

Decision

Matter of: Coast to Coast Computer Products, Inc.

File: B-419624.2

Date: June 28, 2021

Rick Vogel, for the protester.

Marissa M. Jackson, Esq., and Bruce T. McCarty, Esq., Defense Logistics Agency, for the agency.

Jonathan L. Kang, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that a solicitation improperly provides for award on a lowest-price, technically acceptable (LPTA) basis is denied where the agency issued a determination that reasonably found that the statutory and regulatory requirements for use of LPTA award criteria were satisfied.

DECISION

Coast to Coast Computer Products, Inc. (CTC), of Simi Valley, California, protests the terms of request for proposals (RFP) No. SP7000-21-R-1001, which was issued by the Defense Logistics Agency (DLA) for the lease of multifunction devices (MFDs). The protester contends that the solicitation improperly provides for award of contracts on a lowest-price, technically acceptable (LPTA) basis.

We deny the protest.

BACKGROUND

DLA issued the RFP on January 4, 2021, seeking proposals for the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts for the lease of A3, A4, and production-level MFDs, accessories, and document devices, as well as related supplies

and services.¹ Protest, exh. 5, RFP at 1.² The requirements include leasing MFDs, “installation and removal, full-service maintenance, all consumable supplies (excluding paper), end-user training, reports, relocations, network functionality, and network security.” *Id.* The IDIQ contracts will each have an ordering period of 5 years, and the maximum ordering value for all contracts will be \$702,153,470. *Id.* at 1-2.

The RFP advises that proposals will be evaluated based on the following factors: (1) technical, (2) past performance, and (3) price. *Id.* at 6. The technical and past performance factors will be evaluated on an acceptable/unacceptable basis. *Id.* at 6-7. As relevant here, an offeror’s technical proposal “must demonstrate it meets the minimum specification requirements of each device as well as any information technology (IT) and security requirements set forth in the attached [performance work statement (PWS)].” *Id.* at 6. The solicitation provides for awards of contracts on an LPTA basis to the responsible offerors whose proposals are rated acceptable under the technical and past performance factors, and offer the “lowest price to the government.” *Id.*

On February 15, prior to the solicitation’s February 18 closing date, CTC filed an agency-level protest challenging the RFP’s LPTA award criteria. Protest, exh. 8, Agency-Level Protest at 1. The protester argued that the RFP violated Defense Federal Acquisition Regulation Supplement (DFARS) section 215.101-2-70 which, as discussed below, sets forth the limitations on the use of LPTA award criteria in solicitations issued by the Department of Defense. The contracting officer denied the protest on February 17, concluding that the RFP satisfied the requirements of the DFARS section. Protest, exh. 9, Agency-Level Protest Decision at 1.

On February 25, CTC filed a protest with our Office challenging the RFP’s LPTA award criteria. Protest (B-419624) at 1. On March 10, prior to filing an agency report, DLA advised our Office that it would take corrective action in response to the protest. *Coast to Coast Computer Prods., Inc.*, B-419624, Mar. 12, 2021, at 1 (unpublished decision). The agency stated that it would “conduct a new evaluation pursuant to DFARS 215.101-2-70” to determine whether to use LPTA award criteria for the solicitation. *Id.* Based on the proposed corrective action, we concluded that the protest was rendered academic and dismissed the protest. *Id.*

On March 22, DLA posted a notice on the System for Award Management (SAM) website advising that it would proceed with the LPTA award criteria for the RFP. Agency Report (AR), Tab A, SAM.gov Notice at 1. The notice included a memorandum from the contracting officer approving the use of LPTA award criteria, which was issued

¹ A MFD for this procurement generally means devices that copy, print, scan, and fax. Protest, exh. 15, LPTA Determination at 1. A3 and A4 designations refer to paper sizes, while the production-level designation refers to higher volume capacities.

² Citations to the record and the parties’ briefings are to the Adobe PDF pages for those documents.

pursuant to the requirements of DFARS section 215.101-2-70. *Id.*; Protest, exh. 15, LPTA Determination. This protest followed.

