



THE GEORGE WASHINGTON UNIVERSITY

GOVERNMENT PROCUREMENT LAW PROGRAM

WEBINAR: DO COST OR PRICING REQUIREMENTS IMPROVE CONTRACT OUTCOMES?

JANUARY 11, 2023 9:00 AM EST

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Welcome

*Professor Christopher Yukins
GW Law School*

- Recording and materials at www.publicprocurementinternational.com
- Questions – please use chat (not Q&A)
- All speakers' statements are in their personal capacities



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Speaker & Panelists



Accounting Disclosure Requirements in Procurement Contracting



Brad Nathan

Overview

- Buyer-supplier relationships marked by opportunistic behavior.
- Public procurement in 2018: \$13 trillion (15% of global GDP)
- Majority of federal contracts are *negotiated*
- **Reasonable prices** can be established by:



Competition

Knowledge and judgment

Supplier disclosures supporting prices



Cost or Pricing Data

- CO's can require any data necessary to establish price reasonableness.
- **Cost or pricing data (CP data):** all factual information that prudent buyers and contractors would reasonably expect to affect price negotiations
 - Includes detailed cost line items, vendor quotes, drawings, etc.
 - Contractors may have to certify that CP Data is current, accurate, and complete
 - Sweeps for current data
 - Approved cost accounting system
- **Other than certified CP data:** Any *non-certified* contractor data



Truth in Negotiations Act (TINA)

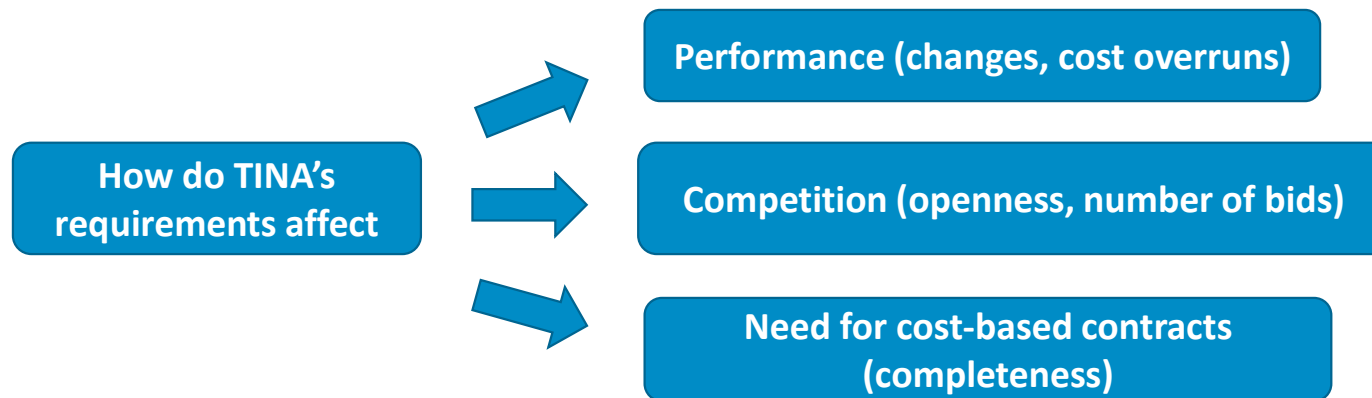
- In practice, **TINA** requires CO's either to request contractors **privately disclose certified CP Data** or to **take measures to receive multiple bids**
 - **Limits reliance on judgment** for higher-dollar contracts
- Decision of promoting **competition** vs. requiring **certified CP data**
 - Function of:
 - **Personal** considerations (transaction costs, bias)
 - Effects on **taxpayer value**
 - **Data costs to suppliers** can decrease **competition**



Truth in Negotiations Act (TINA)

- **TINA** requires CO's either request contractors **privately disclose certified CP Data** or **take measures to receive multiple bids**

Research question:



Motivation

- **Contract competition** can be valuable to buyers, OECD (2011)
- Effect of TINA **on competition** depends on **choice** between competition and data
 - **Decrease**: Data and proprietary costs may dissuade contractors from competing
 - **Increase**: Buyer can promote competition to reduce costs to provide and process disclosures
 - Ways to promote **competition** (via greater attention):

