



# Is the government starting to hate LPTA too?

By Bob Lohfeld

I was surprised (and relieved) to learn that government proposal evaluators are pushing back on the use of lowest price, technically acceptable (LPTA) evaluation criteria—and for good reason. They are now learning that this evaluation criteria can limit their ability to exercise reasonable judgment in the evaluation process and may result in contracts awarded to companies that are clearly inferior and have less qualified offerings compared to others in the competition.

Here are two instances where the use of LPTA evaluation criteria backfired on the government decision-makers.

## Superior value versus price

Best-value solicitations frequently state that as technical scores converge and there is little technical difference between bidders, price will become the determining factor in an award decision.

Conversely, when price converges and there is little price difference between bidders, the award decision would rationally be made based on the merits of the offeror's non-cost factors (technical approach, offeror experience, management plan, subcontracting plan, past performance, etc.).

Regrettably, rational decision-making breaks down under the LPTA procurement process because non-cost factors cannot be used as a basis for differentiating among bidders, other than to say their overall proposal is acceptable or not acceptable. Here's a real-world example of how this can leave evaluators feeling like they were trapped into making the wrong award decision.

DOD issued a procurement to purchase and install multiple sets of network equipment at military bases in the United States. I'm going to be a little vague about the procurement since I agreed not to disclose the specific procurement or the evaluators.

Because the procurement was not technically complex, the procurement official argued that the evaluation of proposals should be done using LPTA evaluation criteria. Under an LPTA bid, the evaluator's only decision is whether or not each offeror's proposal is technically and managerially acceptable and nothing more. Once a proposal is deemed acceptable, award is

made to the lowest priced, technically acceptable offeror. This seems pretty straightforward, but it wasn't.

In this procurement, the network equipment to be purchased was specified in the solicitation, so there was essentially no latitude in the bill of materials to be bid in this procurement. Accordingly, the cost of the materials was essentially the same to all bidders, resulting in little price difference among bidders for their material cost.

The labor to install the equipment was largely covered by the Service Contract Act, so hourly wage minimums were specified by the Department of Labor Area Wage Determinations. Again, there was little difference in the prices bid for the specified labor categories. The result was that all prices for all bidders fell within a narrow range, making the prices essentially equal for all bidders.

Given this outcome, the technical evaluators wanted to make the award decision based on the merits of the non-cost factors in the offerors' proposals since these provided considerable discrimination among the bidders.

Under the rules of LPTA procurements, the evaluators were told that their professional judgment was limited to making only pass/fail decisions about each bidder's proposal, and they were specifically prohibited from using their professional expertise and judgment to give more credit to an offeror with a superior proposal. In this case, the bidder with the superior proposal was slightly underbid by the lowest priced offeror.

The award was made to the offeror with the lowest price, and, in this case, this offeror had a clearly inferior proposal. Under the rules of LPTA procurements, the evaluators were deprived of making award to the company that offered a superior value to the government even though prices from all bidders were essentially the same.

## **Past performance and performance risk**

In another procurement, the government issued a solicitation for guard services at a location outside the United States. Again, I'll be vague about the procurement. Proposals were competed using LPTA as the evaluation criteria. As it turns out, the incumbent contractor's performance had been pretty terrible with multiple cure letters having been issued over the preceding 2 years. Clearly the company was struggling to perform the work.

When the proposals for the recompetes were received and evaluated, there was much discussion about how to evaluate the incumbent's past performance and how to score it on a pass/fail basis. While some of the evaluators wanted to fail the incumbent contractor due to marginal performance on the previous contract, they conceded that since the company was

doing the work currently, it would be illogical to conclude that the company couldn't do the work.

As a result, the company received a passing score for past performance, even though their performance had been less than desirable.

The incumbent contractor, fearing that they would lose on price, took a dive on price and bid lower wages—probably making a bad situation worse. Under the rules of LPTA procurements, evaluators are deprived of evaluating the merits of an offeror's past performance other than making a pass/fail decision.

Evaluators have to turn a blind eye to whether past performance was excellent or barely acceptable—it must be treated as either acceptable or not acceptable. Imagine the surprise when it was announced that the contractor who had repeatedly delivered marginal performance had been selected again.

### **What can you do?**

The judgment of government evaluators is severely limited under the rules of LPTA procurements by depriving them of their ability to exercise their professional judgment and expertise to trade off the merits of the non-cost factors in competing bidders' proposals. Using LPTA evaluation criteria can produce some strange outcomes and can leave evaluators believing they made the award to the wrong company.

If your customer is headed down the LPTA path, make sure they are aware of these potentially unexpected consequences. There are many procurement outcomes similar to the two discussed here. If you would like to share other examples, please email [RLohfeld@LohfeldConsulting.com](mailto:RLohfeld@LohfeldConsulting.com).

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