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"FALSE" OR "INACCURATE" ESTIMATES

By David Z. Bodenheimer

As the largest buyer in the world,[1] the U.S. Government already wields unparalleled leverage and countless weapons in its arsenal to bend sellers to its will. Not satisfied with the statutory fraud and defective pricing remedies already at their disposal, some federal agencies and qui tam relators would further beef up federal muscle by outlawing estimates unilaterally deemed—long after the fact—to be "false" or "inaccurate." The merits of estimates, however, should not be decided by twisting the Truth in Negotiations Act[2] or the False Claims Act[3] into tools for branding estimates as fraudulent or defective, but instead should depend upon the marketplace in which the most suitable estimate prevails on its merits in the negotiation.

An estimate is "an opinion or a judgment."[4] Due to their judgmental and predictive nature, estimates inevitably miss the mark on occasions. Nonetheless, estimates—even "pure" estimates, judgments, and "educated guesses"—have a long and well-recognized role in Government pricing policy. Given this integral function in pricing, estimates are not an appropriate target in defective pricing and fraud cases. This BRIEFING PAPER considers the role of estimates in each of these three contexts: (1) the integral role of judgmental estimates in pricing, (2) estimates and judgments under TINA, and (3) estimates and judgments in fraud cases

IN BRIEF

Role Of Judgmental Estimates In Pricing

Having two parties vigorously dickering over the quality of an estimate is not only appropriate, but it epitomizes the very essence of healthy pricing negotiations. However, federal

David Z. Bodenheimer is a partner in the Washington, D.C. office of Crowell & Moring LLP, where he specializes in Government contracts and False Claims Act litigation, investigations, and counseling.

agencies must not be allowed to sit on both sides of the table, effectively dictating how contractor proposals will be priced by scaring off judgmental estimates with the spectre of fraud or defective pricing hanging over so-called "false" or "inaccurate" estimates. This conclusion rests upon two simple premises that have long guided the parties in the use of estimates in pricing Government contracts:

(1) Judgmental estimates are just fine.

(2) The contractor—not the Government—must decide how to estimate the proposal.

■ Government Recognition Of Judgmental Estimates

Due to the inherent uncertainty and risk of predicting future costs and events, judgment necessarily courses through the arteries of a pricing proposal. As the Armed Services Board of Contract Appeals noted in a 2004 decision, "a contractor's offer is a mix of judgments as to how best to accomplish contract work at a price that is developed to cover anticipated cost and a satisfactory profit."[5]

For decades, federal pricing policy has recognized and validated the use of judgment as a fundamental method for cost estimating. For example, early versions of both the *Armed Services Pricing Manual* (ASPM) and the Defense Contract Audit Agency's *Contract Audit Manual* (DCAM) identified "roundtable" estimating—with judgmental estimates at its core—as one of the three major methods for cost estimating.[6] Currently, the *Contract Pricing Reference Guide*, which replaced the ASPM,[7] acknowledges the use of judgment as an appropriate estimating method:[8]

> Round-Table. Experts are brought together to develop cost estimates, by exchanging views and *making judgments* based on knowledge and experience.

Similarly, the most recent DCAM states that the "roundtable method" represents one of the three "most frequently used" methods "of preparing cost estimates" and describes this method as follows:[9]

> Under this method, representatives of the engineering, manufacturing, purchasing, and accounting departments (among others) develop the cost estimates by exchanging views and *making judgments* based on knowledge and experience.

When a contractor does use such judgment in developing costs estimates, neither the *Contract Pricing Reference Guide* nor the DCAM tells the Contracting Officer or the auditor to file a report of suspected fraud or a DCAA Suspected Irregularity Referral Form (DCAAF 2000).[10] Instead, the appropriate response is to take a closer look at the estimate and perhaps, as the DCAM advises, "technical assistance may be required to evaluate the resultant cost estimates."[11]

■ Contractor's Right To Decide How To Estimate

The contractor—not the Government—has the responsibility for setting the price and determining how to prepare its estimate.[12] Otherwise, the contractor would be jammed into the untenable circumstance of bearing the cost risk and living with a price dictated by its contractual adversary. As a matter of economic survival, the contractor must be the master of

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its pricing proposal, setting the course consistent with its risk assessment, business strategy, and opportunities.