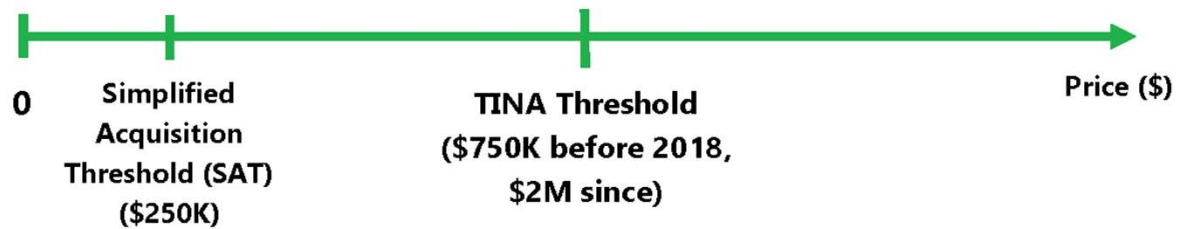


Loosen specifications

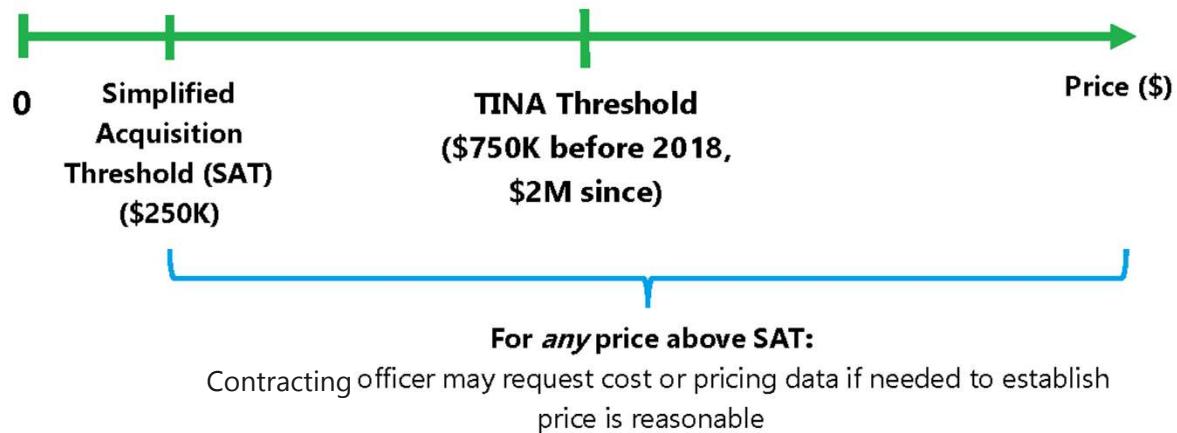
Invite additional
bidders

Reduce restrictions on
who can bid

TINA Threshold Application

