

Maeder



**The Comptroller General  
of the United States**

Washington, D.C. 20548

**Decision**

**Matter of:** Creative Management Technology, Inc.

**File:** B-233255; B-233330

**Date:** February 28, 1989

**DIGEST**

Protests that solicitations for grounds maintenance services and refuse collection and disposal services subject bidders to unreasonable financial risks because they do not contain a cost-reimbursement line item for the repair or replacement of used government-furnished equipment are without merit where the solicitations contain sufficient information for offerors to compete intelligently and on equal terms; there is no legal requirement that solicitations eliminate all risk for the contractor.

**DECISION**

Creative Management Technology, Inc. (CMT), protests invitation for bid (IFB) Nos. F08650-88-B-0073 and F08650-88-B-0117 issued by Patrick Air Force Base for grounds maintenance services and for refuse collection and disposal services at Cape Canaveral Air Force Station, Florida. CMT contends that Patrick's decision to meet its grounds maintenance and refuse collection needs through the use of firm, fixed-price contracts with no cost reimbursement line item for equipment upkeep and replacement was improper.

We deny the protests and the protester's claim for costs of filing and pursuing the protests.

Both solicitations were small disadvantaged business (SDB) set-asides, calling for the award of firm fixed-price contracts. Pre-bid site visits were held for both solicitations.

The solicitation for grounds maintenance outlined four general tasks: (1) grass maintenance, including inspecting, mowing and fertilizing; (2) landscape maintenance of shrubs, trees and plants; (3) pickup and disposal of debris around buildings, on roads and grass, and at the brushline; and (4) watering grass and landscape items. The acreage of

044834/138152

land to be cared for and its condition as improved or semi-improved grounds was provided. The solicitation contained 4 pages of specific tasks. The solicitation also indicated that the government would make available for assignment to the contractor used government-furnished equipment (GFE), such as riding or power mowers, tractors and hand edgers, on an "as is" basis. The equipment type and quantity of each type were listed in an appendix to the solicitation.

Similar provisions were included in the solicitation for refuse collection and disposal services. The solicitation required the collection and disposal of bulky or oversized trash, truck sterilization, and scrap metal recycling. Estimates of weekly trash collection, for general garbage and refuse and for bulky, oversized trash, were provided in the solicitation, which also listed one and one-half pages of specific tasks. "Lodal" receptacle locations and the frequency of service required were provided. Government-furnished refuse collection equipment was also made available on an "as is" basis. The capacity and quantity of each type of equipment (e.g., Lodal trucks and dumpsters) were listed.

The protester contends that the solicitations cannot be bid fairly because they call for firm-fixed-price contracts without a separate line item to reimburse the contractor for costs incurred in maintaining or, if necessary, replacing the GFE. In effect, the protester argues that the solicitations violate Federal Acquisition Regulation § 16.103(b) (FAC 84-5) in that the risk involved in maintaining and/or replacing GFE is significant and cannot "be predicted with an acceptable degree of certainty." The protester takes this position, it asserts, because the majority of the GFE is "decrepit" and the costs of repairing or replacing it could be substantial. The protester states it discussed the condition of the equipment with employees of the current contractor and called parts distributors and manufacturers' representatives for prices of replacement parts and information concerning average life expectancy and average repair costs. According to the protester, because of the age and condition of the equipment, the manufacturers' representatives could not predict maintenance costs "within an acceptable degree of certainty."

The Air Force admits that firm-fixed-price contracts with a cost-reimbursable provision for equipment upkeep and replacement would greatly reduce, in fact, eliminate, the financial risk to the contractor of those tasks. The agency contends, however, that the IFBs as written do not impose upon prospective bidders a legally objectionable degree of

risk, noting that the tasks to be completed are clearly identified and that bidders are deemed to be competent to make assessments of equipment service life, cost of maintaining equipment, equipment down days, and other costs associated with providing the required services, assessments that must be contemplated whether the contractor elects to use the GFE or provide its own equipment.

The Air Force observes that one purpose of the site visits provided for prospective bidders, which the protester did not attend, was to allow an opportunity for examination of the equipment. The Air Force argues that by providing GFE "as is," it was attempting to increase competition and to help SDBs by reducing initial capital outlay for equipment. Under each IFB, the agency states, the GFE was simply made available for assignment to the successful contractor; there was no requirement that the contractor use it. We also note that the Air Force documentation indicating the age and condition of the major pieces of equipment suggests that, although some of the equipment is almost 20 years old, most of it is in fair to good condition, while some more costly, heavy duty equipment is shown to be newer (for example, four industrial tractors are 1980 models, the Lodal trucks are 1986 models and 227 Lodal dumpsters have been purchased within the last 3 years).

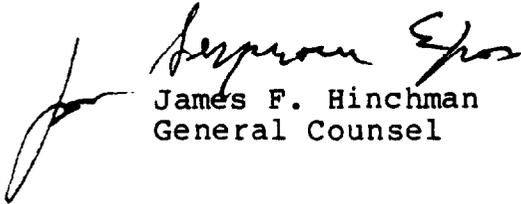
We understand the essence of CMT's protests to be that the solicitations impose an unreasonable financial risk on bidders because they require them to include within the bid price the cost of repairs or replacement whose magnitude is not known. The protester suggests that the more feasible method of reducing this risk is to use a cost-reimbursement line item for repairs/replacement.

While offerors must be given sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis, Ronald E. Borello, B-232609, Jan. 11, 1989, 89-1 CPD ¶ \_\_\_\_\_; T&A Painting, Inc., B-229655.2, May 4, 1988, 88-1 CPD ¶ 435, there is no requirement that the solicitation be so detailed as to eliminate all performance uncertainties and risks. Id.; Ameriko Maintenance Co., B-230994, July 22, 1988, 88-2 CPD ¶ 73. In fact, we have noted that service contracts, by their very nature, often involve the estimation of costs based on visual inspections, and that the presence of some element of risk does not make a solicitation improper. Triple P Services, Inc., B-220437.3, Apr. 3, 1986, 86-1 CPD ¶ 318.

In the present situation, the protester has not shown that the information provided in the solicitations lacked sufficient detail so as to be defective. The Air Force clearly delineated the tasks to be performed and encouraged site visits for the examination of the equipment. Given the information in the solicitations, plus the information the bidder could obtain during the site visits, we think the information provided was sufficient to permit prospective bidders to submit intelligent bids.

Further, the equipment was only made available to bidders to encourage competition. Regardless of whether a bidder intended to use the GFE or its own equipment, its bid had to include repair and maintenance expenses. The fact that offerors may respond differently in calculating their prices is a matter of business judgment and does not preclude a fair competition. American Maid Maintenance, 67 Comp. Gen. 3 (1987), 87-2 CPD ¶ 326; Ronald E. Borello, B-232609, supra.

The protests are denied. Because these protests are without merit, we deny recovery of costs associated with filing and pursuing the protests.



James F. Hinchman  
General Counsel