



## 1. PURPOSE



The purpose of this document is to provide notification policies and procedures within the SPAWAR Claimancy, when a *Truth in Negotiations Act (TINA) waiver, which is also referred to as Truthful Cost or Pricing Data (TCPD)*, is contemplated.

Related Guidance can be found in CPMG sections [1.2.3 Develop D&F](#) and [3.2.2 Analyze Cost/Price](#).

## 2. POLICY



The TINA waiver was codified by [10 U.S.C. 2306a](#) and *TCPD was codified by 41 U.S.C. chapter 35*. It gave the Government informational parity with contractors and subcontractors during negotiations so that the Government avoids excessive prices. It requires certification by the contractor that the costs submitted in response to a proposal are current, accurate, and complete (i.e. "Cost and Pricing Data"). It also gave the Government the right to examine a contractor's records and to pursue remedies in defective pricing, including a downward adjustment in contract price. [FAR 2.101](#) defines "Cost and Pricing Data", in part, as data requiring certification in accordance with [FAR 15.406-2](#); data must be factual, not judgmental and verifiable.

### 2.1 Data Requirements

Cost and Pricing Data is required for all acquisitions exceeding \$750,000, EXCEPT:

1. When exercising an option at the price established at contract award or initial negotiation [[FAR 15.403-2\(a\)](#)];
2. For proposals used solely for overrun funding or interim billing adjustments [[FAR 15.403-2\(b\)](#)];
3. For acquisitions at or below the simplified acquisition threshold [[FAR 15.403-1\(a\)](#)];
4. For acquisitions with the Canadian Commercial Corporation and its subcontractors [Waived by DoD IAW [DFARS 215.403-1\(4\)\(C\)](#)];
5. [Waived by DoD IAW [DFARS 215.403-1\(4\)\(D\)](#)] For nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. The contracting officer shall, however, require:
  - a. Submission of information other than cost or pricing data to the extent necessary to determine price reasonableness and cost realism; and
  - b. Cost and pricing data from subcontractors that are not nonprofit organizations when the subcontractor's proposal exceeds \$750,000
6. If one of the following exceptions applies [[FAR 15.403-1](#), Prohibition on Obtaining Cost or Pricing Data]:
  - a. When the contracting officer determines that prices agreed upon are based on adequate price competition (see standards set by [FAR 15.403-1\(c\)\(1\)](#));
  - b. When the contracting officer determines that the prices agreed upon are based on prices set by law or regulation (see standards set by [FAR 15.403-1\(c\)\(2\)](#));
  - c. When a commercial item is being acquired (see standards set by [FAR 15.403-1\(c\)\(3\)](#)).
    - i. If this exception applies, there are additional reporting requirements for a commercial contract, subcontract, or modification valued at \$15 million or more. See [DFARS 215.403-1\(3\)\(A\)](#) and (B), and [NMCARS 5215.403-1\(c\)\(3\)\(B\)](#) for further guidance;
  - d. When modifying a contract or subcontract for commercial items (see standards set by [FAR 15.403-1\(c\)\(3\)](#)); or
  - e. When a waiver has been granted.



### 3. RESPONSIBILITIES

#### 3.1 Program Manager (PM)/Technical Code

The PM/Technical Code shall utilize this document as well as the guidance and procedures set forth at [PGI 215.403-1\(c\)\(4\)\(A\)](#), write the D&F for an exceptional case TCPD waiver and submit the document to the assigned contract specialist/negotiator for review. The PGI reference also provides guidance for waivers on unpriced supplies or services, or partial waivers.

