PGI 215.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. chapter 271 and 41U.S.C. chapter 35).

(b) *Exceptions to certified cost or pricing data requirements*. Even if an exception to certified cost or pricing data applies, the contracting officer is still required to determine price reasonableness. In order to make this determination, the contracting officer may require data other than certified cost or pricing data, including data related to prices and cost data that would otherwise be defined as certified cost or pricing data if certified.

(c)(3) *Commercial products or commercial services* . See the Department of Defense Guidebook for Acquiring Commercial Items, Part B: Pricing Commercial Items , for detailed guidance about techniques and approaches to pricing commercial products and commercial services.

(4) *Waivers*.

(A) *Exceptional case TINA waiver*.

(*1*) In determining that an exceptional case TINA waiver is appropriate, the head of the contracting activity (HCA) must exercise care to ensure that the supplies or services could not be obtained without the waiver and that the determination is clearly documented. See DPAP March 23, 2007, policy memorandum . The intent is not to relieve entities that normally perform Government contracts subject to TINA from an obligation to certify that cost or pricing data are accurate, complete, and current. Instead, waivers must be used judiciously, in situations where the Government could not otherwise obtain a needed item without a waiver. A prime example would be when a particular company offers an item that is essential to DoD's mission but is not available from other sources, and the company refuses to submit certified cost or pricing data. In such cases, a waiver may be appropriate. However, the procuring agency should, in conjunction with the waiver, develop a strategy for procuring the item in the future that will not require such a waiver (e.g., develop a second source, develop an alternative product that satisfies the department's needs, or have DoD produce the item).

(*2*) *Senior procurement executive coordination*. An exceptional case TINA waiver that exceeds $100 million shall be coordinated with the senior procurement executive prior to granting the waiver.

(*3*) *Waiver for part of a proposal*. The requirement for submission of certified cost or pricing data may be waived for part of an offeror's proposed price when it is possible to clearly identify that part of the offeror's cost proposal to which the waiver applies as separate and distinct from the balance of the proposal. In granting a partial waiver, in addition to complying with the requirements in DFARS 215.403-1(c)(4), the (HCA) must address why it is in the Government's best interests to grant a partial waiver, given that the offeror has no objection to certifying to the balance of its cost proposal.

(*4*) *Waivers for unpriced supplies or services*. Because there is no price, unpriced supplies or services cannot be subject to cost or pricing data certification requirements. The Government cannot agree in advance to waive certification requirements for unpriced supplies or services, and may only consider a waiver at such time as an offeror proposes a price that would otherwise be subject to certification requirements.

(B) The annual report of waiver of TINA requirements shall include the following:

Title: Waiver of TINA Requirements

(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 a waiver. See DPAP March 23, 2007, policy memorandum.

(6) Brief description of the specific steps taken to ensure price reasonableness.

(7) Brief description of the demonstrated benefits of granting the waiver.

Parent topic: PGI 215.403 Obtaining certified cost or pricing data.