



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

SEP 10 2007

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
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
(CONTRACTING), SAF/AQC

SUBJECT: Annual Report to Congress for Commercial Item Exceptions from the Truth In Negotiations Act (TINA), and Exceptional Case Waivers from TINA and Cost Accounting Standards (CAS)

Submission for the subject commercial item exceptions and exceptional case waivers granted in Fiscal Year (FY) 2007 are due into DPAP, Attention: John McPherson, by November 30, 2007. Use the format in the Attachment for your submissions. Note that the revised format for FY 2007 requires the date the waiver was granted. Reference Defense Federal Acquisition Regulation Supplement 215.403-1 and 230.201-5. Also reference DPAP policy memorandum, Waivers Under the Truth In Negotiations Act (TINA), dated March 23, 2007 concerning use of exceptional case waivers. Reply with negative response if applicable.

The Federal Acquisition Regulation (FAR), FAR 15.403-1(b)(3), provides for an exception to the submission of certified cost or pricing data for acquisition of a commercial item. The statutory authority for this commercial item TINA exception is provided at 10 U.S.C. 2306a(b).

In addition to the TINA exception, FAR 15.403-1(c)(4) authorizes the Head of the Contracting Activity (HCA) to waive, in "exceptional circumstances", the requirement that contractors certify that cost or pricing data they have submitted in support of a proposed contract price is current, accurate, and complete. Furthermore, FAR 30.201-5, Waiver, provides for the head of an executive agency to waive, in "exceptional circumstances", the applicability of the Cost Accounting Standards (CAS) for a particular contract or subcontract.

The criteria for using "exceptional circumstances" as the basis for a TINA or CAS waiver was provided in the National Defense Authorization Act (NDAA) for FY 2003. The FY 2003 Act requires three conditions be met for granting a waiver due to

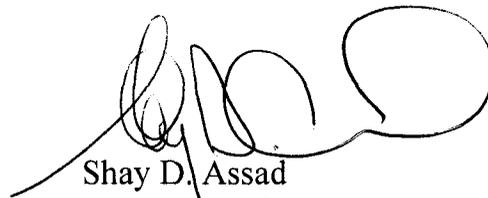


“exceptional circumstances”: (1) the property or services cannot reasonably be obtained under the contract, subcontract, or modification, as the case may be, without the grant of the exception or waiver; (2) the price can be determined to be fair and reasonable without the submission of certified cost or 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.

The NDAA for FY 2003 also includes a requirement for the submission of an annual report to Congress that identifies the following three items:

- (1) A listing of commercial item exceptions granted during the previous FY (i.e., where TINA was not applied because the product or service was deemed a commercial item). This listing must include an explanation of the basis for the determination that the products or services to be purchased are commercial items, including an identification of the specific steps taken to ensure price reasonableness. Note that this reporting requirement does not apply to pricing actions for commercial items that were based on adequate price competition or prices set by law or regulation;
- (2) A listing of waivers to TINA granted on the basis of “exceptional circumstances” during the preceding FY. This listing must include an explanation of how the three conditions for exceptional circumstances (above) were met.
- (3) A listing of waivers to CAS granted on the basis of “exceptional circumstances” during the preceding FY. This listing must include an explanation of how the three conditions for exceptional circumstances (above) were met.

My point of contact for this memorandum is John McPherson and he can be reached on 703-602-0296 or via e-mail at john.mcpherson@osd.mil.



Shay D. Assad
Director, Defense Procurement and
Acquisition Policy

Attachments:
As stated

SUMMARY OF <Insert Organization> FY 07 INPUTS

TINA COMMERCIAL EXCEPTIONS/EXCEPTIONAL CASE WAIVERS & CAS WAIVERS

	Number of Exceptions	\$ in Millions
Commercial Item Exceptions to TINA over \$15M	XX	\$X,XXX
TINA Exceptional Circumstance Waivers over \$15M	X	\$XX
CAS Exceptional Circumstance Waivers over \$15M	X	\$XX

FY 07 , <Organization> (e.g. Navy, DLA, etc.)

COMMERCIAL ITEM EXCEPTIONS TO TINA REQUIREMENT (FAR 15.403-1(b)(3))

(Actions of \$15,000,000 or more)

<List separately each pricing action for which an exception was granted.>

<Do not report if based on adequate price competition or prices set by law or regulation>

Exception 1

1. Contract Number; <include Modification number if applicable>
Procurement Name:
2. Contractor Name:
3. Contracting Activity:
4. Total Dollar Value of Exception: \$
5. Briefly explain the basis for determining the item(s) is commercial: *Note: Clearly describe how this procurement met the commercial item exception. It is not sufficient to state “this item meets the definition at FAR2.101.” Describe why it was determined that this item(s) was a commercial item and that non-government sales (or offered for sale) was verified. Items should not be reported when the contracting officer determines that the prices agreed upon are based upon adequate price competition or set by law or regulation.*
6. Briefly describe the specific steps taken to ensure price reasonableness: *Note: Clearly describe whether or not the contracting officer was able to rely on non-government sales for comparable quantities to determine price reasonableness, specific price analysis or cost analysis techniques used and assistance from DCMA and/or DCAA if applicable. If prior government purchase prices were used, describe how the contracting officer ensured that those prices were based on adequate analysis (in lieu of only accepting a price from a database or automated system).*

Exception 2

1. Contract Number: <include Modification number if applicable>
Procurement Name:
2. Contractor Name:
3. Contracting Activity:
4. Total Dollar Value of Exception: \$
5. Briefly explain the basis for determining the item(s) is commercial: See Note above.
6. Briefly describe the specific steps taken to ensure price reasonableness: See Note above.

