

Truth in Negotiations (TIN) Audits

Moderator - Ki Capitano, Senior Advisor, Capitano Consulting

Panelists -

DCAA – David E Logue, Program Manager, Pricing and Special Projects (PSP)

DCAA – Shae Li, Quality Auditor, Policy and Quality Directorate

Truthful Cost and Pricing Data (Aka TINA)

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.

Truthful Cost and Pricing Data

Truthful Cost or Pricing Data (TINA) - Executive agencies to require prime or subcontractors to submit & certify cost or pricing data (CCPD) under certain circumstances

- **Negotiated contracts expected to exceed CCPD threshold (\$2M)**
- **Modifications price adjustments expected to exceed CCPD threshold (\$2M)**
 - Cost or pricing data need not have been initially required
 - Increase and decrease adjustments on same modification are added
- **Contract clauses to provide for price reduction for increased prices due to submission of defective cost or pricing data**
 - FAR 52.215-10 Price Reduction for Defective Certified Cost or Pricing Data
 - FAR 52.215-11 Price Reduction for Defective Certified Cost or Pricing Data-Modifications
- **DCAA conducts Truth in Negotiations Audits to determine if a negotiated contract price was increased by a significant amount because the contractor did not submit or disclose accurate, complete, and current cost or pricing data.**

Truth in Negotiations Audit Program

Preliminary Steps

Request the contractor provide such information

- Copies of the contractor's proposal(s)
- Identification of significant subcontracts and inter-organizational transfers (IOTs)
- Final Certificate of Current Cost or Pricing Data
- Identification of CCPD submitted before or during negotiations
- Additional data submitted between date of price agreement and date of Certificate
- Costs incurred to date by cost element and EAC by cost element

Analyze the PNM to identify and document areas of potential risk for defective pricing including, for example:

- No pre-award forward pricing audit performed
- Few or no proposal updates provided during proposal audit
- Incomplete cost or price analyses on subs at time of price agreement
- Significant time elapsed between proposal audit and price agreement date
- More cost or pricing data or new proposal provided after pre-award, etc.

Truth in Negotiations Audit Program

Preliminary Steps

- **Materiality, Sensitivity, and Inherent Risk Factors**
 - Contract type
 - Dollar value of the pricing action
 - Defective Pricing Lead Sheet –Part A and use the PNM to complete Part B of the Defective Pricing Lead Sheet
 - Permanent file for history of DP or DP leads
- **Coordinate a date with the contractor to provide a walkthrough**
 - Highlight significant CCPD
 - Internal controls ensuring disclosure
 - Accounting system cost accumulation

Truth in Negotiations Audit Program

Preliminary Steps

Determine an initial audit baseline for the risk assessment phase of the audit to

- Determine the materiality of the cost elements and
- Perform the overrun/underrun analysis.

For risk assessment purposes, use

- The PNM, if practical,
- Latest proposal,
- Disclosed data during negotiations, or
- Sweep data, if applicable

Truth in Negotiations Audit Program

Preliminary Steps - Perform an Overrun/Underrun Analysis

Determine the value of performing an overrun/underrun analysis considering

- The extent that EAC is comprised of ETC,
- The condition of the recorded costs
- The additional procedures necessary to establish the reliability of:
 - ETC
 - Recorded Costs
 - The number and complexity of engineering change orders and other changes that might impair comparability, etc.

Truth in Negotiations Audit Program

Preliminary Steps

- **Begin preparing the Chronology of Significant Events with key dates that may include the following:**
 - Certification date
 - Initial audit report date
 - Date of last proposal before certification
 - Date of final sweep, if applicable
 - Date of final payment, if applicable
- **Conduct entrance conference with contractor and the CO**
 - Confirm the audit team's understanding of the cost or pricing data and the potential of undisclosed data.
 - Discuss the availability of required data and personnel necessary to timely support the audit
- **Send a formal acknowledgment memorandum to the appropriate contracting officer**
- **Send a formal notification letter to the contractor**

Truth in Negotiations Audit Program

- **Direct Labor Rates – Variance Analysis**
- **Comparative analysis – Baseline rates vs.**
 - Actual direct labor rates
 - Bid rates or rate agreements in effect as of the date of price agreement
 - Management approved labor rates changed shortly after the certification date
 - Collective bargaining agreed-to rates
- **Determine if additional data was available and not disclosed**
- **Verify disclosed historical data was current, complete, and accurate**
- **For identified potential defective pricing, calculate the recommended price adjustment using an appropriate baseline direct labor costs and the associated costs and profit**