DISCUSSION

CTC argues that the RFP improperly provides for award on an LPTA basis, in violation of DFARS section 215.101-2-70. The protester argues that the solicitation should use award criteria that provides for a tradeoff between technical and non-technical factors, wherein technical proposals are evaluated to determine whether they exceed the RFP's minimum requirements. See Protest at 14; Comments at 6. For the reasons discussed below, we find that the agency's determination to use LPTA award criteria was reasonable and consistent with the requirements of the DFARS, and that there is no basis to sustain the protest.³

Section 813 of the National Defense Authorization Act for fiscal year 2017 provided that "[i]t shall be the policy of the Department of Defense to avoid using lowest price technically acceptable source selection criteria in circumstances that would deny the Department the benefits of cost and technical tradeoffs in the source selection process." Pub. L. No. 114-328, 130 Stat. 2270 (2016). Section 215.101-2-70 of the DFARS implementing this statutory requirement contains eight criteria, all of which must be satisfied by a solicitation that employs an LPTA evaluation method:

- (i) Minimum requirements can be described clearly and comprehensively and expressed in terms of performance objectives, measures, and standards that will be used to determine the acceptability of offers;
- (ii) No, or minimal, value will be realized from a proposal that exceeds the minimum technical or performance requirements;
- (iii) The proposed technical approaches will require no, or minimal, subjective judgment by the source selection authority as to the desirability of one offeror's proposal versus a competing proposal;
- (iv) The source selection authority has a high degree of confidence that reviewing the technical proposals of all offerors would not result in the identification of characteristics that could provide value or benefit;
- (v) No, or minimal, additional innovation or future technological advantage will be realized by using a different source selection process;
- (vi) Goods to be procured are predominantly expendable in nature, are nontechnical, or have a short life expectancy or short shelf life . . . ;

³ CTC also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest.

(vii) The contract file contains a determination that the lowest price reflects full life-cycle costs [. . .] of the product(s) or service(s) being acquired . . .; and

(viii) The contracting officer documents the contract file describing the circumstances justifying the use of the lowest price technically acceptable source selection process.

DFARS 215.101-2-70(a)(1). In addition, this DFARS subsection requires that contracting officers “avoid, to the maximum extent practicable,” using LPTA procedures for procurements that are “predominantly for the acquisitions” of certain items or services including, as relevant here, “[i]nformation technology services.” *Id.* at (a)(2)-(a)(2)(i).

In general, the determination of a contracting agency’s needs and the best method of accommodating them are matters primarily within the agency’s discretion. *Crewzers Fire Crew Transp., Inc.*, B-402530, B-402530.2, May 17, 2010, 2010 CPD ¶ 117 at 3; *G. Koprowski*, B-400215, Aug. 12, 2008, 2008 CPD ¶ 159 at 3. Although it is within a contracting agency’s discretion to determine its needs and the best method to accommodate them, an agency’s determination of its needs must still be reasonable. *See Curtin Maritime Corp.*, B-417175.2, Mar. 29, 2019, 2019 CPD ¶ 117 at 11. A protester’s disagreement with the agency’s judgment concerning the agency’s needs and how to accommodate them, without more, does not establish that the agency’s judgment is unreasonable. *Chenega Fed. Sys., LLC*, B-414478, June 26, 2017, 2017 CPD ¶ 196 at 3. The adequacy of the agency’s justification is ascertained through examining whether the agency’s explanation is reasonable, that is, whether it can withstand logical scrutiny. *Curtin Maritime Corp.*, *supra*, at 11. Our Office has applied these standards in connection with an agency’s discretion to make determinations concerning whether LPTA award criteria are authorized under DFARS section 215.101-2-70. *Verizon Bus. Net. Servs., Inc.*, B-418331.3 *et al.*, July 10, 2020, 2020 CPD ¶ 235 at 6.

