the government Procurement Contracting Officer (PCO) which included indirect rates that were based on the latest forward pricing indirect rate estimates at the time of the proposal submission.
- Prior to negotiations on the subject proposal, XYZ submitted a Forward Pricing Rate Proposal (FPRP) to the government Administrative Contracting Officer (ACO) responsible for the contractor.
- XYZ subsequently submitted its final proposal to the PCO that included the rates from the original proposal, not the FPRP rates.



SCENARIO 2

Background

- The PCO, in their pre-negotiation memorandum, referenced the FPRP, indicating their awareness of the submission.
- The rates negotiated for the award were those submitted with the original proposal rather than the FPRP rates.
- The government issued a demand for payment for the difference between the negotiated rates and the FPRP rates, plus interest.

Question: Who will likely prevail if this case were to go before the ASBCA? Will XYZ be found to have defectively priced the proposal?



SCENARIO 2

Answer: XYZ Co did disclose to the government the existence of the FPRP rates. The PCO indicated awareness of these rates. If the PCO did not request the rates, there is not a strong case for defective pricing.

The answer could be different if the PCO was not aware of the FPRP rates. Disclosing to one party in the government (the ACO) may not be considered adequate disclosure if the PCO was not aware of that information.

This is an actual case. See SYMETRICS INDUSTRIES, LLC, ASBCA NO. 59297, 15-1 BCA ¶ 36,070.



SCENARIO 3

Background

- ABC Co is proposing on a follow on contract.
- ABC Co has been monitoring its current contract performance as follows:

Proposed				Forecast				Difference			
	Hours	Rate	Total		Hours	Rate	Total		Hours	Rate	Total
Associate	5,000	20.00	100,000	Associate	15,000	20.00	300,000	Associate	(10,000)	20.00	(200,000)
Exp. Associate	10,000	35.00	350,000	Exp. Associate	13,000	35.00	455,000	Exp. Associate	(3,000)	35.00	(105,000)
Sr. Associate	15,000	55.00	825,000	Sr. Associate	2,000	55.00	110,000	Sr. Associate	13,000	55.00	715,000
	<u>30,000</u>		<u>1,275,000</u>		<u>30,000</u>		<u>865,000</u>		<u>-</u>		<u>410,000</u>



SCENARIO 3

- ABC proposed labor on the same basis as the original proposal, without taking actual historical experience and current forecast into account.
- ABC provides its certificate of current cost or pricing data to the government at the completion of negotiations.
- During negotiations, the government relies on the unadjusted labor to establish the negotiated follow on contract amount.

Question: In this scenario, is ABC Co at risk of a finding of defective pricing?



SCENARIO 3

Answer: ABC Co is at risk of a finding of defective pricing because it certified on the basis of the original proposal without refreshing for known factors. Certified cost or pricing data should include all facts that would impact price.

While some might argue that the government should be aware of the current pricing on the original contract, it is ABC Co's responsibility to present accurate and adequate COPD.

ABC should implement robust controls to ensure a full TINA sweep occurs before final certification.



CONTRIBUTE TO THE 2021 GAUGE SURVEY



The 5th Annual GAUGE Survey is Here!

CohnReznick and Unanet have collaborated on the 5th annual GAUGE benchmarking survey for government contractors. Provide your insights via this link: <https://bit.ly/3k2Ad8X>





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