

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3019
OFFERED BY MR. CONNOLLY OF VIRGINIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Promoting Value
3 Based Procurement Act of 2017”.

**4 SEC. 2. AVOIDANCE OF USE OF LOWEST PRICE TECH-
5 NICALLY ACCEPTABLE SOURCE SELECTION
6 CRITERIA IN CERTAIN PROCUREMENTS.**

7 (a) STATEMENT OF POLICY.—It shall be the policy
8 of the United States Government to avoid using lowest
9 price technically acceptable source selection criteria in cir-
10 cumstances that would deny the Government the benefits
11 of cost and technical tradeoffs in the source selection proc-
12 ess.

13 (b) AVOIDANCE OF USE OF LOWEST PRICE TECH-
14 NICALLY ACCEPTABLE SOURCE SELECTION CRITERIA IN
15 CERTAIN PROCUREMENTS.—

16 (1) IN GENERAL.—To the maximum extent
17 practicable, the use of lowest price technically ac-
18 ceptable source selection criteria shall be avoided in

1 the case of a procurement that is predominately for
2 the acquisition of—

3 (A) information technology services,
4 cybersecurity services, systems engineering and
5 technical assistance services, advanced elec-
6 tronic testing, audit or audit readiness services,
7 or other knowledge-based professional services;

8 (B) personal protective equipment; or

9 (C) knowledge-based training or logistics
10 services in contingency operations or other op-
11 erations outside the United States, including in
12 Afghanistan or Iraq.

13 (2) SITUATIONS IN WHICH AVOIDANCE IS NOT
14 PRACTICABLE.—In the case of a procurement de-
15 scribed in paragraph (1) with respect to which the
16 head of an executive agency determines that avoid-
17 ance of the use of lowest price technically acceptable
18 selection criteria is not practicable, lowest price tech-
19 nically acceptable source selection criteria may be
20 used if—

21 (A) the head of the executive agency is
22 able to comprehensively and clearly describe the
23 minimum requirements expressed in terms of
24 performance objectives, measures, and stand-

1 ards that will be used to determine acceptability
2 of offers;

3 (B) the executive agency would realize no,
4 or minimal, value from a contract proposal ex-
5 ceeding the minimum technical or performance
6 requirements set forth in the request for pro-
7 posal;

8 (C) the proposed technical approaches will
9 require no, or minimal, subjective judgment by
10 the source selection authority as to the desir-
11 ability of one offeror's proposal versus a com-
12 peting proposal;

13 (D) the source selection authority has a
14 high degree of confidence that a review of tech-
15 nical proposals of offerors other than the lowest
16 bidder would not result in the identification of
17 factors that could provide value or benefit to
18 the executive agency;

19 (E) the contracting officer has included a
20 justification for the use of a lowest price tech-
21 nically acceptable evaluation methodology in the
22 contract file; and

23 (F) the head of the executive agency has
24 determined that the lowest price reflects full

1 life-cycle costs, including for operations and
2 support.

3 (c) REPORTING.—Not later than one year after the
4 date of the enactment of this Act, and annually thereafter
5 for two years, the Comptroller General of the United
6 States shall submit to the appropriate congressional com-
7 mittees a report on the number of instances in which low-
8 est price technically acceptable source selection criteria is
9 used for a contract exceeding \$5,000,000, including an ex-
10 planation of how the factors listed in subsection (b)(2)
11 were considered in making a determination to use lowest
12 price technically acceptable source selection criteria.

13 (d) REVISION OF FEDERAL ACQUISITION REGULA-
14 TION.—The Federal Acquisition Regulation shall be re-
15 vised to implement the requirements of this Act.

16 (e) APPLICABILITY.—This Act shall apply with re-
17 spect to any solicitation issued on or after the date that
18 is 120 days after the date of the enactment of this Act.

19 (f) DEFINITIONS.—In this section:

20 (1) EXECUTIVE AGENCY.—The term “executive
21 agency” has the meaning given that term in section
22 102 of title 40, United States Code, except that the
23 term does not include the Department of Defense.

1 (2) CONTINGENCY OPERATION.—The term
2 “contingency operation” has the meaning given that
3 term in section 101 of title 10, United States Code.

4 (3) APPROPRIATE CONGRESSIONAL COMMIT-
5 TEES.—The term “appropriate congressional com-
6 mittees” means the Committee on Oversight and
7 Government Reform of the House of Representatives
8 and the Committee on Homeland Security and Gov-
9 ernmental Affairs of the Senate.