As part of the corrective action in response to CTC’s initial protest, the contracting officer prepared a memorandum detailing her determination that the LPTA award criteria were appropriate for the solicitation. Protest, exh. 15, Contracting Officer (CO) LPTA Determination at 1-2. For each of the factors in DFARS subsection 215.101-2-70(a)(1), the contracting officer concluded that the requirements for use of LPTA award criteria were satisfied. *Id.* at 2. The memorandum was accompanied by a supplemental memorandum prepared by the source selection authority (SSA) explaining, as required by the fourth factor, that she had “a high degree of confidence that reviewing the technical proposals of all offerors would not result in the identification of characteristics that could provide value or benefit.” Protest, exh. 15, SSA LPTA Memorandum at 15.

Challenges to the Eight Enumerated Factors

CTC argues that DLA's memorandum issued in support of the LPTA award criteria does not satisfy the requirements of DFARS subsection 215.101-2-70(a)(1).⁴ CTC primarily argues that the agency has not accounted for the advantages of certain types of MFD technologies, and that these advantages render the agency's LPTA determination unreasonable because the agency would receive benefits from utilizing a best-value tradeoff approach.⁵ In particular, the protester contends that MFDs that use thermal inkjet printing technology "use significantly less energy to operate," and "require less maintenance" as compared to MFDs that use laser printing technology.⁶ Protest at 7-9. For the reasons discussed below, we find no basis to sustain the protest.

Description of Minimum Requirements

CTC first argues that the RFP does not satisfy the requirement to describe the minimum requirements "clearly and comprehensively . . . in terms of performance objectives, measures, and standards that will be used to determine the acceptability of offers." Comments at 4-6; DFARS 215.101-2-70(a)(1)(i). The protester argues that the PWS does not clearly define the scope of the work to be performed.

⁴ CTC does not specifically contend that DLA failed to satisfy the requirement that the contracting officer "document[] the contract file describing the circumstances justifying the use of the lowest price technically acceptable source selection process." See Comments at 16; DFARS 215.101-2-70(a)(1)(viii).

⁵ CTC also argues that the LPTA memorandum did not consider costs associated with waste disposal. Protest at 12. The protester, however, does not clearly explain what the relevant costs would be or why they would materially affect the agency's LPTA determination. See *id.* The protester also contends that there are "numerous security technology enhancements developed and released by different manufacturers," but also does not provide specific information about these benefits. *Id.* at 8. Our Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4), and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. We conclude that the CTC's arguments regarding waste disposal and security enhancements fail to state valid bases of protest and therefore dismiss them. 4 C.F.R. § 21.5(f).

⁶ The RFP does not require a particular type of printing technology; rather the PWS defines minimum performance requirements such as print resolution and pages per minute. Protest, exh. 3, PWS at 1-3.

The contracting officer's LPTA memorandum found that the RFP's "minimum requirements are clearly and comprehensively defined," and that "a review of the PWS shows each DLA requirement is set forth in meticulous detail explaining precisely what DLA needs." Protest, exh. 15, CO LPTA Memorandum at 2. For example, the contracting officer noted that "each Contract Line Item Number (CLIN) has specific minimum device specifications and requirements," and that "[t]he requirements are then further specifically detailed in the PWS" with regard to items such as performance requirements, delivery, training, service, and relocations. *Id.* at 2-4. The contracting officer also found that "all requirements are expressed in performance objectives, measures, and standards that will be used to determine the acceptability of proposals." *Id.* at 4.

CTC contends that the RFP does not adequately define certain aspects of the work. See Comments at 4-5. For example, the protester argues that the PWS does not provide adequate details about specific delivery locations, frequency or volume of orders, and the number and frequency of device relocations. *Id.* at 4-5.