Truth in Negotiations Audit Program

Labor Hours

- **Compare baseline labor hours to actual or EAC labor hours at a more detailed level to determine if significant variances exist**
e.g.,
 - Labor category,
 - Tasking function,
 - Major section of SOW
- **Variance analysis – Determine if**
 - Contractor used a different skill mix of employees than proposed
 - Judgment was the basis of estimate, and if so, determine if history was available and not disclosed
 - History was the basis of estimate, and if so, determine if the contractor provided the most relevant and current history to the Government

Truth in Negotiations Audit Program

Labor Hours

Audit program has additional steps when the BOE for hours was

- Labor standards
- Improvement curves
- Cost Estimating Relationships (CERs)

Truth in Negotiations Audit Program

Materials

- **Compare baseline material amounts/prices to actual or EAC material amounts/prices at a more detailed level e.g.,**
 - Category of material,
 - Tasking function,
 - Major section of Statement of Work (SOW),
 - Part number
- **Select items for evaluation and document your rationale**
 - Compare the baseline unit cost, kind and quantity to the actual unit cost, kind and quantity as shown on the purchase order (PO)
 - Review PO history and the complete buyer's file, e.g. quotes, negotiation summary, correspondence, PO, etc.
 - Determine if any data existed that was not adequately disclosed that would cause an increase in the contract price

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Materials – Potential Audit Steps Tailored to the Situation

- If the actual unit cost is less than the baseline unit cost
- If the kind and/or quantity of material purchased are different from the kind and/or quantity included in the baseline
- If there is no consolidated bill of materials
- If material additive rates/factors applied to material costs including intracompany costs

Truth in Negotiations Audit Program

Inter-organizational Transfers (IOT)

- **Compare baseline to EAC obtained directly from the contractor or obtained from the cognizant DCAA office**
 - Identify those IOTs with significant variances and design additional procedures to determine if the IOT's cost or pricing data were accurate, complete, and current
 - Note: Consider using the one audit approach to obtain the data for the overrun/underrun from the cognizant DCAA office
- **For cost-based IOT's selected, ensure that profit was excluded from the prime contractor's price per FAR 31.205-26(e))**
- **When historical data was used as the BOE verify historical data was current, complete, and accurate**
- **For identified potential defective pricing, calculate recommended price adjustment using appropriate baseline IOT costs and the associated costs and profit**

Truth in Negotiations Audit Program

Subcontracts

- **Obtain the subcontract agreement and find the baseline amount**
- **Identify subcontracts with significant variances for further evaluation**
- **For those subcontractors selected**
 - Evaluate the buyer's file to determine if records indicate a lower subcontract price was known (e.g., quote received, correspondence, PO placed, counter offers from subcontractor, etc.).
 - Consider alternate procedures, e.g., 3rd party confirmation to determine if contractor knew of reduced subcontract price before price agreement
- **Assess the risk that the certified cost or pricing data submitted by the subcontractor was not current complete and accurate e.g., prime's cost/price analysis indicates subcontract proposal was not in sufficient detail**
- **Notify the cognizant DCAA office of the risk for their audit consideration**
- **Calculate recommended price adjustment using appropriate baseline subcontract costs and the associated costs and profit**

Truth in Negotiations Audit Program

• Indirect Rates and Factors

- **Compare baseline and actual indirect rates incurred to determine if**
 - Significant variances exist and
 - Additional effort is warranted
- **For rates with significant variances**
 - Compare baseline and actual pools, and bases by year
 - Identify the major cost groups contributing to the variance, and obtain an explanation
 - Assess whether the unexpected variance was the result of an error in judgment or the omission of relevant facts
 - (e.g., planned sale of equipment resulting in a decrease in depreciation, etc.).
- **For anticipated events that are fact-based**
 - Obtain and evaluate records pertaining to the event and
 - Determine if the contractor knew of the event prior to the certification date.
 - Note: Significant underruns may exist if this pricing action had a significant impact on the business base and the impact was not disclosed

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• Other Direct Costs

- **Compare baseline extended costs to actual or EAC extended costs at a more detailed level e.g.**
 - Travel
 - Consultants
 - Identify any significant variances
 - Select items with significant variances for evaluation and develop appropriate detailed audit steps
- **When historical data was used as the BOE verify historical data was current, complete, and accurate**
- **For identified potential defective pricing, calculate recommended price adjustment using appropriate baseline other direct costs and the associated costs and profit**

Truth in Negotiations Audit Program

• Offsets

- **Offsets against defective CCPD are allowable if the contractor:**
 - Certifies entitlement to the offset in the amount requested, and
 - Proves the data were available before the price agreement date and
 - The data were not submitted before such date
- **Offset shall not be allowed if:**
 - The understated data was known by the contractor to be understated before the “as of” date specified on the Certificate of CCPD, or
 - The facts demonstrate that the price would not have increased even if the available data had been submitted before the date of agreement on the price
- **Offsets are permitted among and within the various line items of the CCPD, up to the maximum of defective overstated costs in the same pricing action**