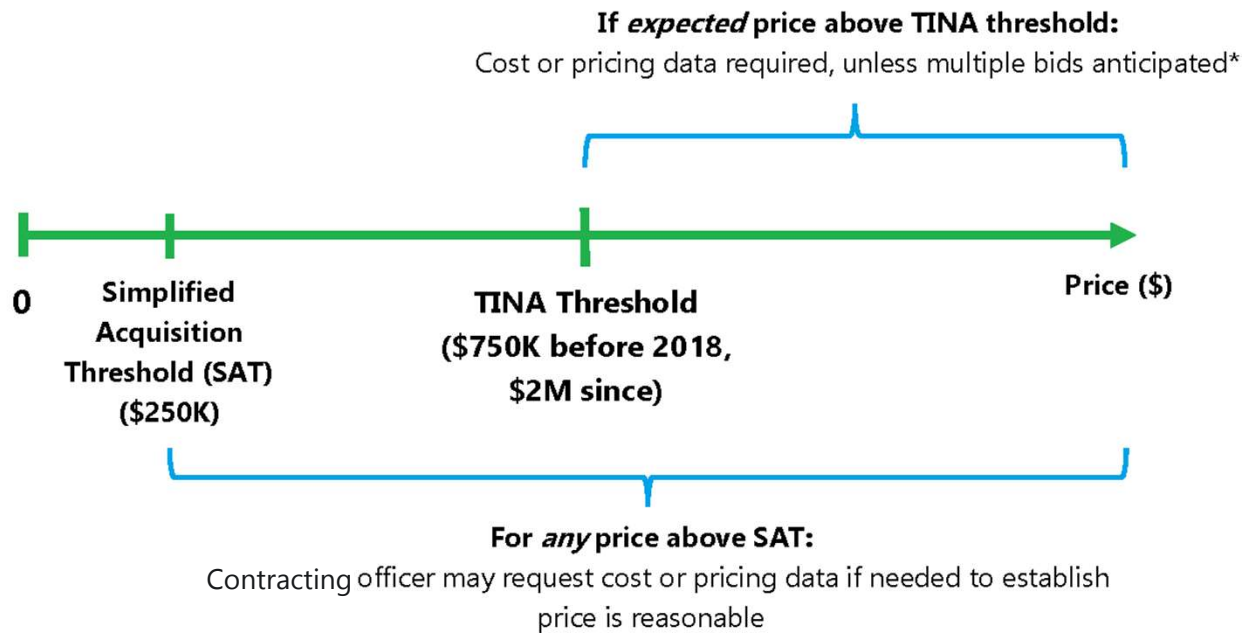


TINA Threshold Application



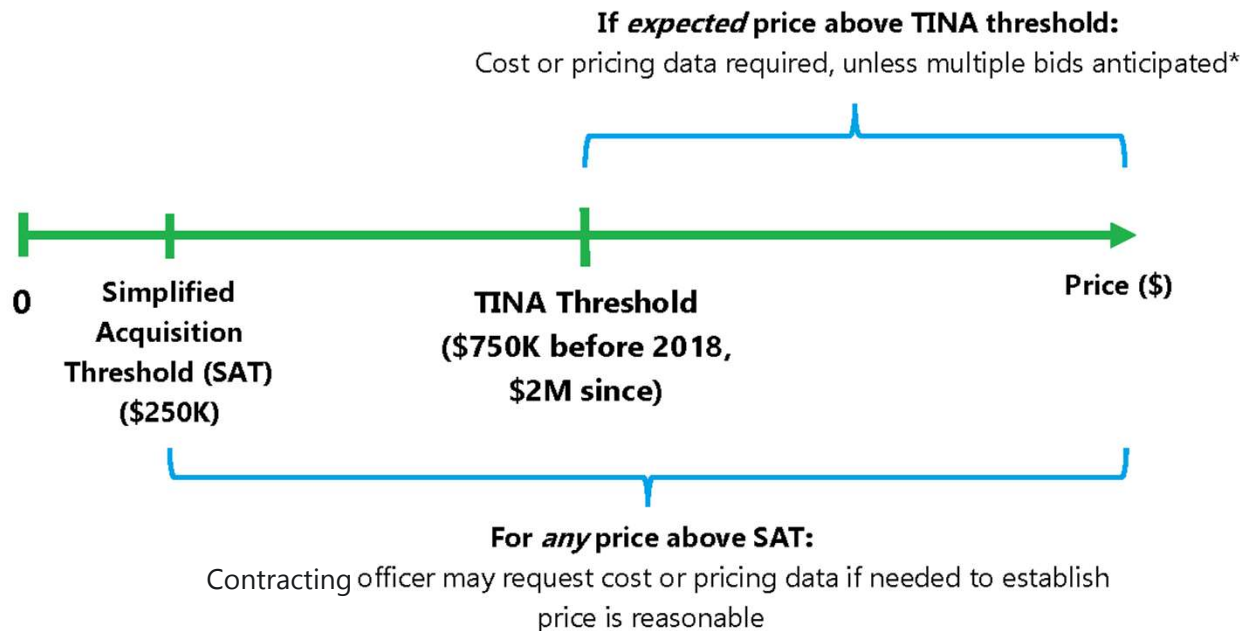
TINA Threshold Application

For negotiated contracts:



TINA Threshold Application

For negotiated contracts:



