

Defective Pricing Handbook 2025 Edition Highlights

The 2025 edition underscores the heightened risks of TINA audits due to the threat of False Claims Act (FCA) defective pricing allegations and suits, including the “second largest government procurement fraud recovery under the Act,” more whistleblower suits, and the Department of Justice’s increased focus in this area. This edition also supplements legal authority regarding: (1) agency obligations to explain with “specificity” how the contracting officer would have used the defective data; and (2) historical difficulties in proving damages for subcontractor defective pricing. Further updates include statutory revisions for (1) nontraditional defense contractors potentially qualifying for TINA exemptions; (2) increased information requirements for commercial data for certain major defense contractors; and (3) limitations on agency claims of denial of access to records. For unpublished defective pricing litigation, this edition notes that a number of recent audits have failed due to loss and destruction of documents by both the auditors and the agencies. Furthermore, as escalation continues its upward trend, the TINA interest rates and ranges for False Claims Act penalties have risen sharply. Additionally, the updated edition brings statutes, regulations and case law up to date and adds clarifications to existing materials where needed due to changing laws, regulations and case law. The author, David Bodenheimer, has extensive experience and knowledge of defective pricing and TINA, and uses clear, precise language to inform the reader.