

SECTION 7: ACQUISITION PROCEDURES

SUBJECT: TRUTH IN NEGOTIATIONS ACT Procedure 7.1.4

POLICY

The University of Washington (UW) complies with the Federal Truth in Negotiations Act (TINA), codified at 10 U.S.C. 2306a and implemented by the Federal Acquisition Regulations (FAR)

For certain federal contracts over \$700,000,¹ the University of Washington, as a prime Contractor is required to obtain certified cost or pricing data from its Suppliers.

PROCEDURE

1. Determine if the Truth in Negotiations Act Applies
 - a. Under TINA, the University of Washington (UW) must require suppliers to furnish cost or pricing data when all of the following conditions apply:
 - i. The contract entered into with the supplier will be funded by a **federal contract** awarded to the UW;
 - ii. The contract between the UW and the supplier will be for **\$700,000 or more**;
 - iii. The contract is **not for a commercial item**; and
 - iv. The contract is **not based upon adequate price competition** or prices set by law or regulation
 - b. The supplier shall be required to certify, on Attachment 7.1.4(a) below, to the best of the certifying official's knowledge and belief, that the cost or pricing data submitted are accurate, complete and current.
2. Obtain an adequate cost and technical proposal from the supplier
3. Evaluate the cost and pricing data used to support the proposal
4. Document the evaluation and use it to develop a negotiation position
5. Write the "Price Negotiation Memo" (PNM) resulting from the negotiation and ensure that the final date of the price agreement is included in the PNM. PNM should include:
 - (1) The purpose of the negotiation.

¹ FAR 15.403-4
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- (2) A description of the acquisition, including appropriate identification (e.g., RFP No.)
- (3) The name, position, and organization of negotiators
- (4) Contractor systems, to the extent relevant to the negotiation.
- (5) If certified cost or pricing data were required, the extent to which UW --
 - (i) Relied on the cost or pricing data submitted and used them in negotiating the price;
 - (ii) Recognized as inaccurate, incomplete, or noncurrent any certified cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated; or
 - (iii) Determined that an exception applied after the data were submitted and, therefore, considered the data not to be certified cost or pricing data.
- (6) A summary of the contractor's proposal, addressing each major cost element.
- (7) The most significant facts or considerations controlling the establishment of the pre-negotiation objectives and the negotiated agreement including an explanation of any significant differences between the two positions.
- (8) To the extent such direction has a significant effect on the action, a discussion and quantification of the impact of direction given by Congress, federal agencies, and higher-level officials (i.e., officials who would not normally exercise authority during the award and review process for the instant contract action).
- (9) The basis for the profit or fee pre-negotiation objective and the profit or fee negotiated.
- (10) Documentation of fair and reasonable pricing.

6. Insert the Appropriate Cost Certification Provision

- a. When the TINA requirements apply, cost or pricing data must be sought from the supplier. In addition to cost or pricing data, the UW must also obtain a certification that the cost or pricing data provided by the supplier is accurate.
- b. To satisfy the certification requirement, attach Attachment 7.1.4(a) to the solicitation and require the supplier to complete and return Attachment 7.1.4(a) prior to award.

7. If the supplier denies access to records, request an assist audit from the Administrative Contracting Officer (ACO). This is only required where the value of a single source award is to be made, the contract is expected to exceed \$700,000, the contract is for a noncommercial item and the supplier has denied the University access to sufficient records to conduct an adequate cost or technical analysis.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of _____* are accurate, complete, and current as of _____**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm _____

Signature _____

Name _____

Title _____

Date of execution*** _____

* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.