



DEPARTMENT OF THE NAVY  
OFFICE OF THE ASSISTANT SECRETARY  
(RESEARCH, DEVELOPMENT AND ACQUISITION)  
1000 NAVY PENTAGON  
WASHINGTON DC 20350-1000

APR 25 2007

MEMORANDUM FOR DISTRIBUTION

Subj: QUARTERLY INPUTS WITH REGARD TO WAIVERS OR EXPECTED WAIVERS  
OF THE TRUTH IN NEGOTIATION ACT (TINA)

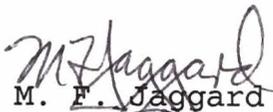
Ref: (a) Section 817 of the Bob Stump National Defense  
Authorization Act for Fiscal Year 2003

Encl: (1) DPAP memo of March 23, 2007  
(2) Input Template

Reference (a) establishes the minimum criteria that must be met in order for the Head of the Contracting Activity (HCA) to waive the requirement for contractor's certification of cost or pricing data in accordance with DFARS 215.403-1(c)(4). Enclosure (1) further discusses the criteria and establishes a requirement for a quarterly meeting between the Director of Defense Procurement and Acquisition Policy and the Senior Procurement Executives (or their designated representatives) of the military departments to discuss Truth In Negotiation Act (TINA) waivers recently approved or in process. The meetings are not intended to be part of the approval process for the waivers; they are intended as a forum to discuss concerns, problems and experiences over the past quarter.

Enclosure (2) is the input template to be used in reporting all waivers approved or in process, for discussion at the quarterly meeting. Since only HCAs may approve TINA waivers, it is recommended that once a contracting officer has determined that a TINA waiver will be requested, they should fill out the template and submit it to Ms. Robbin Bruce at DASN(ALM) by email at Robbin.Bruce@navy.mil. The first meeting is scheduled for May 22, 2007. Activities should submit all known or planned waiver inputs by COB May 18, 2007. Negative reports are required.

Any questions should be addressed to Ms. Robbin Bruce at (703) 693-3998 or by email.

  
M. F. Jaggard  
Chief of Staff/Policy  
for DASN(ACQ)

Distribution:  
(See next page)

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ACQUISITION  
TECHNOLOGY  
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OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

MAR 23 2007

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(POLICY AND PROCUREMENT), ASA (ALT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION MANAGEMENT), ASN (RDA)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(ACQUISITION), SAF/AQ  
DIRECTORS OF DEFENSE AGENCIES

SUBJECT: Waivers Under the Truth In Negotiations Act (TINA)

The purpose of this policy memorandum is to (a) make it clear that the standard to be met for granting a TINA waiver is extremely high, and (b) to establish a quarterly meeting to assist in early identification of potential waiver issues.

Section 817 of Public Law 107-314 (NDAA 2003) established the criteria that must be met in order to grant a TINA waiver under the exceptional circumstances exception (See DFARS 215.403-1(c)(4)). These criteria are:

- (1) the property or services cannot reasonably be obtained under the contract, subcontract, or modification, as the case may be, without the grant of the exception or waiver;
- (2) the price can be determined to be fair and reasonable without the submission of certified cost and pricing data or the application of cost accounting standards, as the case may be; and
- (3) there are demonstrated benefits to granting the exception or waiver.

This memorandum establishes that it is DoD policy to apply this waiver authority only to situations where the Government could not otherwise obtain the needed product or service without the waiver. An example would be when a commercial business segment offers a non-commercial item that is essential to DoD's mission but is not available from other sources, and the company refuses to accept the TINA requirements. In such cases, a TINA waiver may be granted, provided the price can be determined fair and reasonable without submission of the certified cost and pricing data. However, in such cases, the procuring activity shall also develop a strategy for procuring the item in



**ENCLOSURE( / )**

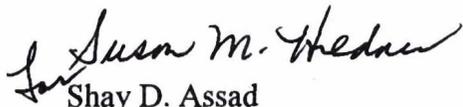
the future (e.g., develop a second source, develop an alternative product that satisfies the department's needs, have the Government produce the product, continue to use this source with a TINA waiver because the business case does not support any other alternative).

It is important for DoD to apply the TINA waiver authority in a judicious manner. For example, TINA waivers should not be granted to contractor business segments that normally perform Government contracts subject to TINA. In addition, a waiver should not be granted simply because the waiver could allow the parties to execute the contract at an earlier date than if TINA was applied.

To further assure that the Department properly utilizes the subject waiver authority, to assist in early identification of potential waiver issues, and to ensure the policy is applied appropriately, quarterly meetings will be held with the Senior Procurement Executives (or their designated representatives) of the military departments. In addition, any Other Defense Agency (ODA) that has granted a waiver during the quarter or has a waiver in process as of the end of that quarter is also required to attend the meeting. The purpose of the meeting will be to discuss any waivers that were granted during the prior quarter and any waivers that are pending as of the time of the meeting.

In October, 2006, I established a Cost, Pricing, and Finance directorate (CPF) within DPAP to improve the cost, pricing and finance function across the Department. The CPF function includes outreach to assist services and ODAs in understanding and applying policies and requirements. Thus, CPF shall be my focal point for arranging and conducting these quarterly meetings. The Military Departments and ODA's are therefore requested to provide a point of contact to Mr. John McPherson of CPF, whose contact information is listed below. Once we receive your points of contact we will coordinate the details for the quarterly meetings.

The point of contact for this memorandum is Mr. McPherson, Senior Procurement Analyst, who can be reached at 703-602-0296 or via e-mail at [john.mcpherson@osd.mil](mailto:john.mcpherson@osd.mil).



Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

**WAIVER OF TINA REQUIREMENTS (FAR 15.403-1(c)(4))**  
(ALL TINA Waiver Actions)

1. Contract Number: (Contract Number, including Modification Number is applicable, if known).

2. CLIN(s): (If applicable)

3. Activity:

POC:

Email:

Phone Number:

4. Total dollar amount waived: \_\_\_\_\_

5. Total dollar amount of the contract: \_\_\_\_\_

6. Brief discussion of rationale supporting decision to waive TINA requirement.

[Contracting Officer s should discuss the “exceptional circumstances” supporting the granting of the waiver. The following information should be provided in this portion of the write-up:

(1) Why the item could not be reasonably obtained under the contract, subcontract, or modification without the granting of a waiver.

(2) List demonstrated benefits to the government for granting the waiver.

(3) Explain why a letter contract would not have been more appropriate]

- [This discussion should include the fact that the Contracting Officer has made or is making a determination that sufficient data exists when combined with updated information to determine a fair and reasonable price. TIME should never be a deciding factor unless it is the result of an approval process that neither, the Program Manager or Contracting Officer had control over.]

7. Brief discussion on how the price will be determined to be fair and reasonable.

8. Name and Address of Contractor or Subcontractor to whom waiver is or will be granted.

Enclosure (2)