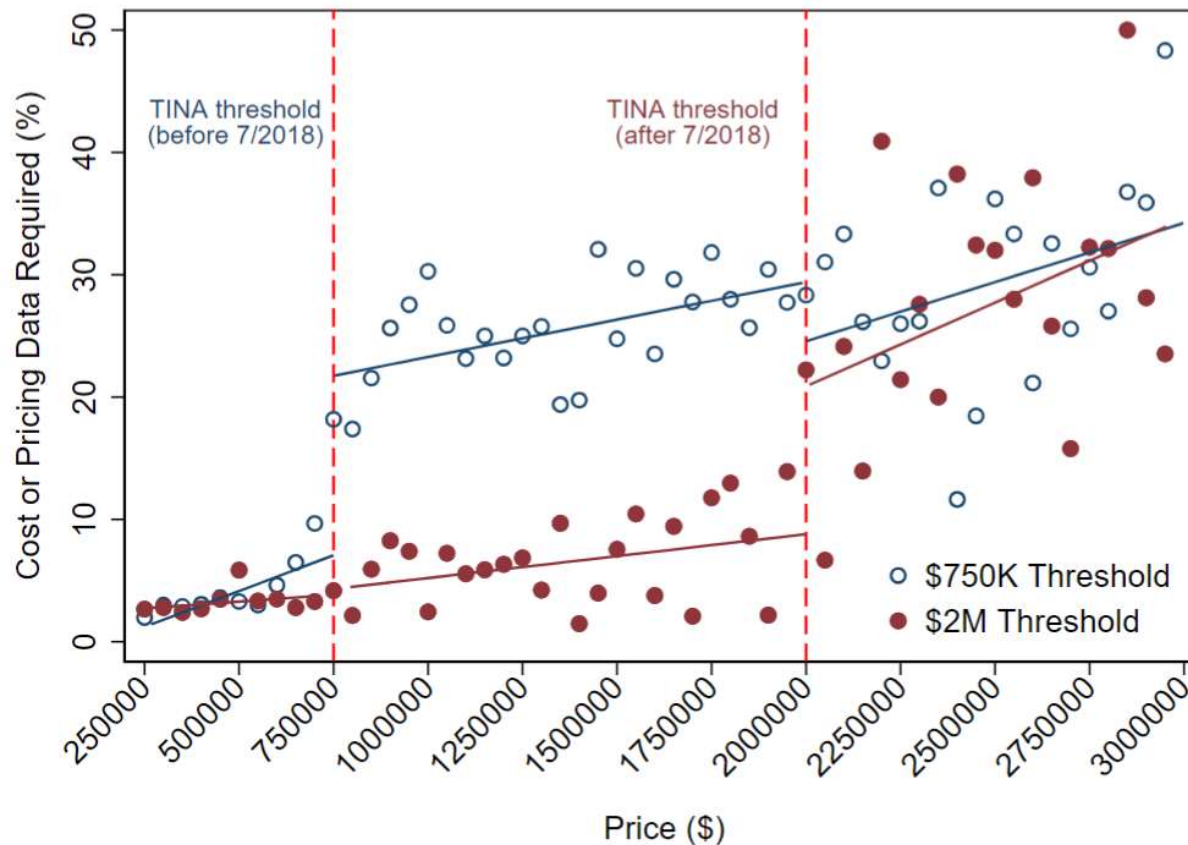
* **Exceptions to TINA:**

- Multiple bids
- Commercial contracts
- Prices set by law or statute



Effects of TINA: Cost or Pricing Data Required

Definitive & Purchase Order Contracts: \$750,000 and \$2,000,000 Threshold Periods



