

Legal Alerts

The Shift from Best Value to Lowest Price, Technically Acceptable Evaluations

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Garvey Schubert Barer Legal Update, March 2013.

Before Award: Can you compete?

After Award: Did shift occur without notice?

To save money, agencies are increasingly evaluating proposals based on a "Lowest Price, Technically Acceptable" approach, rather than the traditional "Best Value" approach - sometimes even if the solicitation criteria states that it is a Best Value procurement. If you do not prepare your proposals with this in mind, your ability to win contract awards could be diminished. In addition, if you have lost a solicitation and you feel that an agency improperly made a Lowest Price, Technically Acceptable evaluation in a Best Value procurement, you may have grounds for a bid protest.

A Best Value evaluation allows the Government to take a more holistic approach when considering contract award. In addition to price and technical requirements, a best value evaluation approach can include: past performance, past experience, risk assessment, and management approach. The Government can more favorably evaluate proposals that exceed the minimum specifications. In contrast, the Lowest Price, Technically Acceptable (LPTA) approach does just what it says: it awards the contract to the contractor with the lowest priced, technically acceptable proposal! (The other Best Value factors are not considered.) While exceeding the Government's technical specifications can be considered by the Government in Best Value procurement, allocating resources to going above and beyond the technical specifications may price you out of the competition.

First, when preparing a proposal, keep in mind the following:

1. Be sure you understand how your proposal will be evaluated before making a submission. Busy contractors sometimes prepare a bid without focusing on this critical component. This aspect of any RFP is critical to understanding where to devote efforts in your proposal and where not to. Before launching into how you will accomplish the various elements of a particular scope of work, make sure you know how your proposal will be evaluated.

2. Make sure your proposal is technically acceptable. While it may seem that price is king under LPTA evaluations, ensuring your proposal meets the technical requirements is critical. Before the Government

can even consider your pricing proposal, it must determine whether your proposal is technically up to snuff- if it is not, your pricing proposal will be ignored. The surest way to lose out on one of these contracts is by submitting a technically unacceptable proposal.

Second, if you learn that you have not won a Best Value procurement:

1. Request a debriefing and see whether the procurement criteria shifted from a BV to a LPTA.

We recommend that contractors request debriefings whenever possible, even if the contractor is successful. Debriefings can provide invaluable information about how the Government contracting process works. Debriefings can be especially helpful if you plan on seeking future contract awards from the same agency. Further, if you suspect that a solicitation providing a Best Value procurement was really conducted as a LPTA procurement, a debriefing will be the best way for you to determine whether a protest is viable. Beware: the Government is not always required to provide a debriefing-check the solicitation. Requesting a debriefing when it is not required will not extend the time you have to file a protest. During the past few years, and several times in past year alone, the GAO has sustained protests where the Government failed conduct a proper Best Value and evaluate contractors consistently with the stated terms of the solicitation.

2. Act swiftly-the time limits for filing a bid protest are strictly enforced.

Because protests on these grounds will generally be post-award, a protest must be filed with GAO within 10 days of the contractor learning the basis of the protest. (If you request a debriefing and the debriefing informs you of the basis of a protest, you will have 10 days from the date the debriefing was held.) But, if you are requesting an automatic stay of contract award, you must file your protest within 5 days of a requested and required debriefing. The days following source selection are critical to being able get a successful protest off the ground.

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