We agree with the agency that the RFP reasonably defines the scope of work to be performed, in that it identifies all of the tasks to be performed and states what proposals must address in order to be found technically acceptable. See Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 7-10. For example, the PWS states that device locations must be provided for "100 [percent] of the total number of devices awarded under each order." PWS at 10. The PWS further explains that "if there are 100 devices awarded under any given order, the Contractor shall provide relocations for up to 100 devices per year," and that the moves could require "relocating the same device 100 times, relocating 100 different devices one time each or any other combination thereof each year." *Id.*

While the protester contends that additional information should be provided about the volume and frequency of the work to be required, we agree with the agency that the indefinite nature of the IDIQ contracts that will be awarded here does not establish that the solicitation fails to meet the requirement of DFARS subsection 215.101-2-70(a)(1)(i). In this regard, IDIQ contracts anticipate that ordering requirements are indefinite, and that individual orders may be placed at different times for varying quantities. See FAR 16.501-2. On this record, we find no basis to sustain the protest.

Value from Exceeding Minimum Requirements

Next, CTC argues that the RFP does not satisfy the requirement that "[n]o, or minimal, value will be realized from a proposal that exceeds the minimum technical or performance requirements." Comments at 6-10; DFARS 215.101-2-70(a)(1)(ii). The protester primarily argues that the agency's LPTA memorandum fails to address potential savings that the agency could realize through a best-value procurement that permits the proposal of MFDs with greater energy efficiency.

The RFP incorporates FAR clause 52.223-13, which requires that MFDs provided under a contract must be meet minimum standards under the Electronic Product Environmental Assessment Tool (EPEAT) standards.⁷ RFP at 15. Specifically, MFDs must “at the time of submission of proposals and at the time of award, [be] EPEAT® bronze-registered or higher.” FAR clause 52.223-13(b).

The RFP also incorporates FAR clause 52.223-15 Energy Efficiency in Energy-Consuming Products. RFP at 16. This clause requires the contractor to “ensure that energy-consuming products are energy efficient products (*i.e.*, ENERGY STAR® products or [(Federal Energy Management Program (FEMP)]-designated products).”⁸ FAR clause 52.223-15(b).

The contracting officer’s LPTA memorandum found that “no value is realized when proposals exceed the minimum technical or performance requirements.” Protest, Exh. 15, CO LPTA Memorandum at 4. In support of this finding, the contracting officer explained:

As discussed in Factor (i), above, DLA clearly and comprehensively defines its requirements. Indeed, as shown above, each DLA requirement is set forth in meticulous detail explaining precisely what DLA needs. Additionally, were a proposal to exceed DLA’s needs, DLA would realize--at best--extremely minimal value and more realistically no value.

Id. The memorandum discussed various PWS requirements concerning areas such as printing volumes, delivery times, extent of training, availability levels, networking, and security. *Id.* at 4-6.

⁷ EPEAT is a set of standards established by the Global Electronics Council for technology services and products. About EPEAT Website, www.epeat.net/about-epeat (last accessed June 28, 2021). EPEAT issues certifications in increasing level of quality: bronze, silver, and gold. *Id.* Products registered under EPEAT “must meet environmental performance criteria that address: materials selection, supply chain greenhouse gas emissions reduction, design for circularity and product longevity, energy conservation, end-of-life management and corporate performance.” Environmental Protection Agency, EPEAT Website, www.epa.gov/greenerproducts/electronic-product-environmental-assessment-tool-epeat (last accessed May 26, 2021).

⁸ Energy Star is “the government-backed symbol for energy efficiency, providing simple, credible, and unbiased information that consumers and businesses rely on to make well-informed decisions.” About Energy Star, www.energystar.gov/about (last visited June 28, 2021). FEMP “provides information about energy-efficient products and energy-saving technologies that can help agencies meet federal energy-efficient product purchasing requirements.” Department of Energy FEMP, www.energy.gov/eere/femp/energy-efficient-products-and-energy-saving-technologies (last visited June 28, 2021).

