TINA Sweeps Again and Again

Written by Nick Sanders
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Readers may recall that we did a **couple of articles** about TINA "sweeps" about a year ago. In the **second article** we discussed allegations that BAE Systems "defectively priced" a proposal to definitize a UCA and we used the allegations and the chronology of events (as established by the court's findings) to look at TINA sweeps and when they should be performed.

(By the way, if you are getting confused by the acronyms we suggest you go read those two articles before continuing with this one.)

In that second article we opined that "it makes much more sense to perform sweeps just before the price agreement date. Do one complete sweep, identify any changed cost or pricing data, and disclose the changes as the final part of negotiations. Then execute the CCCPD right away. Risk is minimized and no further sweeps are necessary." We still think that was good advice.

In related news, DoD issued a policy memo on June 5, 2018 entitled "Reducing Acquisition Lead Time by Eliminating Inefficiencies Associated with Cost or Pricing Data Submissions After Price Agreement ('Sweep Data')." Long story shortened, the memo discusses the curious phenomenon of a contractor submitting cost or pricing data after the date of price agreement as part of its efforts to ensure that the cost or pricing data to which it's certifying is actually accurate, complete, and current. The problem is—as we noted in our articles—submitting cost or pricing data after the price agreement date does not mitigate the risk of defective pricing. Or at least, not by very much. Based on the memo's language, the Director of Defense Pricing/Defense Procurement and Acquisition Policy was really concerned about the issue of post-negotiation contractor sweeps; his concern was that those contractor sweeps can unduly delay the execution of the Certificate of Current Cost or Pricing Data and thus delay issuance of a contract.

Remember, as we **told you** , we're measuring PALT now. And anything that increases PALT is a bad thing. The memo was issued to tell contractors to stop post-negotiation sweeps and get those CCCPDs executed ASAP.

In fact, the memo states that contractors that provide untimely submissions of sweep data may have estimating system deficiencies. Those can get expensive.

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Further, the memo directs DoD contracting officers to request executed CCCPDs "no later than five business days after the date of price agreement."

Note that DPAP issued **a revision** to that June 5th Class Deviation (dated June 7, 2018) that made some minor wording changes which did not affect the substance of the policy direction. Make sure you refer to the June 7 th memo and not the June 5 th memo when discussing how you are going to comply. Nitpickers abound.

What does this mean?

It means that you need to perform your sweeps as negotiations are happening, so that you can confidently execute the CCCPD and meet the five-day deadline. It's really that simple. You need to change whatever processes you need to change in order to make that happen, because if you don't meet the deadline you may find yourself with an estimating system deficiency--and perhaps an irritated contracting officer.

Over at WIFCON, the usual suspects have been debating this new policy guidance. Many folks don't care much for it.

Many people do not agree with our position that post-award sweeps do not effectively militate the risk of defective pricing, which we maintain ends on the date of price agreement (or other effective date to which the parties may agree). Nonetheless, we continue to believe that if you want to address defective pricing risk, then you need to do the sweeps earlier. If you do the sweeps earlier, then you are going to be better prepared to meet the new five-day deadline.

There shouldn't be anything extraordinarily controversial about that.

Editor's Note: This article has been edited to remove a quote from WIFCON at the individual's request.