

## INFORMATION ON LOWEST PRICED TECHNICALLY ACCEPTABLE PROCESS

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Recently, the Government Accountability Office (“GAO”) issued a report on the Lowest Price Technically Acceptable (“LPTA”) process of procuring goods and services. *Defense Contracting DOD Should Clarify Criteria for Using Lowest Price Technically Acceptable Process*, GAO-19-54 (Nov. 13, 2018). The Federal Acquisition Regulation identifies LPTA as one of two key processes in negotiated procurement (the other process being a tradeoff where the government considers award to other than the lowest priced offeror or other than the highest technically rated offeror.) FAR 15.101. The FAR says this about LPTA:

(a) The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

(b) When using the lowest price technically acceptable process, the following apply:

(1) The evaluation factors and significant subfactors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. []

(2) Tradeoffs are not permitted.

(3) Proposals are evaluated for acceptability but not ranked using the non-cost/price factors.

(4) Exchanges may occur (see 15.306).

FAR 15.101-2. There has been a great deal of interest in using LPTA, since it may appear to source selection officials that is an easier and “less judgmental” method than a tradeoff process. However, the use of LPTA has been criticized as inappropriate for certain types of procurements (see below for Congressional changes).

### How Frequently LPTA Is Used for DOD Procurement

According to GAO, there is no specific reporting mechanism that identifies the percent of DOD procurements that use the LPTA process. However, the GAO analyzed procurement statistically and concluded that about 26 percent of contracts and orders awarded competitively by DOD valued at \$5 million and above in fiscal year 2017 used the LPTA process. The report does not examine LPTA year by year, but does indicate the following:

- In 2009, the LPTA process was used in 26% of contracts over \$25 million
- In 2013 the LPTA process was used in 36% of contracts over 25 million
- In 2017 the LPTA process was used in 26% of contracts over \$5 million

GAO changed the value of the contracts in its samples over this period.

### **New Requirements for LPTA Acquisitions**

Section 813 of the National Defense Authorization Act (“NDAA”) for 2017, Pub. L. No 114-328, as amended by Section 822 of the 2018 NDAA, Pub. L. No. 115-91, requires that the Department of Defense (“DOD”) revise the Defense FAR Supplement (“DFARS”) to require that LPTA be used only in situations when the following eight criteria are met.

- (1) DOD can clearly describe the minimum requirements in terms of performance objectives, measures, and standards that will be used to determine acceptability of offers.
- (2) DOD would realize no, or little, value from a proposal exceeding the solicitation’s minimum technical requirements.
- (3) DOD would realize little or no additional innovation or future technological advantage by using a different methodology
- (4) The proposed technical approaches can be evaluated with little or no subjectivity as to the desirability of one versus the other.
- (5) There is a high degree of certainty that a review of technical proposals other than that of the lowest-price offeror would not identify factors that could provide other benefits to the government.
- (6) The contracting officer has included a written justification for the use of the LPTA process in the contract file.
- (7) For the acquisition of goods, the goods being purchased are predominantly expendable in nature, nontechnical, or have a short life expectancy or shelf life.
- (8) The lowest price reflects full life-cycle costs, including for operations and support.

Section 813 required DOD to revise the DFARS within 120 days of enactment of the National Defense Authorization Act for Fiscal Year 2017. The NDAA was enacted December 23, 2016, but, as of November 2018, GAO noted that the DFARS had not been revised.

In its report, the GAO found that criteria (1)-(5) above were considered in most of the LPTA acquisitions, but criteria (6)-(8) were rarely considered, and had not been included in a March 2016 publication of DOD source selection procedures. The biggest uncertainties are in the 7<sup>th</sup> criteria (“predominantly expendable, nontechnical or short life expectancy”) and 8<sup>th</sup> criteria (“life-cycle costs”). Many contracting officers advised GAO of uncertainties they harbored in how to apply these two criteria to a variety of procurements.

GAO's report made two recommendations to the Secretary of Defense, both relating to the two criteria (7<sup>th</sup> and 8<sup>th</sup> above) that are rarely used:

- Address how contracting officials should apply the criterion regarding procurement for goods that are predominantly expendable in nature, nontechnical, or have a short life expectancy or shelf life as revisions to the DFARS are considered.
- Address how contracting officials should apply the criterion regarding full lifecycle costs, including for operations and support as revisions to the DFARS are considered.

The GAO report does not address the “success” or “failures” of the LPTA process, or whether or not contracting officers are really obtaining best value for the government by using the LPTA process. It is likely that such conclusions can only be reached by examining specific case-by-case examples of the use of the process.

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