

# Annual Public Contracting Update Symposium

Session 2: Cost & Pricing Developments and Dealing with Inflation

# Meet the Presenters



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# Agenda for Session

- Cost Accounting Standards – What's New?
- Inflation / COVID-19 Update
- Commercial Items & Commercial Services
- Truthful Cost or Pricing Update
- Policy Impacting Pricing

# CAS – What's New?

- Quick Review
  - Exemptions
  - Full vs. Modified CAS coverage
  - Disclosure Statements
- CAS Board
  - New Appointments
  - Conformance of CAS and GAAP
  - IDIQ thresholds for CAS coverage
- DCAA Increase in CAS Audits

# Inflation / COVID-19 Update

- DoD Inflation Guidance
  - May 2022: Guidance on Inflation and Economic Price Adjustments
  - September 2022: Managing the Effects of Inflation with Existing Contracts
- NDAA FY 23: Sect. 822, Modification of Contracts to Provide Extraordinary Relief Due to Inflation Impacts
- Impact of inflation / COVID-19 on supply chain
  - Ace Electronics Defense Systems, ASBCA No. 63224 (October 5, 2022)
- April 2023 DoD Guidance Update: Contracting Updates with the Termination of the COVID-19 Emergency

# Using EPA Clauses

- DoD guidance provides four key suggestions when drafting EPA clauses in new solicitations and contracts:
  - allow both upward and downward price adjustments;
  - incorporate ceilings and floors on adjustments of a similar magnitude;
  - use carefully selected indices that are broadly exposed to the market, but narrow enough as to be relevant to contract performance; and
  - clearly describe the events that trigger a price adjustment, and the mechanism through which such price adjustment will be calculated.
- DoD guidance on EPA clauses at [DFARS PGI 216.203-4](#)

# Be Careful with EPA Index Selection

- Appeal of Delfasco LLC, ASBCA Case Nos. 63280, 63402
  - Decision just released
  - Delfasco made practice bombs under a FP contract with EPA
  - Index in EPA clause was “Steel”
  - Delfasco products used “Grey Iron”
  - ASBCA determined that Grey Iron is not Steel – No Adjustment

# Commercial Definitions ...

- Is it Commercial???

FAR 2.101 lists nine commercial product and service definition paragraphs - each is a different & unique pathway, or "Door"



1 2 3 4 5 6 7 8 9

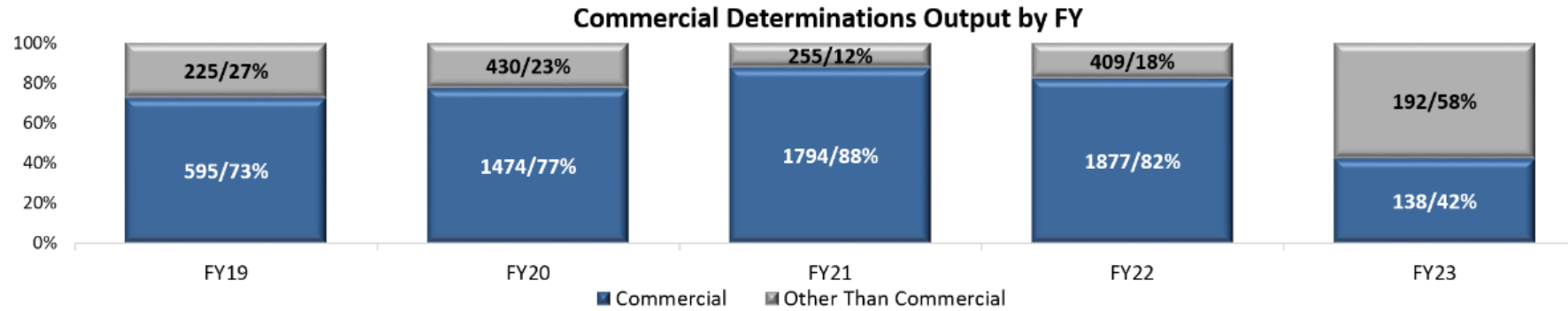
**NOTE:** See FAR full text for original.



