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Source Selection

Spike in Agency Use of LPTA May be Leveling, but Concerns Remain

Use of lowest price, technically acceptable (LPTA) source selections may be leveling off after gaining popularity in recent years among agency contracting offices as a way to save money.

Nonetheless, concerns remain that LPTA—a seldom seen acronym until a few years ago—is being used inappropriately.

LPTA is the “low-cost end of the best-value continuum” set out in Federal Acquisition Regulation Part 15, John Knab of Garvey Schubert Barer in Washington told Bloomberg BNA. Unlike LPTA, however, best value allows for consideration of non-cost factors, such as past performance, risk aversion and innovation.

LPTA, in contrast, does not permit trade-offs; proposals are evaluated for acceptability but not ranked using non-cost/price factors.

LPTA “is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price,” according to the FAR.

Proper Role for LPTA. There appears to be a consensus that LPTA has its place.

LPTA “is a perfectly smart way to purchase if you know what you want,” Dan Gordon, George Washington Law School associate dean for government procurement law studies, told Bloomberg BNA. “It is a useful tool as long as it is used in the right circumstances.”

LPTA “works and should work” if an agency can define requirements in a way that it will get “what it expects to get or needs to get,” as opposed to what it wants to get, said Patricia Meagher of Rogers Joseph O’Donnell in San Francisco.

There’s “not really much criticism” when LPTA is used for “fungible” items, she said. But relying on LPTA for “anything other than commodities is a mistake.”

‘Number One Concern.’ LPTA makes sense for “routine nondevelopmental” acquisitions, but not when you need continuous development and enhancement, according to Stan Soloway, president and CEO of the Professional Services Council.

Soloway called LPTA the “number one concern in terms of acquisition strategy” and staunchly criticized extending its use beyond “pure commodity” purchases. LPTA “incentivizes a race to the bottom” outside those parameters, he told Bloomberg BNA.

Technical requirements are “really, really minimal” and the source selection process leaves no room for flexibility,” he said. If you are “looking for innovation,” LPTA “is not the right tool,” but rather a “major inhibitor to high-quality delivery.”

Expanded use of LPTA was anticipated a few years ago in response to sequestration, but Knab said he has not come across a “a big backlash” against the evaluation method.

Knab said most of his clients offer high-level services, such as information technology deliverables.

“The government wisely doesn’t like to use LPTA” in such cases, he said. Rather it tends to be “looking for best value” when making those kinds of purchases.

However, there has been what Knab described as a “creep” in use of LPTA due to the fiscal constraints facing government agencies. Agencies might want to use the best-value approach but are under pressure to save money, he said.

Meagher said agencies started to use LPTA more often a few years ago in response to budget cuts. This prompted industry concern that the government “should have discretion to pay additional money for higher levels of services it really wants,” she said.

Move Away from LPTA? Adequately defining requirements is another concern when it comes to LPTA, she said. Nevertheless, federal agencies “have felt their way on this” since then.

“People are understanding what goes on with LPTA,” Meagher said. She pointed to “some movement” by the Defense Department “away from LPTA, at least at the higher level.”

According to Soloway, there have been “some pockets” of improvement, but overuse of LPTA is “still a huge problem.” Exactly how huge is difficult to determine, particularly given the dearth of data on source selections.

Soloway said there are “lots and lots of cases” in which agencies hide behind a “smokescreen,” saying they will consider a cost/technical tradeoff but going with LPTA instead.

Notwithstanding assertions to the contrary by Under Secretary of Defense for Acquisition, Technology and Logistics Frank Kendall, the DOD is feeling pressure “to go low,” he said.

Recent GAO Report. Kendall recently credited the Defense Department’s Better Buying Power (BBP) initiatives—the latest draft of which was released Sept. 19 (102 FCR 343, 9/23/14)—with de-emphasizing LPTA competitions when best value is a better source selection method.

However, the Government Accountability Office has attributed increased DOD reliance on LPTA to earlier BBP initiatives.

While the GAO said in a July report that data on the DOD's use of source selection processes were not readily available, it still found that the Pentagon increased its use of LPTA from 26 percent in fiscal year 2009 to 36 percent in FY 2013 for contracts with obligations of \$25 million or more.

Over that same period, reliance by the DOD on the trade-off source selection process declined from 69 percent to 58 percent.

Due to the lack of government data, whether the process is being used appropriately can only be determined on a case-by-case basis, said Gordon, former head of the Office of Federal Procurement Policy.

He said LPTA use should decline given that an increased proportion of government purchases have been for services in recent years. Thus, it is "somewhat troubling" if LPTA use is going up, Gordon said.

Additional GAO Findings. For contracts with obligations of more than \$1 million and less than \$25 million in FY 2013, the DOD used trade-off and LPTA evaluation methods at about the same rate—47 percent and 45 percent respectively.

Altogether, the DOD used trade-off and LPTA to evaluate offers for about 93 percent of the 2,851 new, competed contracts for which it had obligated over \$1 million in FY 2013. It relied on sealed bids for the remaining approximately 7 percent, the GAO said.

The DOD used LPTA primarily to acquire commercial products such as fuel for contracts with obligations of \$25 million or more, as well as a mix of products and services for contracts with obligations between \$1 million and \$25 million.

In conducting its review, the GAO said it was told by several contracting and program officials "that their commands gave more attention to whether LPTA is an alternative option in light of declining budgets and Better Buying Power initiatives." In doing so, they discussed how to set technical acceptability at an appropriate level where there was no additional benefit from paying for more than that level, the GAO said.

According to the report, LPTA is viewed as:

- less complex and time consuming than a trade-off; and
 - a good choice for mature, commercial requirements when there is no added value in conducting a trade-off.
- Other factors contributing to the shift, the report said, include:
- the difficulty of justifying higher-dollar solutions from a technical standpoint when solutions that meet the minimum requirements may exist;
 - a move away from overstating requirements when purchasing products that meet a program's needs; and
 - increased scrutiny of acquisitions when non-cost factors are deemed more important than price.

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The GAO report is available at: <http://www.gao.gov/products/GAO-14-584>.