



5 questions to derail an LPTA procurement

What you ask might guide an agency away from a low-price contract

By Bob Lohfeld

Recently, while teaching a capture management class, a capture manager asked me what he could do when the contracting officer for a pending IT services bid said he wanted to use lowest price technically acceptable (LPTA) evaluation criteria versus the traditional best-value tradeoff approach.

The capture manager and the government program manager wanted to avoid a price shootout, but the contracting shop wouldn't agree.

When confronted with this situation, here are five questions a capture manager should answer to help the technical client steer clear of LPTA requirements.

1. Does the use of LPTA violate government guidance?

Does your client know that the Defense Department (DOD) has a policy statement providing guidance on when to use LPTA evaluation criteria instead of the best-value approach that trades off cost and non-cost factors? Appendix A of the DOD's Source Selection Procedure (3/4/11) contains the policy and states that, "LPTA may be used in situations where the government would not realize any value from a proposal exceeding the government's minimum technical or performance requirements, often for acquisitions of commercial or non-complex services or supplies which are clearly defined and expected to be low risk."

If your services are complex or if poor performance could expose the agency to unacceptable risk, then using the LPTA evaluation criteria would be inappropriate.

FAR 15.101-2 (a) provides a similar statement for LPTA bids, "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."

When using LPTA, the government must accept that there is no benefit from an offeror exceeding a contract requirement rather than just barely meeting it. Consequently, the only judgment an evaluator can render is that the offer meets the minimum requirements or it doesn't. This means the government must accept a marginally capable bidder and grant that bidder the same standing as the best, most innovative firms in the industry. This is often an unacceptable position when the government strives to achieve service or technical excellence.

2. Can you define technical acceptability?

DOD provides additional guidance in its Better Buying Power 2.0 Memorandum to the Defense Acquisition Workforce (11/13/12). This guidance states, “Industry has expressed concerns about the use of Lowest Price, Technically Acceptable (LPTA) selection criteria that essentially defaults to the lowest price bidder, independent of quality. Where LPTA is used, the Department needs to define [technically acceptable] appropriately to ensure adequate quality.”

The procurement office should defer to the technical team for guidance on what constitutes technical acceptability. For procurements involving software development, systems integration, systems engineering, solution architecture, etc., it is hard enough to define the work let alone the criteria for technical acceptability. If the government cannot specify what constitutes technical acceptability in the RFP, then the procurement should not use LPTA selection criteria.

3. Is past performance important?

If past performance is important to the buyer, then LPTA may not be an acceptable evaluation criterion. The guidance from DOD states that, “In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available or so sparse that no meaningful past performance rating can be reasonably assigned, the offeror may not be evaluated favorably or unfavorably on past performance (see FAR 15.305 (a)(2)(iv)). Therefore, the offeror shall be determined to have unknown past performance. In the context of acceptability/unacceptability, “unknown” shall be considered “acceptable.”

In accordance with the FAR, “If the contracting officer documents the file pursuant to 15.304 (c)(3)(iii), past performance need not be an evaluation factor in lowest price technically acceptable source selections.”

Guidance from the FAR and DOD allows bidders with no relevant past performance to be treated as though they have the same past performance as the most experienced firms in the industry. If you believe past performance is a predictor of future results, then you may want to steer clear of LPTA evaluation criteria.

4. Is there public opposition to the use of LPTA?

Can you cite articles from the trade press that support your position that LPTA is inappropriate for most IT services procurements? If you Google *Lowest Price Technically Acceptable*, you can find 50 articles that discuss why LPTA should not be used for services

bids. If this were my procurement, I would do the search and then send copies of relevant articles to the government technical team and their procurement office. Perhaps the power of the press can turn some folks away from using LPTA inappropriately.

5. Is there a record of failed contract performance?

Can you find evidence of similar service contracts awarded using LPTA evaluation criteria where the contract was either terminated for poor performance or substantially modified to grant price relief to the lowest priced offer? There is much speculation that the inappropriate use of LPTA criteria will ultimately result in contracts with unacceptable performance. If you can document some of these instances, it will strengthen your argument to avoid the LPTA approach.

If you have other strategies to help your customers steer clear of LPTA evaluation criteria and you want to share them, or if you can cite LPTA contracts that have failed, please add your comments to the comments section of the *Washington Technology* article, and our publisher will post your valuable guidance so that we can have an open dialog on the misuse of LPTA evaluation criteria.

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Maryland Office: Bob Lohfeld 410.336.6264 rlohfeld@lohfeldconsulting.com
Virginia Office: Amy Barden 703.820.0075 abarden@lohfeldconsulting.com

 Facebook.com/LohfeldConsulting  Lohfeld Consulting Group  Twitter.com/Lohfeld



www.lohfeldconsulting.com