

**ACTION:** Extension of comment period and notice of public meeting.

**SUMMARY:** This public notice is issued to familiarize the public with the status of the rulemaking effort on FAR Case 94-721, Truth in Negotiations Act and Related Changes (TINA), which implements the Federal Acquisition Streamlining Act of 1994 (FASA), to extend the period for public comment, and to provide notice of a public meeting. The TINA drafting team has made some refinements to the proposed rule that was published in the January 6, 1995, **Federal Register**. The revised coverage has been mailed to the public commenters on FAR Case 94-721 and copies may be obtained by other interested parties.

**DATES:** *Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before July 19, 1995.

*Meeting Date:* The meeting will be held at 2:00 p.m. on July 7, 1995.

**ADDRESSES:** A copy of the revised coverage may be obtained by calling the FAR Secretariat at 202-501-4755. Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

The public meeting will be held at: General Services Administration, National Capital Region Auditorium, 7th & D Streets, SW, Washington, DC 20407. Please cite FAR case 94-721 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Al Winston, Truth in Negotiations Act (TINA) Team Leader, at (703) 602-2119 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 94-721.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

On January 6, 1995, a proposed rule was published in the **Federal Register** (60 FR 2282). The proposed rule afforded the public a 60 day comment period. During that time, 40 organizations submitted more than 213 comments. A public meeting was also held on this rule on February 13, 1995. Based upon comments received, the TINA drafting team refined the coverage. Accordingly, a copy of revised coverage has been mailed to previous public commenters on FAR Case 94-721. The purpose of this notice is to advise the public generally of the availability of the revised coverage and enable other interested parties to obtain

a copy by contacting the FAR Secretariat.

##### **B. Case Summary**

FAR case 94-721 implements Sections 1201 through 1210 and Sections 1251 and 1252 of FASA. Highlights include making TINA requirements for civilian agencies substantially the same as those for the Department of Defense (increasing the threshold for submission of "cost or pricing data" to \$500,000 and adding penalties for defective pricing). Provisions are also included that increase the threshold for cost or pricing data submission every 5 years beginning October 1, 1995. New exceptions are added to the requirement for the submission of "cost or pricing data" for commercial items; approval levels for waivers are changed, and prohibitions are placed on acquiring "cost or pricing data" when an exception applies. The coverage includes a clear explanation of adequate price competition as required by the Act.

Also, FAR coverage has been included that addresses (1) "information other than cost or pricing data", (2) exemptions based on established catalog or market price, (3) inter-divisional transfers of commercial items at price, and (4) price competition when only one offer has been received.

The FAR language primarily modifies FAR Part 15, together with associated Part 52 clauses and Part 53 forms. However, some coverage addresses contract clauses where threshold changes are made in Part 14 pertaining to sealed bid contracting, and in Part 31 where the cost principle on material costs has been amended to address inter-divisional transfers of commercial items at price. Additional miscellaneous changes in Parts 4, 12, 15, 16, 31, 33, 36, 45, 46, 49, and 53 have also been included.

When a final rule is promulgated, it will also supersede the earlier FAR case 94-720 that was previously published as an interim rule in Federal Acquisition Circular (FAC) 90-22. FAR case 94-720 provided for an immediate increase of the threshold for "cost or pricing data" submission by contractors to civilian agencies to \$500,000. FAC 90-22 (FAR case 94-720) also removed the certification requirement of commercial pricing for parts or components for contractors doing business with civilian agencies.

##### **C. Summary of Changes**

The following are highlights of changes that have been made to the proposed rule as a result of the written comments received during the comment

period and other issues that were raised at the public hearing held on 13 February 1995:

- The coverage has been edited to improve readability.
- The hierarchical policy at FAR 15.802 has been clarified to ensure that it is consistent with TINA and FASA.
- Regulatory guidance implementing the catalog or market price exception to TINA has incorporated more flexible procedures (See FAR 52.215-41).
- The Standard Form (SF) 1412 is eliminated.
- Relational tests have been eliminated.
- Disclosure of lowest prices is no longer mandated.
- TINA-based postaward audit access is no longer required.
- Expanded guidance is provided on what constitutes substantial sales.
- Requirement for offerors to account for "end users" when addressing sales to the general public has been eliminated.
- Reference to GSA certifications for granting a prior exemption under FAR 15.804-1(c)(1)(ii)(B) is removed.

• Flexibility in requesting an exception to TINA is improved via a generic provision at FAR 52.215-41 that provides broad guidelines on the type of data that would be needed to qualify for a TINA exception.

- A "Commercial Item" definition cross-reference is given.
- A definition of "cost realism" has been added.
- Additional data requirements have been removed for qualification under the commercial item exception created by FASA (rebates, credits, warranties, and sales to resellers).
- Expanded guidance is provided on effective dates for certification of cost or pricing data.

##### **E. Presentations at the Public Meeting**

To allow the public to present its views on the refinements to this proposed rule, a public meeting will be held at the GSA National Capital Region Auditorium on July 7, 1995. Persons or organizations wishing to make presentations will be allowed 10 minutes to present their views, provided they notify the FAR Secretariat at (202) 501-4745 and provide an advance copy of their remarks not later than July 5, 1995.

Dated: June 13, 1995.

**Edward C. Loeb,**

*Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act.*

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