

Updates

December 20, 2018

DOD Proposed Rule Limits the Use of LPTA

The U.S. Department of Defense (DOD) proposed to [amend](#) the Defense Federal Acquisition Regulation Supplement (DFARS) on December 4, 2018, to limit the use of lowest price technically acceptable (LPTA) procurements.

The LPTA procurement process requires source selection officials to choose the lowest priced proposal that meets minimum technical specifications, even if other proposals offer the government significant, non-price benefits. By forcing source selection officials to focus on price, LPTA procurements reduce officials' discretion to choose the products and services best-suited to the government's needs, and encourage contractors to propose minimally acceptable products and services instead of higher-quality, innovative solutions.

Reflecting Congress's concern with the acquisition of minimally acceptable solutions in the service of national defense, the National Defense Authorization Acts (NDAA) for 2017 and 2018 directed DOD to restrict the use of LPTA procurements. As instructed, DOD now proposes to add new DFARS section 215.101-2-70 to significantly limit the use of the LPTA source selection process.

Proposed Rule

The new DFARS 215.101-2-70 would *limit* the use of LPTA procedures to procurements in which *all eight* of the following factors are met:

1. Minimum requirements can be clearly described and measured
2. No or minimal value will be realized from a proposal that exceeds minimum technical or performance requirements
3. Proposed technical approaches require no or minimal subjective judgment by the source selection authority (SSA)
4. The SSA is confident that reviewing all technical proposals would not lead to the identification of characteristics that could provide value or benefit
5. No or minimal additional innovation will be realized by using a difference selection method
6. The goods being procured are predominantly expendable, nontechnical or have a short life expectancy/shelf life
7. The contract file contains a determination that the lowest price reflects full life-cycle costs
8. The contracting officer documents the contract file describing the circumstances justifying use of the LPTA process

The new DFARS 215.101-2-70 would also provide that contracting officers *must avoid*, to the maximum extent practicable, using LPTA procedures in procurements predominantly for the acquisition of: (1) IT, cybersecurity, systems engineering and technical assistance services, advanced electronic testing or other knowledge-based professional services; (2) items designated as personal protective equipment; and (3) services designated as knowledge-based training or logistics services in contingency operations or other operations outside of the United States.

Finally, the new DFARS 215.101-2-70 would *prohibit* the use of LPTA procurements for: (1) personal protective equipment or aviation critical safety items where a lower quality item can result in combat casualties; (2) engineering or manufacturing development for major defense acquisition programs; and (3) auditing

contracts.

These new LPTA limitations and prohibitions would apply to Federal Acquisition Regulation (FAR) part 15 negotiated procurements, orders placed against Federal Supply Schedules using FAR subpart 8.4 procedures, FAR part 12 commercial items acquisitions, and orders placed under multiple award indefinite delivery contract using FAR 16.505 procedures.

Potential Effects

If DOD finalizes the proposed rule without revision, DOD will have far greater difficulty using LPTA procedures to procure, for example, new technology with military application or sophisticated professional services of any sort. Moreover, the highly prescriptive nature of the new process for justifying the use of LPTA will open DOD to new protests challenging the terms of an LPTA solicitation.

Contractors have until February 4, 2019 to submit comments on DOD's proposed rule. We will be monitoring developments on this topic—[subscribe here](#) for future updates.

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