Exceptions 3-6

1. Contract Number: BAAF0300-C-S017
Mod P00205, \$50.1M
Mod P00206, \$34.4M
Mod P00213, \$17.2M
Mod P00218, \$66.0M
Program Name:
2. Contractor Name:
3. Contracting Activity:
4. Total Dollar Value of Exception: \$167.7M

5. Briefly explain the basis for determining the item(s) is commercial: See Note above.
6. Briefly describe the specific steps taken to ensure price reasonableness: See Note above.

FY 06 <Organization>

EXCEPTIONAL CASE WAIVERS OF TINA REQUIREMENTS (FAR 15.403-1(b)(4))

(Actions of \$15,000,000 or more)

<List separately each pricing action for which an exception was granted.>

Waiver 1

1. Contract Number: *<include Modification number if applicable>*
Procurement Name:
Date Waiver was Granted:
2. Company Name:
3. Contracting Activity:
4. Total Dollar Amount Waived:
5. Briefly describe why this item(s) could not be reasonably obtained without a waiver: ***Note: Clearly describe why without the waiver we could not obtain this item(s), e.g., the best value contractor selection was a commercial company unwilling to accept TINA; requiring TINA for non-government contractors would significantly restrict competition and world class companies..., etc. Awarding faster, saving audit and other review time, and the fact that we could otherwise determine prices to be fair and reasonable ARE NOT sufficient reasons to meet this criteria.***
6. Briefly describe the specific steps taken to ensure price reasonableness: ***Note: Clearly describe how the contracting officer determined the price to be fair and reasonable and specific price or cost analysis techniques used.***
7. Briefly describe the demonstrated benefits of granting the waiver. ***Note: Clearly explain how the government benefited, e.g., increased competition of world class commercial contractors...; significantly reduced delivery schedule on critical parts using a non-government contractor...; etc.***

Waiver 2

1. Contract Number: *<include Modification number if applicable>*
Procurement Name:
Date Waiver was Granted:
2. Contractor Name:
3. Contracting Activity:
4. Total Dollar Amount Waived:
5. Briefly describe why this item(s) could not be reasonably obtained without a waiver: See Note above.
6. Briefly describe the specific steps taken to ensure price reasonableness: See Note above.
7. Briefly describe the demonstrated benefits of granting the waiver.

Exceptions 3-6

2. Contract Number: BAAF0300-C-S017
Mod P00205, \$50.1M
Mod P00206, \$34.4M
Mod P00213, \$17.2M

Mod P00218, \$66.0M

Program Name:

Date Waivers were Granted

2. Contractor Name:
3. Contracting Activity:
4. Total Dollar Value of Exception: \$167.7M
5. Briefly explain the basis for determining the item(s) is commercial: See Note above.
6. Briefly describe the specific steps taken to ensure price reasonableness: See Note above.

FY06 <Organization>

WAIVER OF APPLICABILITY OF COST ACCOUNTING STANDARDS (FAR 30.201-5)
(Actions of \$15,000,000 or more.)

Waiver 1

1. Contract Number:
Procurement Name:
Date Waiver was Granted:
2. Contracting Activity:
3. Total Dollar Amount of Award:
4. Brief description of why the property or service could not be reasonably obtained under the contract without granting the waiver:
5. Briefly describe why this item(s) could not be reasonably obtained without a waiver: ***Note: Clearly describe why, without the waiver, we could not obtain this item(s), e.g., the best value contractor selection was a commercial company unwilling to accept CAS; requiring CAS for non-government contractors would significantly restrict competition and world class companies..., etc. Awarding faster, saving audit and other review time, and the fact that we could otherwise determine prices to be fair and reasonable ARE NOT sufficient reasons to meet this criteria.***
6. Briefly describe the specific steps taken to ensure price reasonableness: ***Note: Clearly describe how the contracting officer determined the price to be fair and reasonable and specific price or cost analysis techniques used.***
7. Briefly describe the demonstrated benefits of granting the waiver. ***Note: Clearly explain how the government benefited, e.g., increased competition of world class commercial contractors...; significantly reduced delivery schedule on critical parts using a non-government contractor...; etc.***

Waiver 2

1. Contract Number:
Procurement Name:
Date Waiver was Granted:
2. Activity:
3. Total Dollar Amount of Award:
4. Brief description of why the property or service could not be reasonably obtained under the contract without granting the waiver:
5. Brief description of price reasonableness determination: See Note above.
6. Briefly describe the specific steps taken to ensure price reasonableness: See Note above.
7. Briefly describe the demonstrated benefits of granting the waiver.

Etc.