Truth in Negotiations Audit Program

Offsets

- **Audit procedures are not specifically designed to seek out offsets**
 - Auditor should notify the contractor and CO in writing of potential offsets
 - Until the contractor provides the required certification for its offset submission including offsets found by the auditor, DCAA should neither adjust the findings nor expend additional resources on the alleged offsets
- **If the offsets are certified, develop audit procedures and evaluate them in the associated section of the audit program**
- **Provide the PCO the offsets and request PCO confirm that**
 - Contractor did not disclose the factual data and that
 - PCO relied on the defective data

Truth in Negotiations

DoD IG Defective Pricing Indicators of Fraud

- **DoD IG has published a listing of fraud indicators, including 20+ indicators of fraud for defective pricing**
 - Defective Pricing - Material Pricing Deficiencies
 - Defective Pricing - Subcontract Pricing Deficiencies
 - Defective Pricing - Selective Disclosure
- **DoD IG audit guidance**
 - The main differences between defective pricing and potential fraud include the root cause of the underrun and the contractor's intent
 - Since the auditor does not prove intent, the circumstances leading to defective pricing generally warrant a fraud referral

Disclose

Disclose

Disclose

Cost Accounting Standards (CAS) Audits

Moderator - Ki Capitano, Senior Advisor, Capitano Consulting

Panelists -

DCAA – Joseph A. Montoya, Program Manager Policy Accounting & Cost Principles (PAC) Division

DCAA – Tina I. Lamie, Program Manager, HQ Policy & Quality, Accounting & Cost Principles Division (PAC)

CAS Applicability

All negotiated contracts > \$2M except (partial list)

- Contracts less than \$7.5 m if not currently performing any CAS-covered contracts of \$7.5 million or greater at time of award
- Small business award
- FFP/T&M for commercial items
- FFP without CCPD

Coverage

- Full - \$50M for an award, an award this FY, or total for prior FY
- Modified – CAS 401, 402, 405, 406

CASB DS - \$50M award, or

- \$50 M awards for entire organization in the prior FY, and
- Segment's CAS awards > \$10M or 30% of sales

DCAA CAS Audits

FAR Part 30

- The contract auditor shall be responsible for making recommendations to the cognizant Federal agency official (CFAO)
- Within DoD, ACO is the CFAO

Auditor's recommendations to the CFAO address

- Disclosure Statement adequacy
- Disclosure Statement compliance
- Contractor behavioral compliance
- Cost Impact proposal evaluations

DCAA CAS Audits

FAR 30.202-6 Responsibilities

- CO shall not award a CAS-covered contract until the CFAO has made a written determination that a required Disclosure Statement is adequate
- Exception if HCA authorizes award without obtaining submission of the required Disclosure Statement

Purpose of the adequacy review - determine whether disclosed cost accounting practices to be used for estimating, accumulating and reporting contract costs, as described, are:

- Current, i.e. the disclosed practices are consistent with the contractor's intended practice described during the walk through
- Accurate, i.e. the disclosed practices are consistent with the policies and procedures provided during the walk through, and
- Complete, i.e. the contractor completed all items on the CASB Form DS-1 in accordance with the General Instructions, and each disclosed practice stands on its own with minimal explanation needed from the contractor

DCAA CAS Audits

Disclosure Adequacy Evaluations

- Review of Initial Disclosure Statement for Adequacy
- Review of Revised Disclosure Statement for Adequacy

Audit validation

- Clerical accuracy
- Consistency of entries using the Internal Consistency of Disclosed Practices tool
- Conformance to the General Instructions using the Conformity of Disclosure Statement with General Instructions tool
- Described practices consistent with most recent cost assertions
- Described practices do not include vague, incomplete or ambiguous items which could lead to alternative accounting interpretations

DCAA CAS Audits

Disclosure Statement Compliance

- The initial audit of a Disclosure Statement's compliance should be scheduled for completion within 60 days after the CFAO's determination of adequacy of the Disclosure Statement
- Audit and subsequent reporting cover those conditions that constitute
 - Actual noncompliance
 - Potential non-compliance of a planned or pending action
- Types of Noncompliances

	Non-Compliant with		
Cost Accounting Practices	CAS	FAR	CASB-DS
Disclosed practices	1	2	
Actual estimating practices	3	4	5
Actual accumulating and reporting practices	6	7	8

- These types of noncompliance may be detected during audits of Disclosure Statements, CAS compliance audits, or other types of audits