In such circumstances, estimating cannot be reduced to a bean-counting exercise that disregards judgmental factors—such as risk, opportunity cost, and competitive threats—that necessarily drive the pricing by any business that plans to stay in business. Indeed, the *Contract Pricing Reference Guide* expressly links judgments on price and risk: "different judgments on which price is most reasonable…will be based on different perspectives and different assessments of the risk involved."[13] Likewise, a contractor's opportunity cost may influence the price when higher margin business opportunities in a tight market put pricing pressures on the parties' negotiations, such as occurred in the forging industry during Vietnam War in the mid-1960s. Finally, even in noncompetitive procurements, the threat of competition may harness the price almost as effectively as actual competition, such as occurred in the Air Force's second-sourcing initiatives during the 1980s.[14]

■ Common Fallacies In "False Estimate" Allegations

When federal agencies or qui tam plaintiffs slap the "false and inaccurate" label on an estimate, such allegations often rest upon common misconceptions, such as the Government's supposed prowess in determining the "best" estimate or a blind preference for estimating with historical data. Neither history nor sound estimating policy bear out these misguided assumptions.

(a) *"The Government Knows Best."* Far too often, a Government auditor or Inspector General agent opens a postaward audit with an epiphany that the preaward parties just missed the mark entirely, using the wrong data and estimating method to reach the wrong price.[15] Aside from the fact that these cases rarely pay off for the Government, such allegations are rather presumptuous, casting a dim light on the preaward participants and exalting the unique insight of the postaward inspector or auditor often devoid of first-hand knowledge.[16] In any event, history offers precious little support for the Government having superior prowess in setting prices or repricing contracts.[17] Accordingly, it would be bad policy and bad law for the Government to use "false" or "inaccurate" estimate theories to knock out judgmental estimates and usurp the contractor's role in selecting the estimating method.

(b) "*Historical Cost Data Is Always Better.*" In some cases, the postaward auditors presume that historical cost data trumps other bases for estimating.[18] While historical cost data is a recognized method for developing an estimate, it is not necessarily the best.[19] Years ago, the Defense Acquisition Regulation (DAR) (since replaced by the Federal Acquisition Regulation System) warned Government officials against getting too obsessed with cost at the risk of overlooking overall price:[20]

> While the public interest requires that excessive profits be avoided, the contracting officer should not become so preoccupied with particular elements of a contractor's estimate of cost and profit that the most important consideration, the total price itself, is distorted or diminished in its significance. Government procurement is concerned primarily with the reasonableness of the price which the Government ultimately pays, and only secondarily with the eventual cost and profit to the contractor.

The FAR carries this same theme forward by specifying that price analysis should be performed even when cost analysis is used by the agency.[21] In short, so long as a contractor disclosed any relevant historical cost data to the Government, the contractor should not be hit with a fraud or defective pricing suit simply for using some estimating method (such as judgmental estimates) instead of historical cost.

Judgments & Estimates Under TINA

Despite the Government's unmatched buying leverage and its enormous hordes of auditors, engineers, and other procurement specialists, Congress believed that it needed to level the negotiation playing field by enacting TINA in 1962.[22] By requiring contractors to submit cost or pricing data certified to be accurate, complete, and current and providing the Government the remedy of a price reduction for "de-

fective" (i.e., "inaccurate, incomplete, or noncurrent") cost or pricing data, TINA aims to provide the Government access to the same information as the contractor and thus allow it to negotiate the best possible contract price. However, not even the Government's primary overpricing remedy allows agencies to declare open season on "inaccurate" estimates or judgments.

■ TINA's Inapplicability To Judgments & Estimates

Since the beginning, TINA has only been applied to cost or pricing data, not to judgments or estimates. Both the statutes and regulations have expressly barred the Government's recovery for allegedly defective estimates or judgments.[23] Indeed, "pure estimates are not 'cost or pricing data'"[24] and therefore need not be disclosed under TINA, as the ASBCA held in a 1992 decision:[25]

> In this appeal, we have no underlying document that is verifiable. The ESLH [Estimated Standard Labor Hours] report is based on estimates made by appellant's industrial engineers or test engineers and, as we have found above, no two industrial engineers or test engineers would estimate either the task or the frequency of the task the same. The ESLH report is therefore pure judgment and is, accordingly, not data and need not be disclosed.