Effects of TINA on competition

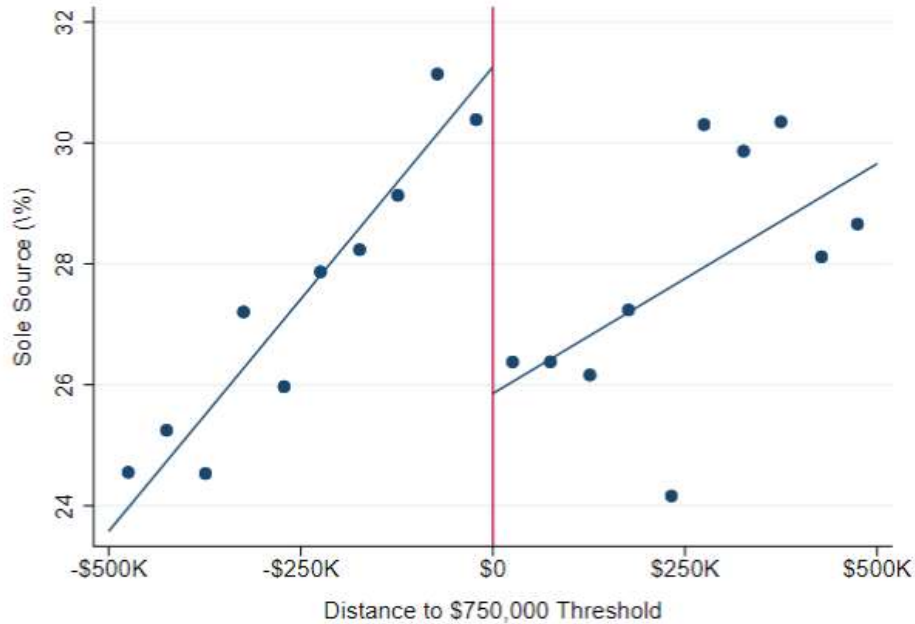


- **Sample:** All negotiated, non-commercial, prime contracts awarded by “early adopters” of an increased TINA threshold – DoD and others
- **Study assesses effects of TINA on competition:**
 - Solicited competition: impact on sole source (non-competed) contracts
 - Actual competition: multiple offers
- **Regression Discontinuity Design (RDD):**
 - Around \$750,000 (July 2015 - June 2018), 41,993 contracts
 - Around \$2,000,000 (June 2018 - March 2020), 10,492 contracts

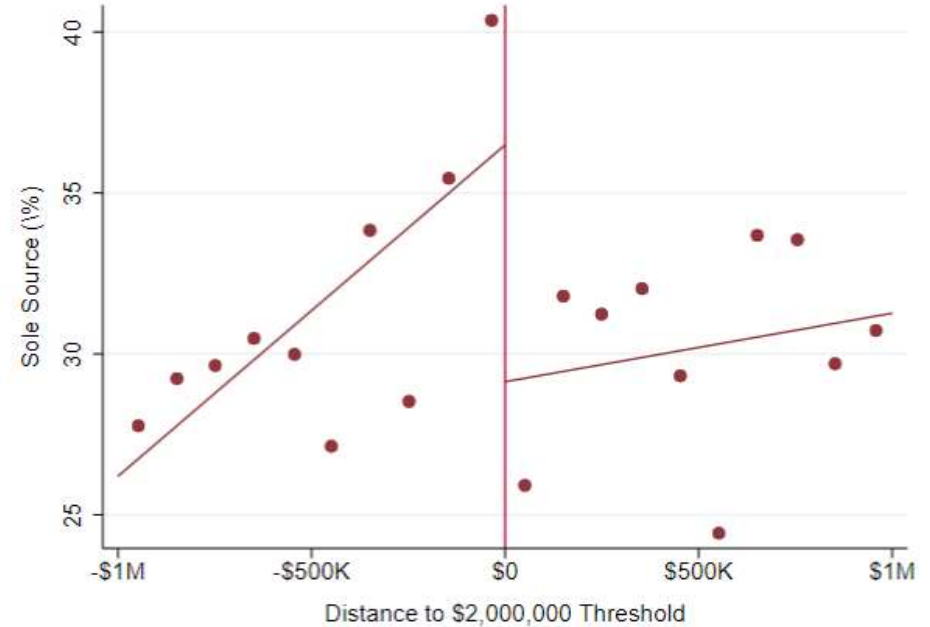
Effect of TINA Threshold on Sole Source Contracts