CTC argues that the solicitation failed to “consider[] power consumption during operation or [] power consumption at rest, which account for a significant portion of the cost of operation for the commercial items being acquired.” Protest at 7. CTC argues that “[n]umerous innovations have been introduced in recent years,” specifically MFDs that use thermal inkjet technology, and that these MFDs “use significantly less energy to operate, and require [less] maintenance than comparable laser devices.” *Id.*; Comments at 6-8. The protester generally argues that energy consumption savings would be achieved, but does not provide any specific representations as to the amounts. See *id.* Based on these potential savings, the protester contends that the agency unreasonably concluded that there will not be additional value realized from a proposal that exceeds the minimum requirements for a bronze EPEAT rating.

In response to the protest, DLA states that the RFP expressly addressed energy efficiency requirements through the inclusion of FAR clauses 52.223-13 and 52.223-15, which require products that have EPEAT bronze certifications and that comply with Energy Star/FEMP requirements. COS/MOL at 11-12. The agency also states that the RFP addressed energy efficiency by requiring the MFDs to enter low-energy sleep mode after 20 minutes of inactivity. *Id.* at 11 (*citing* PWS at 2). The agency contends that it reasonably found no value, or no more than minimum value, in exceeding these energy efficiency requirements. See *id.* at 12.

We think the record shows that the agency considered the requirements for energy efficiency and also reasonably found that potentially higher levels of energy efficiency do not provide more than a minimal value to the government. See Protest, exh. 15, CO LPTA Memorandum at 4-6; COS/MOL at 11-12. The protester’s disagreement with the agency’s judgment regarding whether there is more than a minimal benefit from a higher EPEAT certification, without more, does not establish that the LPTA memorandum was unreasonable. We therefore find no basis to sustain the protest.⁹

⁹ The third factor of the DFARS subsection addresses whether “[t]he proposed technical approaches will require no, or minimal, subjective judgment by the source selection authority as to the desirability of one offeror’s proposal versus a competing proposal.” DFARS 215.101-2-70(a)(1)(iii). CTC argues that, assuming there are additional benefits that the agency must consider, then subjective judgment will be required as part of the evaluation and award decision. Comments at 9. Similarly, CTC argues that the agency could not have satisfied the fourth factor in the DFARS subsection: “The source selection authority has a high degree of confidence that reviewing the technical proposals of all offerors would not result in the identification of characteristics that could provide value or benefit.” *Id.* at 10-11; DFARS 215.101-2-70(a)(1)(iv).

We conclude that the protester’s arguments are derivative of its challenges to the agency’s conclusions regarding the potential benefits of exceeding the agency’s minimum requirements. Because we find no merit to the protester’s arguments concerning the agency’s judgments regarding additional benefits above the RFP’s minimum requirements, we also find no merit to its arguments concerning the agency’s conclusion that subjective judgment will not be required.

Innovation and Future Technological Advantage

Next, CTC argues that the RFP does not satisfy the requirement that “[n]o, or minimal, additional innovation or future technological advantage will be realized by using a different source selection process.” Comments at 11-12; DFARS 215.101-2-70(a)(1)(v). The protester primarily argues that the agency’s determination fails to address the benefits that thermal inkjet printers could provide in connection with energy savings, particularly with regard to “equipment that has been released in the recent 48 months.” Comments at 11.

The contracting officer found that “[n]o additional innovation or future technological advantage will be realized using a different source selection process.” Protest, exh. 15, LPTA Memorandum at 7. In this regard, the contracting officer stated that “[t]he end user’s needs are for devices that provide copy, print, scan, and fax (except [classified information transmission]) functionalities.” *Id.* Aside from these features, however, the contracting officer explained that “[a]dditional functionalities provide no benefit,” and that “[t]he Government does not require additional innovation or technological advantages” beyond “the minimum specifications and requirements of the PWS and support the industry standard for multi-functional devices.” *Id.*

Here again, CTC argues that DLA should have concluded that use of best-value tradeoff award criteria would provide benefits because certain MFDs offer energy-savings advantages associated with EPEAT certifications levels higher than bronze. As discussed in the LPTA memorandum for this factor, as well as the factor concerning the value of exceeding minimum requirements, the agency concluded that there was no or minimal value in exceeding the minimum requirements for bronze EPEAT certifications. The protester’s disagreement with the agency’s judgment regarding innovation and future technological advances, without more, does not establish that the LPTA memorandum was unreasonable. For these reasons, we find no basis to sustain the protest.