Even when the contractor must disclose data that consists of a mixture of fact and judgment, the TINA "Certificate of Current Cost or Pricing Data"[26] imposes no liability for "defective" estimates or judgments. As the FAR states, the "certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections."[27] Similarly, the *Contract Pricing Reference Guide* makes clear that the contractor does not certify "educated guesses" or "judgments":[28]

> Remember that cost or pricing data are facts not judgment. The Certificate does not certify the accuracy of the offeror's judgment in making the projections or estimates (educated guesses) of future costs using these data. It applies only to the data upon which the judgment and estimate were based.

In congressional hearings years ago, the General Accounting Office (now the Government Accountability Office) bemoaned the lack of any remedy for poor estimates: "When overpricing is determined to be caused by poor estimating, the Government has no safeguard such as the Truth in Negotiations Act for reducing the contract prices."[29] In short, TINA does not punish "defective" estimates or judgments.

■ Disclosure vs. Use Under TINA

With surprising frequency, Government agencies have asserted TINA liability on the theory that the contractor failed to use certain data. With consistent firmness, such claims have been repeatedly rejected because TINA requires disclosure—not use—of the data:[30]

> It is clear that a contractor does not have to either itself use the cost information or analyze it for the Government, but rather must only submit it so the Government make its own analysis.

Bowing to this unbroken line of case law rejecting any "use" requirement under TINA, the DCAA incorporated this rule into the DCAM:[31]

> TINA addresses only the submission of cost or pricing data. It does not require a contractor to use such data in preparing its proposals or for there to be a relationship between the proposals and the conclusions that can be drawn from such data.

Allegations of inaccurate or defective estimates often boil down to a simple assertion—the contractor did not use the best data. The answer is equally simple—the contractor has no legal duty to use the best data, second-best data, or even good data.[32] Indeed, a contractor could price its proposal based upon a parametric relationship of "eye of newt" to "toe of frog." No one clamors for a new TINA to slam the door on "eye of newt" pricing because such estimates will wash out during the hurly-burly of negotiations.

Estimates As A Basis For Fraud Claims

In federal procurement cases, allegations of "false estimates" as the basis of fraud claims cannot be squared with either the common-law requirements or the federal pricing standards.

■ Common-Law Requirements For "Opinion" Fraud

Generally, "mere opinions, or predictions about future events, are not actionable as misrepresentations."[33] While acknowledging this rule that "[e]xpressions of opinion are not actionable as fraud," the U.S. Court of Appeals for the Fourth Circuit stated a purported exception to this general rule as follows:[34]

> However, an opinion or estimate carries with it "an implied assertion, not only that the speaker knows no facts which would preclude such an opinion, but that he does know facts which justify it." W. Page Keeton, *et al.*, Prosser & Keeton on the Law of Torts, § 109, at 760 (5th ed. 1984).

However, the court overstated the exception by deleting a critical condition in the actual text of Prosser & Keeton ("the expression of an opinion *may carry* with it an implied assertion") and failing to acknowledge other major restrictions identified by Prosser & Keeton and imposed by courts in common-law cases.

In particular, the common-law exception depends upon "special knowledge" when the parties do not have equal information regarding the subject matter of the particular representation:[35]

> The "special knowledge" exception applies typically to the opinions of specialized experts—such as jewelers, lawyers, physicians, scientists, and dealers in antiques—where their opinions are based on concrete, specific information and objective, verifiable facts. *See Restatement [(Second) of Torts]* § 542, comment f [(1977)].

Furthermore, this "special knowledge" exception generally requires that "the disparity of knowledge arises, not from any special information on the part of the defendant, but from the ignorance or illiteracy of the plaintiff."[36]

When the Federal Government enters the marketplace, hardly any of these conditions can be met: (1) the sellers are not "specialized experts—such as jewelers, lawyers, physicians, scientists, and dealers in antiques"; (2) the federal agencies presumably will not plead "ignorance or illiteracy of the plaintiff"; (3) the judgments or estimates will not qualify as "objective, verifiable facts"; and (4) the "disparity in knowledge" will be leveled by TINA disclosure of pertinent cost data. Accordingly, the common-law exception has no realistic applicability in the context of an arm's-length federal procurement where the huge buyer has ample expertise and resources to look out for its own interests.

■ Federal Standards For Fraud & Estimates

Consistent with the title of the statute ("False Claims Act"), a threshold requirement for liability under the Act is a "false" claim.[37] To meet this standard, the claim must be objectively false:[38]

> The critical allegation for a false claim under the [False Claims Act] is a charge of an objective falsehood....Expressions of opinion, scientific judgments, or statements as to conclusions about which reasonable minds may differ cannot be false as required by the [False Claims Act].

