Recently we posted **an article** discussing our disappointment with a report issued by the Office of the Under Secretary of Defense (Acquisition, Technology and Logistics) that was intended to make recommendations to the USD (AT&L) and other Pentagon leaders regarding areas in which non-value-added requirements could be reduced so as to obtain a commensurate reduction in contractors' indirect expenses. We were disappointed in the paucity of recommendations and the extensive effort made to justify the status quo.

One small recommendation[1] for a regulatory reduction escaped the overwhelming bulwarks erected to support the current regulatory regime: the study team agreed with the contractor recommendation that DoD should reduce the requirements to make multiple submissions of cost or pricing ("CoP") data that are made simply to ensure that such data are "current." The study team wrote (at pages 89 – 90 of the report) –

We concur with contractors' recommendation in the first category: DoD should clarify policy guidance to reduce repeated submissions of CoP data. Multiple submissions are an unintended, and generally unsought, consequence of the FAR requirement that certified CoP data be 'current.' Frequent resubmissions appear to be the result of contractors' fears that out of date CoP data that becomes inaccurate will lead to defective pricing claims by DoD post-award. However, lack of clarity on what is considered 'current' motivates some contractors to provide excessively frequent CoP data updates during negotiations (weekly or monthly), which creates unnecessary work not only for contractors, but also for the Procuring Contracting Officer (PCO). We recommend amending DFARS (and/or the FAR) to remove uncertainty about the appropriate frequency of providing certifiable CoP data to ensure it remains 'current' and/or to clarify pricing changes that warrant resubmission of CoP data. … Reducing unnecessary resubmissions of certifiable CoP data would lower contractor proposal costs and reduce procurement administrative lead time. Making this change also weakens the argument for making additional changes to the TINA statute, such as increasing thresholds or relaxing waiver criteria.

There were four alternate approaches put forward that might, if implemented, reduce the contractor burden associated with complying with TINA (or what is now called "Truthful Cost or Pricing Data") requirements. One of those proposed approaches was described as follows: "Reinstitute practice from 1980s that provided contractors the option to voluntarily disclose defective pricing data post-award and provide DoD with refunds (including interest), without risk of initiating defective pricing claims and associated audits."

Somehow (and we are not sure exactly how) that contractor recommendation "evolved" into the following recommendation to the Director of Defense Pricing: "Consider revising the FAR to eliminate the requirement that a defective pricing claim and associated audit must be initiated if a contractor voluntarily discloses defective pricing post-award …"

Again, how the study team got from "reduce multiple submissions of CoP data" to "give contractors an option to voluntarily disclose defective pricing without risk of initiating defective pricing claims and associated audits" is a mystery but, clearly, a key step to implementing that evolved recommendation would be to eliminate the regulatory requirement that claims and audits *must* be initiated if a contractor voluntarily discloses defective pricing—*i.e.*, a failure to comply with the requirements of Truthful Cost or Pricing Data (which used to be known as the Truth-in-Negotiation Act or TINA).

So, *yeah*. We guess.

Even though the recommendation was to revise FAR 15.407-1(c), the Director of Defense Pricing initiated a DFARS Case that would only revise DFARS 215.407-1. In other words, DoD was going to modify what it could control, not what the study team actually recommended. The fact that revising the DFARS without revising the FAR requirement would leave Contracting Officers (and contractors) still subject to the FAR requirement—*and thus would not lead to any significant cost reductions whatsoever*
—would only matter if you accepted that the purpose of the roll-back in regulatory requirements was to actually reduce the contractors' burdens. If you ignore that fundamental objective (which was documented in BBP 2.0 and 3.0), then the proposed DFARS revision seems like an important victory.

Thus, we have DFARS Case 215-D030 and its proposed DFARS **rule revision**, now out for

public comment. You already know what we think of it – just read the foregoing. And guess what? We think even less of it than we did before we read it, because it proposes to accomplish *ev en less* than the already watered-down recommendation submitted to the Director of Defense Pricing. In the words of the Federal Register summary—

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to stipulate that DoD contracting officers shall request a limited-scope audit, unless a full-scope audit is appropriate for the circumstances, in the interest of promoting voluntary contractor disclosure of defective pricing identified by the contractor after contract award.

There you go.

Did you notice that the already-evolved recommendation to eliminate the requirement to have mandatory claims and audits upon receipt of a contractor's voluntary notification of defective pricing "evolved" again, so that now the regulatory requirement would be to initiate a *mandatory* "limited-scope audit" – but only and we mean *only* if a full-scope audit was deemed not to be appropriate. How would a Contracting Officer know whether to initiate a full-scope or a limited-scope audit? Well, the proposed rule says "To determine the appropriate scope of the audit, the contracting officer should consult with Defense Contract Audit Agency (DCAA)."

Moreover, the proposed rule would, if implemented as drafted, declare that "Voluntary disclosure of defective pricing does not waive the Government's rights to pursue defective pricing claims on the affected contract or any other Government contract."

What, then, are the benefits associated with this proposed rule?

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Contractors can't reduce system requirements or labor involved because the FAR wasn't revised.

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Contractors will still face DCAA audits, should they make voluntary disclosures of defective pricing.

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The Government may still initiate a claim against the contractor as a result of any voluntary disclosures made.

In other words, *none*. There is no benefit associated with this proposed rule. It is a sham, readers. A sham perpetrated on the defense industrial base by entrenched bureaucrats eager to perpetuate the status quo, despite direction from Pentagon leadership (and Congress) to cut down regulatory requirements that lead to contractors' increased overhead rates.

We all know this is a sham. If anybody were interested in actually rolling-back the requirements and cutting down overhead costs, then the original recommendation—which was to eliminate the repetitive (and expensive!) submissions of cost or pricing data that contractors make in order to maintain the "currency" of the data, lest somebody accuse the contractor of defective pricing—would have been implemented. We've shown you here today how the original recommendation was watered-down and diffused and forced into something that is barely recognizable as the descendant of the original. Something that will, if implemented as drafted, reduce no requirements and decrease no overhead.

Which is why, dear readers, this is a *perfect* example of how the Pentagon bureaucracy implements a reduction in requirements via regulatory revision.

Comments on the proposed rule should be submitted in writing before January 19, 2016, to be considered in the formation of a final rule. Click the link above to be taken to the Federal Register notice that lists addresses available to receive public comment.

[1] In fairness, there were other recommendations for regulatory roll-back. But there were not very many of them and very few of the recommendations were, in our estimation, significant.