Expendability and Shelf Life

Next, CTC argues that the RFP does not satisfy the requirement that the “[g]oods to be procured are predominantly expendable in nature, are nontechnical, or have a short life expectancy or short shelf life.” Comments at 12-13; DFARS 215.101-2-70(a)(1)(vi). The protester primarily argues that the agency unreasonably concluded that MFDs are expendable, and that they have a short life expectancy.

DLA contends that the DFARS subsection at (a)(1)(vi) does not apply here because it states that the restriction applies to “goods,” and the RFP concerns the acquisition of services to lease MFDs, rather than the acquisition of MFDs by the agency. COS/MOL at 16-17; DFARS 215.101-2-70(a)(1)(vi). As the contracting officer’s memorandum notes, ownership of the MFDs remains with the contractor and does not pass to the government. Protest, exh. 15, CO LPTA Memorandum at 7.

The final rule implementing this DFARS subsection, issued by the Department of Defense in the Federal Register, makes clear that the subsection at (a)(1)(vi) applies only to the acquisition of goods, and does not apply to the acquisition of services. 84 Fed. Reg. 50786, Sept. 26, 2019. The notes for the final rule explain that while the requirements of subsection (a)(1) apply to the acquisition of both goods and services, “[o]ne exception is the limitation at DFARS 215.101-2-70(a)(1)(vi), which implements paragraph (a)(3) of section 822 of the [National Defense Authorization Act for fiscal year] 2018 that states the limitation is “with respect to a contract for the procurement of goods[.]” *Id.*

The RFP classifies the solicitation under North American Industry Classification System (NAICS) code 532420, which is for Office Machinery and Equipment Rental and Leasing. RFP at 1. This NAICS code is classified as a service industry rather than a goods industry. See Bureau of Labor Statistics, *Industries at a Glance*, www.bls.gov/iag/tgs/iag_index_naics.htm (last visited June 28, 2021). The protester does not specifically challenge DLA’s selection of a NAICS code for this solicitation; in any event, our Office does not have jurisdiction to hear challenges of selected NAICS codes. 4 C.F.R. § 21.5(b)(1); *Warrior Serv. Co.*, B-417574, Aug. 19, 2019, 2019 CPD ¶ 298 at 3 n.5.

Where parties disagree as to the interpretation of a statute or regulation, our analysis begins with the language of the disputed provision. See *ASRC Fed. Data Net. Techs., LLC*, B-418028, Dec. 26, 2019, 2019 CPD ¶ 432 at 8. Where the relevant statute or regulation has a plain and unambiguous meaning, the inquiry ends with that plain meaning. *Id.* (citing *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984)).

We agree with DLA that the plain meaning of DFARS subsection 215.101-2-70(a)(1)(vi) states that the restriction applies to goods, rather than services. Because DLA reasonably concluded the solicitation here concerns the acquisition of services, rather than goods, we agree with the agency that DFARS subsection 215.101-2-70(a)(1)(vi) does not apply here. We therefore find no basis to sustain the protest.

Life-Cycle Costs

Next, CTC argues that the LPTA memorandum does not satisfy the requirement that the “contract file contains a determination that the lowest price reflects full life-cycle costs . . . of the product(s) or service(s) being acquired.” Comments at 14-16; DFARS 215.101-2-70(a)(1)(vii). The protester primarily argues that the agency failed to consider the potential cost differences between different models of MFDs associated with energy usage because “[t]here are significant differences in the amount of power consumed during the operation of varying MFD makes and models, and differences in the amount of power consumed [by] MFDs of varying makes and models [when they] are in sleep and hibernation modes.” Comments at 15.