This test depends upon the existence of a verifiable fact: "A statement of fact is one that (1) admits of being adjudged true or false in a way that (2) admits of empirical verification."[39]

In contrast, a judgmental estimate is—by definition—not verifiable, as noted in one of the ASBCA cases cited earlier in this PAPER.[40] The U.S. Court of Appeals for the Fifth Circuit compared such unverifiable estimates to weather predictions:[41]

> The weatherman does not know whether it will in fact rain tomorrow. No one does. Thus no one knows whether the statement ["It will rain tomorrow"] is true or false; perhaps it would be better to say that it is *neither true nor false.* A statement about the future can be verified only in the future; but then, of course, it is no longer a statement about the future as such. When tomorrow finally comes, and it is indeed raining, one no longer says "It will rain tomorrow" but rather "It is now raining." *That* statement can be empirically verified as true or disconfirmed as false.

The *Contract Pricing Reference Guide* expressly recognizes the subjectivity in judgmental "Round-Table" estimates because "different experts make different judgments."[42] Similarly, different perspectives on risk result in subjective differences in what constitutes a reasonable price:[43]

> *Judgment in Risk Assessment.* It is likely that, given the same data, buyers and sellers will develop different judgments on which price is most reasonable. These judgments will be based on different perspectives and different assessments of the risk involved.

Long ago, the Federal Government acknowledged in the ASPM that any prediction of future events entails subjectivity more akin to art than science:[44]

> Contract pricing is an art. Many would reduce this art to routine by emphasizing the accounting view of price that price equals direct cost and overhead plus a fair profit. If contract pricing is the art we believe it to be, the test of a price requires more than a weighing of past and estimated costs. Subjective evaluation is necessary because of the error inherent in estimates and because it is necessary to test for reasonableness, economy, relevancy, probability and materiality.

Similarly, this same pricing guide recognized that contract pricing deals with "estimates of future events" and that "[a]n estimate is a prediction of what the cost of future events will or should be."[45] Given the "the error inherent in estimates," the "art" and "subjective evaluation," and the "prediction" of future costs, the federal pricing guidelines demonstrate that judgmental estimates are inconsistent with the objective falsity standard under the False Claims Act.

Conclusion

For decades, federal pricing standards have acknowledged the propriety of using judgmental estimates for predicting future costs and developing pricing estimates. Similarly, longstanding TINA law recognizes that contractors neither certify judgmental estimates nor shoulder liability if such estimates turn out to be off the mark. Finally, the standards for fraud under both the common law and the False Claims Act are inconsistent with imposing liability for purportedly "false" estimates.

GUIDELINES

These *Guidelines* are intended to assist you in understanding the issues raised by alleged "false" or "inaccurate" estimates. They are not, however, a substitute for professional representation in any specific situation.

Agencies

1. Treat contract pricing as an art rather than as an accounting exercise. Avoid becoming so preoccupied with historical costs that other appropriate estimating techniques and information are not given sufficient weight. Tailor the evaluation to the unique circumstances of the procurement so that marketplace conditions, risk factors, and other price-drivers receive suitable consideration.

2. Remember that the TINA certificate is not a substitute for examination and analysis of the contractor's proposal. The agency must perform its own evaluation and make an independent judgment regarding the reasonableness of the proposed estimate.

3. Recognize that the contractor has discretion in choosing the estimating techniques and supporting data in developing its proposal. Do not assume that a relationship necessarily exists between the disclosed cost or pricing data and the cost estimates or judgments reflected in the contractor's proposal.

4. Remember that the best defense against poor estimates or judgments is thorough evaluation of the estimates, development of solid agency objectives and positions, and vigorous negotiation.

Contractors

1. Recognize judgment as an integral element of estimating due to the inherent uncertainties of predicting future costs. Consider the full range of factors (marketplace conditions, financial and performance risks, competitive threats, and other business opportunities) in making such judgments and developing estimates.

2. Beware of poor estimates as they may well lead to protracted negotiations and disappointing results in the final negotiated price. Keep track of the factors supporting judgmental estimates

to facilitate the negotiation process and improve your negotiating position.