DCAA CAS Audits

Disclosure Statement Compliance

- Scope of compliance audits of initial DS limited to determining whether described practices comply with CAS and FAR Part 31
- Transaction testing is not conducted to determine if the contractor's actual practices comply with the described practices
- Auditor will report the noncompliance If auditor is aware through other audit work that an actual practice is noncompliant with the disclosed practice

Changes to Disclosure Statements and/or Established Practices

- Changes to be submitted at least 60 days prior to implementation
- Proposed changes audited simultaneously for adequacy and compliance

DCAA CAS Audits

Compliance Audits

Testing for compliance with FAR Part 31 and CAS is an inherent part of every contract audit

- Auditors are expected to
 - Be knowledgeable of compliance requirements and consider them in examination of proposals and incurred cost
 - Periodically assess and document the significance of each CAS standard and the interrelationship between CAS compliance audit steps and other audits at the contractor
- A comprehensive audit of a contractor's compliance with each applicable cost accounting standard should be conducted whenever the standard is significant except for
 - CAS 401 Consistency in Estimating, Accumulating, and Reporting costs
 - CAS 402 Consistency in Allocating Costs Incurred for the Same Purpose
 - CAS 405 Accounting for Unallowable Costs
 - CAS 406 Cost Accounting Period

DCAA CAS Audits

Compliance Audits

- Audit Program for Compliance of Initial Disclosure Statement
- Audit Program for Compliance of Revised Disclosure Statement
- CAS Noncompliance Report Assignment
- Compliance Audit CAS 403
- Compliance Audit CAS 404
- Compliance Audit CAS 407
- Compliance Audit CAS 408
- Compliance Audit CAS 409
- Compliance Audit CAS 410
- Compliance Audit CAS 411
- Audit Program for Incurred Pension Cost and CAS 412 and 413 Compliance
- Joint Review Program for Segment Closing Adjustments (CAS 413)
- Compliance Audit CAS 414
- Compliance Audit CAS 415
- Audit Program for Incurred Insurance Costs and CAS 416 and FAR Compliance
- Compliance Audit CAS 417
- Compliance Audit CAS 418
- Compliance Audit CAS 420
- Audit Program for CAS Impact Proposal Evaluations

DCAA CAS Audits

Cost Impact Proposals

- Two stages
 - General Dollar Magnitude (GDM)
 - Detailed cost impact proposal
- Required for
 - Required cost accounting practice change
 - Unilateral cost accounting practice change
 - Desirable cost accounting practice change
 - Noncompliance
- Cost impact proposal due within 60 days (or other agreed-upon date) after change is determined adequate and compliant
- Contractor to provide list of CAS-covered contracts and subs that are, or will be, affected by the change or noncompliance

DCAA CAS Audits

Cost Impact Proposal Evaluations

- Basic content
 - Identification of each CAS-covered contract and subcontract and the cost impact (including cost, profit/fee, and price/amount) on each CAS-covered contract and subcontract
 - Grouping the CAS-covered contracts and subcontracts by contract type and by the various Departments/agencies
- Auditor should initially evaluate the cost impact proposal for adequacy of content and method of presentation using the Cost Impact Adequacy Tool
 - Certificate of CCPD not required until after negotiation of impact
 - Defense contracts require EA certification with proposal for each contract seeking adjustment > SAP (\$250k)

DCAA CAS Audits

Cost Impact Proposal Evaluations

Five-Step Process to Calculate Cost Impact

- a) Compute the increased/decreased cost estimates and/or accumulations for CAS-covered contracts and subcontracts
 - Changes - ETC old way vs. new way
 - Non-compliance – affect accounting/billing and/or pricing
- b) Combine the increased/decreased cost estimates and/or accumulations within each contract group (flexibly priced and fixed price)
- c) Determine the increased/decreased cost paid by the Government for each contract group, using the net impact on cost estimates, accumulations and profits/fees
- d) Changes - Determine the increased costs paid by the USG in the aggregate by combining across contract groups the increased/decreased costs paid by the USG for both contract groups, as determined in step c.
- e) Settlement Alternatives

DCAA CAS Audits

Cost Impact Proposal Evaluations

- **Interest Due to CAS Noncompliance**

- Government will also recover interest on overpayments made to the contractor, including increased costs paid due to CAS noncompliances
- Interest compounded daily from payment date until the date adjustment is effected
- Auditor should calculate daily compound interest using the CAS Noncompliance Cost Impact Interest Calculator

- **Offsets**

- FAR 30.606 specifically states that cost impacts may not be combined except under limited circumstances

- **Failure to Submit Cost Impact Proposals**

- CFAO, with the assistance of the auditor, shall estimate the cost impact on affected CAS covered contracts and subcontracts
- CFAO may withhold up to 10 % of payment requests related to the affected CAS covered contracts until the cost impact proposal has been furnished

Reserved