



ACQUISITION
TECHNOLOGY
AND LOGISTICS

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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



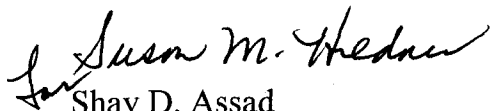
the future (e.g., develop a second source, develop an alternative product that satisfies the department's needs, have the Government produce the product, continue to use this source with a TINA waiver because the business case does not support any other alternative).

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.


Shay D. Assad
Director, Defense Procurement
and Acquisition Policy