

CLIENT ALERT

Government Seeks To Push Defective Pricing Into Twilight Zone

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Not content with the Truth in Negotiation Act (TINA) as a disclosure statute, the government has taken increasingly aggressive positions that would warp a contractor's TINA certificate into warranty of perfect pricing, creating a defective pricing regime where: (1) reliance is not an element of TINA; (2) contractors must use, not merely disclose, cost or pricing data that is current, accurate, and complete; and (3) judgmental estimates are routinely certified. In his article "Government's Defective Pricing Claim in the Great Engine War Flames Out at the Federal Circuit" published in *The Government Contractor* (Vol. 48, No. 36) on October 4, 2006, http://www.crowell.com/pdf/newsroom/GovtContractor_Bodenheimer_Oct06.pdf, David Z. Bodenheimer explains how the Federal Circuit decision in *Wynne v. United Technologies Corp.*, well-established ASBCA precedents, longstanding regulations, and agency interpretations all soundly reject the government's attempts to transmogrify a contractor's liability for defective pricing.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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