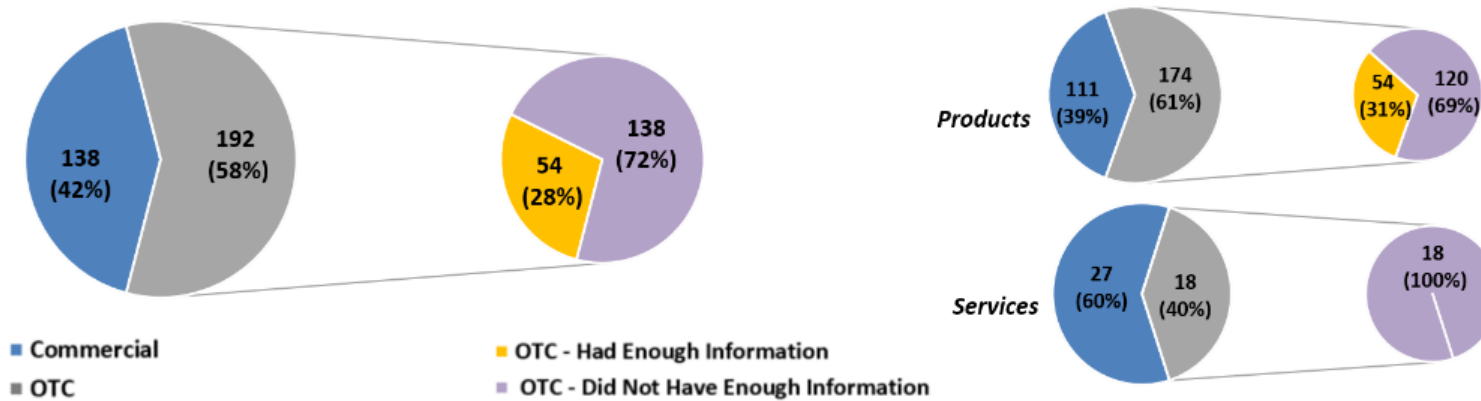
# DCMA Commercial Item - History

- 2012 - A small team of DoD SMEs was established to explore updating the Commercial Handbook
- 2013 - NDAA set the mandate for a “Cadre of Experts” within DoD (Established under 10 USC 3456)
- 2014 - Pilot program began with only 9 personnel
- 2015 - Review of 2013 NDAA language & results of pilot program
- 2016 - Commercial Item Group (CIG) began and declared operational capability
- 2018 - Shift to Agile customer support (realigned technical-centers of excellence to meet increasing customer needs)
- 2019 – DCMA authorized to issue Determinations
- 2021 - Internal restructure: functional teams to multi discipline teams
- 2023 – Held 2nd Commercial Item Summit at Fort Lee

# DCMA CIG Commercial Output



**FY23 Breakdown of Commercial vs Other-Than-Commercial (OTC) Output**



As of 14 Mar 23

# DCAA TINA Audit

- Can be requested by a contracting officer or initiated by DCAA.
- Focuses on review of contractor compliance with the 10 U.S.C. Chapter 271: Truthful Cost or Pricing Data {Truth in Negotiations Act (TINA)}.
- Requires cost or pricing data to be submitted prior to contract award.
- DCAA will hold discussions with the contracting officer as part of the risk assessment.

# Five Points of Defective Pricing

- Defective pricing (DP) exists only when the Government can establish the following five points:
- The information in question fits the definition of cost or pricing data.
- Accurate, complete, and current data existed and were reasonably available to the contractor before the agreement on price.
- Accurate, complete, and current data were not disclosed to the Government, and the Government did not have actual knowledge of the data.
- The Government relied on the defective data in negotiating with the contractor.
- The Government's reliance on the defective data caused an increase in the contract price.

# Section 890 Pilot Program (“TINA Lite”)

- Congress granted DoD authority for a pilot program, “TINA Lite” to Accelerate Contracting and Pricing Processes.
- Contracting officer may strategically establish the extent, structure, and level of detail of the historical actual cost data the contractor will be required to submit in lieu of providing complete certified cost or pricing data.
- Relies on a minimum of actual cost data (certified) for purchases of the same or similar products.
- Procuring Contracting Officer can still obtain traditional certified cost or pricing data as needed (i.e. for cost elements with no actual cost history).
- Requires authorization from Office of the Secretary of Defense, Defense Pricing & Contracting, Price, Cost and Finance (OSD DPC PCF) Director.
- TINA Lite is not permanent authority.

# DoD IG Statistics

- Inspector General Semi-Annual Reports to Congress
- Data included on TINA Audits:

Period End	Audits	Questioned (\$M)
3/31/2020	11	\$ 84
9/30/2020	13	172
3/31/2021	11	71
9/30/2021	18	33
3/31/2022	10	133
9/30/2022	13	59
3/31/2023	1	-

# DODIG TINA Violation Areas Identified

- Semi-Annual Reports summarized DCAA findings:
  - Quantity Discounts
  - Relevant historical data
    - Sub'k Direct Labor Hours
    - Actual material costs
    - Special-rated labor adjustments
  - General procurement, sub'k and IWO costs
  - Inaccurate material quantities
  - Direct materials & indirect costs

# Policy Impacting Costs – and likely pricing . . .

- Pricing Cybersecurity - CMMC
- Greenhouse Gases
- Subcontractor Pricing
- Labor



# Polling Question #1

- Are you in a financial loss position on a fixed price contract due solely to inflation?
  - Yes
  - No
  - N/A

## Polling Question #2

- Does your company sell commercial products or services under FAR Part 12?
  - Yes
  - No
  - N/A

# Polling Question #3

- Does your company perform on contracts subject to the requirements of the Cost Accounting Standards?
  - Yes
  - No
  - N/A

# Polling Question #4

- Is your company primarily a prime contractor or a subcontractor?
  - Prime
  - Subcontractor
  - Healthy mix of Prime and Sub
  - N/A

# Thank You!