#### 3.2 Contract Specialist/PCO

- A. The Contract Specialist/PCO shall review the D&F and provide any necessary comments/feedback.
- B. **\*\*Important Reminder\*\***: Because this is a waiver, when creating the Contract Action Report (CAR), ensure that the FPDS-NG field titled "Cost or Pricing Data" is populated with the selection of "Not Obtained – Waived".
- C. Conversely, for those acquisitions that meet any of the exceptions mentioned earlier, (or that have been waived by DoD), the appropriate selection is "No".
- D. Report all waivers valued at \$15 million or more (contract, subcontract, or modification), to [SPAWARSSYSCOM Code 2.3.1](#). The report shall include:
  1. Contract number, including modification number, if applicable, and program name
  2. Contractor name
  3. Contracting activity
  4. Total dollar amount waived
  5. Brief description of why the item(s) could not be obtained without the waiver
  6. Brief description of the specific steps taken to ensure price reasonableness
  7. Brief description of the demonstrated benefits of granting the waiver
  8. Award Date
  9. Contracting Officer's name
  10. Contracting Officer's phone number

#### 3.3 SPAWARSSYSCOM Code 2.3.1

[SPAWARSSYSCOM Code 2.3.1](#) is tasked to submit an annual report to DASN (AP) by October 31st of each year.

### 4. PROCEDURE

#### 4.1 Waiver Requirements

- A. The Head of the Contracting Activity (HCA) may, without power of delegation, waive the requirement for submission of cost or pricing data in exceptional cases. If this is done, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed \$750,000 requires the submission of cost or pricing data unless:
  1. An exception otherwise applies to the subcontractor; or
  2. The waiver specifically includes that subcontract and the rationale supporting the waiver for that subcontract.
- B. The waiver shall be documented as a Determination and Findings (D&F). The standards for such waivers have been clearly delineated by the Office of the Under Secretary of Defense (Acquisition, Technology & Logistics), via their "[Waivers Under the Truth in Negotiations Act](#)" memorandum. Accordingly, the following standards for TCPD waivers shall be met and documented in the D&F [[DFARS 215.403-1\(c\)\(4\)](#)]:



- 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.
- C. The SCPPM document  [Determination and Findings](#) duplicates the policies set forth here.

**5. APPROVALS**

- A. As previously stated the Head of the Contracting Activity (HCA) has approval authority to waive the requirement for submission of cost or pricing. This authority cannot be delegated.
- B. Submit exceptional case Truth in Negotiations (TINA) waivers that exceed \$100 million via DASN(AP) for coordination prior to approval by email at [RDAJ&As@navy.mil](mailto:RDAJ&As@navy.mil) with the subject "[DFARS 215.403-1\(c\)\(4\)\(A\)](#), -Exceptional TINA Case Waivers."

**6. TOOLBOX**

**6.1 Federal**

- A. [FAR 2.101](#) "Definitions of Words and Terms"
- B. [FAR 15.403-1](#) "Prohibition on obtaining certified cost or pricing data"
- C. [FAR 15.403-2](#) "Obtaining Certified Cost or Pricing Data"
- D. [FAR 15.406-2](#) "Documentation"
- E. [10 U.S.C. 2306a](#) "Cost or Pricing Data: Truth in Negotiations"

**6.2 DoD**

- A. [DFARS 215.403-1](#) "Obtaining Certified Cost or Pricing Data"
- B. [DFARS PGI 215.403-1](#) "Obtaining Certified Cost or Pricing Data"

**6.3 Navy**

- A. [NMCARS 5215.403-1](#) "Obtaining Certified Cost or Pricing Data"

**6.4 SPAWAR**

- A. CMPG [1.2.3 Develop D&F](#)
- B. CMPG [3.2.2 Analyze Cost/Price](#)
- C.  [Determination and Findings](#)

**7. CHANGE HISTORY**

Updated material is highlighted by *purple text* and an Alert/New  icon.

Date	Description of Changes
May 2016-Rev1	SCPPM title changed back to Truth in Negotiations Act (TINA) Waivers, added info on TCPD, and link to 41 U.S.C. chapter 35
May 2016	SCPPM title changed and content reorganized and reformatted to new version and links updated.
January 2011	Last version created in old format as Truth in Negotiations Act (TINA) SCPPM.