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New Department of Defense Source Selection Procedures Released

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The Department of Defense (DoD) released its new Source Selection Procedures (Procedures) on March 31, 2016. The Procedures can be found [here](#).

The Procedures became effective April 1, 2016, and rescind the Source Selection Procedures issued on March 4, 2011, although solicitations with a source selection plan approved by the Source Selection Authority prior to May 1, 2016, may continue to use the 2011 Procedures. One of the more significant changes is the addition of a new Value Adjusted Total Evaluated Price (VATEP) tradeoff technique.

The new Procedures address certain Better Buying Power (BBP) initiatives, available [here](#). Originally launched in 2010, and now in its third iteration, BBP encompasses a set of fundamental acquisition principles to achieve greater efficiencies through affordability, cost control, elimination of unproductive processes and bureaucracy, and promotion of competition. In the new Procedures, both tradeoff and lowest price technically acceptable source selection procedures are addressed and are consistent with Better Buying Power initiatives, as discussed below. In addition, DoD notes that the new Procedures consolidate best practices collected from peer reviews and other group reviews.

Applicability to FAR Part 15 Negotiated, Competitive Acquisitions

The Procedures address competitively negotiated source selections and are applicable to all acquisitions conducted as part of a major system acquisition program, as defined in Federal Acquisition Regulation (FAR) 2.101, **and all competitively negotiated FAR part 15 acquisitions with an estimated value greater than \$10 million.** Although Defense FAR Supplement (DFARS) subpart 215.3 – Source Selection has not been updated to cite the new Procedures, it currently provides that DoD agencies “shall follow the principles and procedures” set forth in DoD’s Source Selection Procedures memorandum “when conducting negotiated, competitive acquisitions utilizing FAR part 15 procedures.”

Addresses Tradeoff Techniques

The new Appendix B – “Tradeoff Source Selection Process: Subjective Tradeoff and Value Adjusted Total Evaluated Price (VATEP) Tradeoff”— addresses two tradeoff techniques:

- First, the Subjective Tradeoff Process where the RFP identifies all evaluation factors and significant subfactors that will affect contract award by clearly stating their *relative* importance in the solicitation (FAR 15.204-5(c)).
- Second, the VATEP process, under which the RFP will both define threshold (minimum) and objective (maximum) performance and capabilities as well as the percentage price increase or dollar amount that the US Government is willing to pay for measureable levels of performance between the minimum and maximum criteria.

Appendix B of the Procedures relates to the Better Buying Power 3.0 initiative to provide clear “best value” definitions to industry. This initiative builds on the work started in Better Buying Power 2.0 to provide industry with information on the value, in monetary terms, of higher levels of performance above minimally acceptable or threshold levels. According to BBP 3.0, without this information, “the default industry position will be to bid to the lowest acceptable level of performance.” By providing this additional information, industry will know what the competitive effect of offering higher performance will be and can bid accordingly. Appendix B suggests that one of the benefits is that offerors may be more likely to propose innovative solutions which provide higher performance and capability if it is clear to them what value the end user places on exceeding the threshold or minimum performance or capability requirements and how exceeding the threshold will influence the evaluated cost/price.

Adds a New Technical Risk Rating

The 2011 Procedures had three technical risk ratings – low, moderate, and high. The 2016 Procedures provide a fourth technical risk rating, which is “unacceptable.” It is defined as “likely to cause significant disruption of schedule, increased cost or degradation of performance” and the risk is unlikely to be overcome “even with special contractor emphasis and close Government monitoring.”

Recommends Debriefings in Person

Another change in the 2016 Procedures is a stated preference for face-to-face debriefings: “[w]henver practicable, debriefings should be conducted in person.” The Debriefing Guide at Appendix A of the 2016 Procedures is generally similar to the 2011 Procedures although it now directs that “Legal Counsel *shall* attend the debriefing when the offeror’s Legal Counsel will attend the debriefing.” (Emphasis supplied.) Contractors should note the “sample offeror questions” at A.9 of Appendix A, which includes a useful checklist of key questions for offerors to consider in preparing for a debriefing.

Source Selection Team Roles and Responsibilities

An interesting aspect of the new Procedures is the expanded roles and responsibilities section, including a new section on the role of Legal Counsel. That section recognizes that “Legal Counsel is an integral part of the source selection process and is crucial in reviewing documentation for legal sufficiency as well as providing legal advice throughout the source selection process.”

Lowest Price Technically Acceptable

The 2016 Procedures address the Lowest Price Technically Acceptable (LPTA) Source Selection Process in Appendix C and include interesting language clarifying the appropriate use of LPTA. The Procedures, for example, continue to provide that the LPTA source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price and that this process may be used where the government places no value of the product or service exceeding threshold technical or performance requirements. Both the 2011 and 2016 Procedures also state that the appropriate use of LPTA includes “acquisitions of commercial

or non-complex services or supplies which are clearly . . . defined,” but the 2016 Procedures add that those services and supplies also must be “objectively defined.” App. C, ¶ 1. When using LPTA, the Procedures also add that the agency’s “solicitation and the Source Selection Plan must clearly describe the minimum requirements that will be used to determine the acceptability of the proposal” and that “[w]ell-defined standards of performance and quality of services must be available to support the use of LPTA.” The new Procedures also advise procuring agencies that “[w]hen standards of performance and quality are subjective, or the Government places value on higher quality or performance, another approach should be used,” and that “LPTA should not be used when the SSA will be required to make a judgment as to the desirability of one offeror’s proposal.”

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