3. Remember that cost or pricing data must be disclosed, but no requirement exists to use such data in developing estimates or preparing proposals. Use the data and/or judgments that best fit the circumstances and reflect a reasonable estimate of future costs, consistent with the prevailing risks and market conditions.

★ REFERENCES ★

1/ See, e.g., Fiscal Year 2004 Federal Procurement Data System (over $327 billion in procurement), at https// www.fpds.gov.

2/ 10 U.S.C.A. § 2306a; 41 U.S.C.A. § 254b.

3/ 31 U.S.C.A. §§ 3729–3733.

4/ Webster's New World Dictionary 479 (2d ed. 1976).

5/ United Techs. Corp., ASBCA No. 51410 et al., 04-1 BCA ¶ 32,556, at 161,025, modified on other grounds, 05-1 BCA ¶ 32,860. See generally Bodenheimer, "Feature Comment: Competition Trumps Defective Pricing Claim in the Great Engine War," 47 GC ¶ 86 (Feb. 23, 2005).

6/ ASPM No. 1 at 2B28 (Sept. 15, 1975); DCAM § 9-303(d)(3) (Oct. 1984).

7/ See FAR 15.404-1(a)(7); http:// www.acq.osd.mil/dpap/contractpricing/.

8/ Contract Pricing Reference Guide, vol. 3, "Cost Analysis," § 1.4 (2005) (emphasis added).

9/ DCAM § 9-303(d)(3) (July 2005) (emphasis added).

10/ See, e.g., FAR 33.209 ("Suspected fraudulent claims"); DCAM § 4-702.2 ("Auditor Responsibilities for Detecting and Reporting Fraud") (July 2005); see also DCAM § 4-702.4 (July 2005).

11/ DCAM § 9-303(d)(3) (July 2005).

12/ Hughes Aircraft Co., ASBCA No. 30144, 90-2 BCA ¶ 22,847, at 114,762 (contractor "does not have to change its accounting practices to accumulate, report and estimate costs by individual contract"); Texas Instruments, Inc., ASBCA No. 23678, 87-3 BCA ¶ 20,195, at 102,270–71 (rejecting auditor's effort to dictate estimating method).

13/ Contract Pricing Reference Guide, vol. 1, "Price Analysis," § 9.5.1 ("Judgment in Risk Assessment") (2005). Similarly, profit and risk are directly linked: "Profit is the reward for risk bearing.... If a [businessman's] judgment turns out to be faulty, losses—negative profits—are the penalties society imposes on him." Mansfield, Principles of Micro-economics 300–01 (1974).

14/ See, e.g., Defense Department Authorization and Oversight: Hearings on H.R. 4428 Before the House Comm. On Armed Services, 99th Cong., 2d Sess. 691 (1986); cf. ASPM at 2A2 (1975) (contractor's price may be more closely tied to competitive market than to its own cost of manufacture or acquisition).

15/ See, e.g., Lockheed Martin Corp. d/b/a Sanders, ASBCA No. 50464 et al., 02-1 BCA ¶ 31,784, at 156,945 (Government engineer admitted parties had not looked at such inventory transfers during prior negotiations).

16/ Lockheed, 02-1 BCA ¶ 31,784; see also Rosemount, Inc., ASBCA No. 37520, 95-2 BCA ¶ 27,770, at 138,455 (neither the contractor nor the preaward Government personnel used the learning-curve analysis employed by the Inspector General auditors during the postaward review).

17/ The misguided (and blessedly lapsed) Renegotiation Act (50 U.S.C.A. app. §§ 1211–1233), the miserable failure of price controls, and the economic distortions of regulated industries by the now-defunct Interstate Commerce Commission and Civil Aeronautics Board are just a few examples of what happens when the Government gets into the price-setting business.

18/ Boeing Co., ASBCA No. 20875, 85-3 BCA ¶ 18,351, at 92,033 (holding that actual labor- hour data did not constitute cost or pricing data).

19/ "Examples of the economic irrelevancy of historical cost abound. Consider wily Peter Minuit, who purchased the whole of Manhattan Island for the magnificent sum of $24. The present mayor of New York…would reject out of hand a bid of $24 for Manhattan Island." Koch, Microeconomic Theory and Applications 164 (1976).

20/ DAR 3-806(b) (1984).

21/ FAR 15.404-1(a)(3).

22/ Pub. L. No. 87-653, 76 Stat. 528 (1962) (codified as amended at 10 U.S.C.A. § 2306a; 41 U.S.C.A. § 254b).

