

Special Regulatory/Contractual Update

November 2, 2007

Volume 12, Issue 10

- **Important Truth In Negotiation Act (TINA) Regulatory Changes.** On November 1, 2007, the Federal Register noticed a November 15, 2007 public meeting will be held in Washington DC, by the Civilian/DoD Acquisition Councils as a follow-on to the April 23rd Federal Notice on TINA. This request for public input will, among other things, “seek additional views before finalizing the proposed rule.” The TINA proposal will, in part, revise the definition of “cost or pricing data,” change “information other than cost or pricing data” to “data other than certified cost or pricing data,” and to “clarify the need to obtain data other than certified cost or pricing data when there is no other means to determine fair and reasonable pricing during price analysis.” The Councils also extended the comment period to November 22nd.

The Background section of the April 23rd notice provides the following: “The Councils believe that the terminology should be changed because they believe that it should be clear that the contracting officer should be free to ask for any information necessary to determine the price to be fair and reasonable. This could include any cost data or pricing data that would support price reasonableness even though certification is not required. The Councils believe it to be extremely important to resolve any misunderstanding amongst Government and contractor acquisition professionals by ensuring that the definition is fully clarified.”

Also, throughout the year there has been additional TINA related items most of which were mentioned in the April and June Updates covering the regulatory expansion in this area, DoD direction to look at a contractor’s business mix at a business unit in determining whether a TINA waiver should be granted, etc.

Readers should ascertain the business/legal impact of these changes within their organization, Supply Chain and commercial suppliers including the significance, if any, between certified and uncertified “data.”

Earlier Updates also provided relevant comments including...

“What is the ‘real’ problem? Does everyone (really) know how to ascertain whether a price is “fair and reasonable”—to both parties? It is submitted that having “additional” information does not necessarily make a price ‘fair and reasonable’ in the opinion of that requesting party, if not, both parties. Could the Government provide additional contract management tools to assist Contracting Officers obtain a fair and reasonable price to both parties? The Navy recently implemented a policy change that is a step in that direction—see... (the March) Update on recent Navy ADR changes.... Merely having “more” information does not ensure a price is fair and reasonable. Additional contract management and negotiation tools that empower Contracting Officers on “getting-to-closure” on fair/reasonable pricing should have been “the order of the day!”

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