Bill on the Hill:
Congress Seeks to End the Misuse of LPTA

by Cate Benedetti, PSC Vice President of Government Relations

For federal agencies, like any individual making a purchase, one expression remains true: you get what you pay for.

For too long and for too many reasons, the government has used "lowest-price technically-acceptable" (LPTA) evaluation factors to purchase goods and services without adequate consideration of the complexity of the needs and the range of available solutions. Whether it was tightening federal budgets, fear of a bid protest or a lack of understanding of the value that the contracting community can provide, the government has misused LPTA for acquisitions that should not be done on the cheap.

PSC understands that LPTA has a place in the acquisition toolbox and when appropriately used it can achieve desired outcomes. But we also know—and the government is beginning to see—that it is particularly ill-advised to apply LPTA to complex professional or IT services where higher-level technical capabilities and innovation are often sought and contracting requirements are often difficult to accurately define.

Taxpayers benefit when the government has the flexibility to obtain the best value from a contract and when innovative solutions can be leveraged to improve outcomes and mission results.

That's why the contractor community, led by PSC, has consistently pushed to reign in LPTA's misuse. With bipartisan allies in Congress—including Reps. Mark Meadows (R-NC) and Don Beyer (D-VA)—PSC has advocated for government-wide restrictions on the use of LPTA for complex services contracts.

By approving the Fiscal Year 2019 National Defense Authorization Act (NDAA, now P.L. 115-232), Congress codified these restrictions and directed agencies to seek a best value trade-off between price and technical solutions, rather than default to the price-predominant evaluation factor.

Specifically, Section 880 restricts the use of LPTA by civilian agencies to acquisitions that meet six stated criteria. The law also requires those agencies, to the maximum extent practicable, avoid LPTA for contracts for which a focus on price over value is particularly problematic, including information technology and cybersecurity services, engineering and technical services, and other knowledge-based services or solutions.

Section 880 parallels language included in the Fiscal Year 2017 NDAA applicable only to the Department of Defense.

LPTA is often misinterpreted as a cost-saving mechanism. Indeed, LPTA can lead to short-term cost savings. When used inappropriately, however, it often leads to longer-term costs for the purchasing agency because of subpar performance, scope of work change orders, or other contract rework efforts associated with either terminating or fixing the contract. In a 2017 report, almost 70% of respondents said they had seen winning LPTA contractors receive price relief within the first year following award of an LPTA bid, up from 54.6% in 2014.[1]

That's why the twin NDAA provisions are so critical. Contracting officers will now have the tools to promote value and be smarter buyers, and the incentive to use them. Rather than pushing experience and capability levels downward and introducing cost pressures that could impair successful program performance, federal agencies will now have the flexibility necessary to seek and obtain innovative solutions, better outcomes and ultimately the best value on behalf of taxpayers. ■

[1] https://washingtontechnology.com/pages/insider-reports/2017-the-hate-continues.aspx