The LPTA memorandum states that the agency's independent government cost estimate (IGCE) reflects the full life-cycle costs, as verified by the Policy and Support Branch Chief for the DLA activity. Protest, exh. 15, CO LPTA Memorandum at 2. These costs include "acquiring (delivery and installation), operating (relocations and consumables), supporting (maintenance and technical support), and (if applicable) disposing of the items being acquired. . . ." *Id.* at 8. The memorandum further states that the PWS accounts for all of the agency's requirements as follows:

[A] review of the PWS clearly shows the full life-cycle, "from cradle to grave," is meticulously set forth and accounted for in DLA's requirements from acquisition of the leased MFDs (PWS §§ I-III), delivery and installation (PWS § IV), training (PWS § V), maintenance (PWS § VI), relocations (PWS § VII), technical refreshment (PWS § VIII), and removals (PWS § IX). Moreover, every other associated service is also meticulously set forth in the DLA's requirements. This includes reports (PWS § X), invoicing (PWS § XI), network functionality (PWS § XII), network security (PWS), Options to order preconfigured devices (PWS § XIV), testing (PWS § XV), supply chain risk management (PWS § XVI), an enterprise management tool (PWS § XVII) and base installation security requirements (PWS § XVIII).

Id.

In response to the protest, DLA also states that its consideration of total life-cycle costs considered energy usage to the extent the minimum requirements include a sleep/hibernation mode for MFDs after a period of inactivity, and require a minimum bronze EPEAT certification. COS/MOL at 17-18.

CTC's arguments focus on the existence of higher EPEAT certification levels, arguing that although "MFDs exist with ratings of Silver and Gold . . . there is no weighted preference or stated desire for devices" that exceed the minimum requirements for a bronze certification. Comments at 15. In essence, the protester argues that the agency's cost estimate does not account for the possibility that MFDs that exceed the minimum bronze EPEAT certification requirements could result in lower energy costs.

We conclude that CTC's arguments do not show that DLA's life-cycle cost analysis is unreasonable because the DFARS does not require the agency to consider costs on the basis argued by the protester, *i.e.*, the comparative costs of alternatives to the minimum requirements. Rather, the DFARS subsection states that the agency is required to consider the full life-cycle costs "of the product(s) or service(s) being acquired." DFARS 215.101-2-70(a)(1)(vii). Because the DFARS subsection does not require the agency to account for differences between the minimum requirements and other alternatives in the manner argued by the protester, we find no basis to sustain the protest.

Avoidance of LPTA Criteria to the Maximum Extent Practicable

CTC argues that DLA's determination in support of the issuance of the solicitation with LPTA award criteria does not satisfy the requirement of DFARS subsection 215.101-2-70(a)(2) to avoid the use of LPTA award criteria "to the maximum extent practicable." Comments at 15-20. For the reasons discussed below, we find no basis to sustain the protest.

In addition to the eight enumerated factors in DFARS subsection 215.101-2-70(a)(1), contracting agencies are required to "avoid, to the maximum extent practicable," using LPTA procedures for procurements that are "predominantly for the acquisitions" of "[i]nformation technology services." DFARS 215.101-2-70(a)(2) -(a)(2)(i).

The Federal Acquisition Regulation (FAR) defines information technology (IT) as follows:

Information technology means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency. . . .

FAR 2.101.

In addition to this definition, the FAR also defines electronic and information technology (EIT) as follows:

Electronic and information technology (EIT) has the same meaning as "information technology" except EIT also includes any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term EIT, includes, but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide websites, multimedia, and office equipment (such as copiers and fax machines).

Id. (emphasis added).