\$750,000 Threshold Period



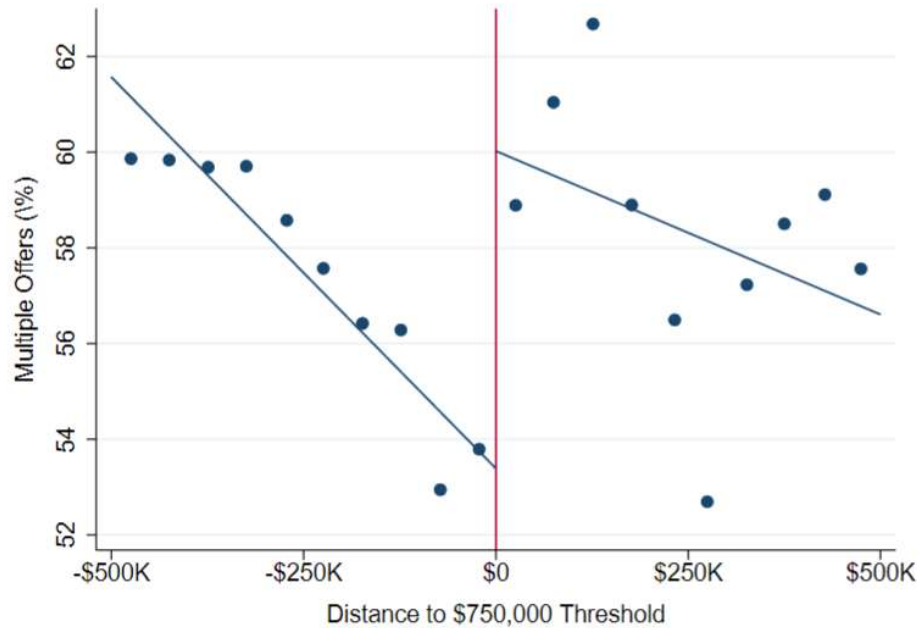
\$2,000,000 Threshold Period



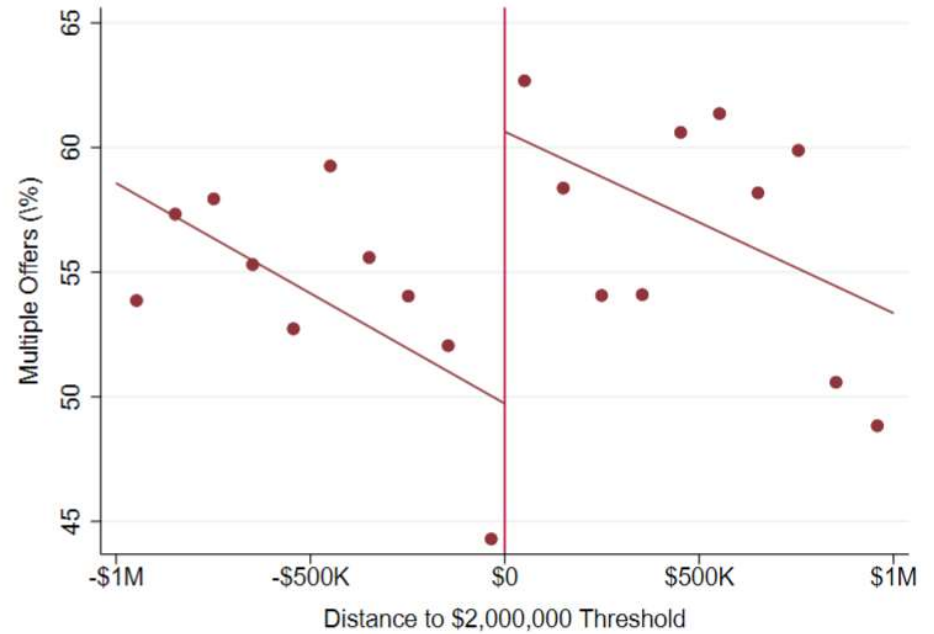
Effect of TINA in Receiving Multiple Offers



\$750,000 Threshold Period



\$2,000,000 Threshold Period



TINA: Performance & Completeness

- Evidence against alternative explanation for competition results
- Test two opposing predicted effects of TINA's requirements on performance

Results:

- Improved performance (fewer modifications and cost overruns) above \$750,000 threshold
 - Due to data/attention
- Weak evidence cost-plus contracts less frequent



Robustness Checks

- **Heterogeneity tests**
- **Substitution tests**
- **Difference-in-discontinuities design**
 - Uses 2018 change in the TINA threshold
- **Placebo tests**
- **Bunching and splitting**
- **Other analyses**



Take-Aways

- Two sides to ongoing debate on TINA:

Data better aids bargaining power

VS.

Attract innovative companies by reducing TINA's requirements (e.g., OTA, TINA Lite)

- Results suggest:

- **TINA** can **increase** competition
- Disbanding TINA *may* diminish TINA's competition-increasing effects
- **Middle ground:** compensate with policies to promote competition
 - E.g., Dedicated supplier recruitment teams, check for list of suppliers invited to bid
 - Review process to verify specifications cannot be relaxed
 - Enlist CO's with expertise/training in specifications



Conclusion

- Study provides **first empirical evidence** on key aspects of TINA
 - TINA requires CO's either request suppliers privately disclose certified cost or pricing data or take measures to receive multiple bids
- **Main findings:** TINA's requirements can increase contract competition, performance, and completeness
 - Procurement system pays greater attention to affected contracts



Questions & Discussion



Questions - Panel

- The study notes that *competition* is an alternative strategy to requiring sellers to disclose cost data. Does this study compare outcomes if *competition* is used in lieu of cost data?
- Are the better outcomes due to the cost/pricing data, or due to the *greater procurement attention* paid to awards under TINA?
- Does your study suggest that *open procurement data* may make it easier to assess the efficacy of contracting strategies?

Materials and recordings at:
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Recordings also at:
YouTube: GW Law Government Procurement Law Program

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