23/ See, e.g., 10 U.S.C.A. § 2306a; 41 U.S.C.A. § 254b; FAR 2.101 ("Cost or pricing data are factual, not judgmental; and are verifiable."); DAR 3-807.1(a)(1) ("Cost or pricing data, being factual, are that type of information which can be verified.").

24/ Hardie-Tynes Mfg. Co., ASBCA No. 20717, 76-2 BCA ¶ 12,121, at 58,227.

25/ Litton Sys., Inc., Amecom Div., ASBCA No. 36509, 92-2 BCA ¶ 24,842, at 123,944–45.

26/ See FAR 15.406-2(a).

27/ FAR 15.406-2(b); see also DAR 3-807.6(b).

28/ Contract Pricing Reference Guide, vol. 3, "Cost Analysis," § 2.3.1 (2005); see also DCAM § 14-104.5 ("Judgments are not cost or pricing data and do not become cost or pricing data when intertwined with facts.") (July 2005).

29/ Problems in the Pricing of Negotiated Defense Contracts: Hearings Before House Subcomm. on Government Operations, 99th Cong., 1st Sess. 7 (1985) (statement of Mr. Conahan, GAO).

30/ Hughes Aircraft Co., ASBCA No. 30144, 90-2 BCA ¶ 22,847, at 114,761; accord United Techs. Corp., ASBCA No. 51410 et al., 04-1 BCA ¶ 32,556, at 161,024, modified on other grounds, 05-1 BCA ¶ 32,860; Rosemount, Inc., ASBCA No. 37520, 95-2 BCA ¶ 27,770, at 138,455; Hardie-Tynes Mfg. Co., ASBCA No. 20717, 76-2 BCA ¶ 12,121, at 58,226.

31/ DCAM § 14-104.7 (July 2005).

32/ See United States ex rel. Williams v. Martin-Baker Aircraft Co., 389 F.3d 1251, 1257 (D.C. Cir. 2004) (no case or regulation requiring the use of data during negotiations).

33/ 37 Am. Jur. 2d "Fraud and Deceit" § 122 (2001).

34/ Harrison v. Westinghouse Savannah River Co., 176 F.3d 776, 792 (4th Cir. 1999); see also United States ex rel. Bettis v. Odebrecht Contractors of Cal., Inc., 393 F.3d 1321, 1328 (D.C. Cir. 2005) (citing, but distinguishing, Harrison). See generally Bodenheimer, "The Strange Notion of Estimates as Fraud: Will Weather Predictions Be Next Under the False Claims Act?," 40 Proc. Law. 1 (Summer 2005).

35/ Presidio Enters., Inc. v. Warner Bros. Distrib. Corp., 784 F.2d 674, 682 (5th Cir. 1986); see also Page et al., Prosser & Keeton on the Law of Torts 760–61 (5th ed. 1984) (defendant has "special knowledge of the matter which is not available to the plaintiff" and "the parties do not purport to be dealing on an equal footing as to available information").

36/ Prosser & Keeton, supra note 35, at 761.

37/ 31 U.S.C.A. § 3729(a). See generally Huffman, Madsen & Hamrick, "The Civil False Claims Act," Briefing Papers No. 01-10 (Sept. 2001).

38/ United States ex rel. Juan Wong v. Consul-Tech Eng'g, Inc., No. 02-23081-CIV-Seitz/Bandstra (S.D. Fla. Mar. 16, 2005) (citing United States ex rel. Wang v. FMC Corp., 975 F.2d 1412, 1420–21 (9th Cir. 1992), and United States ex rel. Roby v. Boeing Co., 100 F. Supp. 2d 619, 625 (S.D. Ohio 2000)).

39/ Presidio, 784 F.2d at 679; see also Harrison, 176 F.3d at 792.

40/ Litton Sys., Inc., Amecom Div., ASBCA No. 36509, 92-2 BCA ¶ 24,842, at 123,944–45.

41/ Presidio, 784 F.2d at 680 (internal citation omitted) (italics in original).

42/ Contract Pricing Reference Guide, vol. 3, "Cost Analysis," § 1.4 (2005).

43/ Contract Pricing Reference Guide, vol. 1, "Price Analysis," § 9.5.1.

44/ ASPM No. 1 at 2(i) (1975).

45/ Id. at 2A4.