The contracting officer's LPTA determination concluded that the services required under the RFP were not for the acquisition of information technology (IT) services, and that subsection (a)(2) of the DFARS section therefore did not apply. Protest, exh. 15, CO LPTA Memorandum, at 9. The contracting officer found that MFDs meet the definition of EIT, but not IT:

MFDs are considered "electronic and information technology (EIT)" in accordance with the FAR Part 2 definition: "The term EIT, includes, but is

not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide websites, multimedia, and office equipment (such as copiers and fax machines).” The leased MFDs sought through RFP SP7000-21-R-1001 are office equipment that are very similar to copiers and fax machines. In contrast, the FAR Part 2 definition of “Information Technology” does not include office equipment such as copiers and fax machines. It follows from these definitions that services associated with lease of MFDs are not IT services.

Id. The contracting officer also stated that guidance at DFARS Procedures, Guidance, and Information section 237.102-74 provides that device leases are categorized as equipment-related services, but not information technology services. *Id.*

The contracting officer also found, however, that even if the RFP was for the acquisition of IT services, the use of other than LPTA procedures was not practicable because “DLA will not realize any value from proposals that exceed the minimum specifications in the RFP’s [PWS]” because “there is no value the Government would be willing to pay for from a proposal that exceeds the minimum technical/performance requirements.” *Id.* at 10. The contracting officer further explained that issuing the solicitation on a best-value basis would “likely mislead proposers” by inducing them to propose higher prices for features for which the government would not be willing to pay a price premium. *Id.*

CTC and DLA agree that the solicitation here is for the lease of EIT equipment, as defined in FAR section 2.101, in that the MFD requirements fall under the definition of office equipment. COS/MOL at 19-20; Comments at 16-18. The parties do not agree, however, whether the solicitation is for the acquisition of IT goods or services as defined in FAR section 2.101. *See id.* We need not resolve whether MFDs are IT or EIT under the FAR because we agree that the agency reasonably found that use of other than LPTA award criteria was not practicable here.¹⁰

The DFARS section does not prohibit the use of LPTA award criteria for IT services. Instead, it instructs agencies to avoid the use of LPTA award criteria in acquisitions that are predominantly for IT services “to the maximum extent practicable.” DFARS 215.101-2-70(a)(2). In *Verizon Bus. Net. Servs. Inc.*, we concluded that the agency

¹⁰ We note, however, that the definition of EIT does not necessarily include all items that are IT. In this regard, EIT “has the same meaning as ‘information technology,’” but also includes certain items that would not otherwise be included in the definition of IT, namely: “any equipment or interconnected system(s) or subsystem(s) of equipment, that is used in the creation, conversion, or duplication of data or information.” FAR 2.101. In other words, the definition of EIT encompasses a broader range of items than the definition of IT. The definition of EIT would not need to “also include[]” additional items such as “any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information” if those items were already included in the definition of IT.

reasonably found the use of other than LPTA award criteria was not practicable because there were no additional benefits to be gained from proposals that exceeded the agency's minimum requirements. *Verizon Bus. Net. Servs., Inc., supra*, at 10.

CTC contends that the DFARS mandates that agencies use "all other source selection procedures that can be utilized for an acquisition for information technology services" before using LPTA award criteria. Comments at 2. We find no merit to this interpretation of the DFARS as it effectively prohibits the use of LPTA award criteria whenever use of other than LPTA criteria is possible. As our Office has explained, the term possible is different from the terms practical or practicable. See *HAP Constr., Inc.*, B-280044, B-280044.2, Sept. 21, 1998, 98-2 CPD ¶ 76 at 5. The protester's interpretation would, in essence, unreasonably limit the use of LPTA award criteria to situations where all other award criteria, such as best value, are impossible to use.

We think the agency reasonably interpreted the DFARS to mean that agencies must avoid the use of LPTA award criteria in all instances where it is practicable to do so; where impractical to do so, however, the prohibition does not apply. Because the agency reasonably concluded that there are no additional benefits to be gained from seeking proposals that exceed the agency's minimum requirements, we agree with the agency that it was not practicable to avoid the use of LPTA award criteria. See *Verizon Bus. Net. Servs., Inc., supra*. We therefore find no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel