



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: CACI Products Company

File: B-240839

Date: November 9, 1990

Peter M. Kilcullen, Esq., Kilcullen, Wilson & Kilcullen, for the protester.

William R. Galeota, Esq., and A. Mechele Dickerson, Esq., Shea & Gardner, for Jade Simulations Corporation, an interested party.

Herbert F. Kelley, Jr., Esq., and Jack B. Patrick, Esq., Department of the Army, for the agency.

M. Penny Ahearn, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency performed inadequate evaluation of total contract cost for award purposes is dismissed as untimely where basis of protest concerns method of cost calculation announced in solicitation, but matter was not protested until after closing date for receipt of proposals.

DECISION

CACI Products Company protests the award of a contract to Jade Simulations Corporation under request for proposals (RFP) No. DABT60-89-R-0178, issued by the Department of the Army. The requirement is for services to support the further development of a computer language used for combat simulations, known as Modular Simulation (ModSim), which originally was developed for the Army by CACI under a prior contract. The protester contends that the agency performed an inadequate cost evaluation.

We dismiss the protest as untimely filed.

The RFP requested offers for a time-and-materials, indefinite quantity contract with fixed hourly labor rates, under which tasks would be required by delivery orders. The solicitation required offerors to provide hourly rates for certain identified labor categories and provided estimated minimum and maximum hours by labor category. Award was to be made to the offeror submitting the lowest-priced, technically acceptable

offer; total price for evaluation purposes would be calculated by multiplying the proposed loaded hourly labor rates by the RFP's minimum estimated number of hours for each listed labor category and then adding proposed rates for reimbursable materials and travel. The solicitation further stated that cost would be analyzed for realism.

The Army received proposals from only CACI and Jade. CACI's total offered price, based on the total contract cost calculation method set forth in the RFP, was the highest, at \$317,898 (for the base period and two 1-year options), while Jade's was the lowest, at \$256,868. CACI's proposal included a "special option," which was described in the firm's proposal as an enhanced commercial version of ModSim, called ModSim II, to be provided at no cost; according to the proposal, the enhancements included in ModSim II would eliminate the need for certain potential tasks listed in the RFP, and provide significant cost savings to the government over the total contract period.

In its evaluation of proposals, the Army considered CACI's special option; however, the agency determined that the option's value could not be calculated due to the uncertainty of whether the unsolicited enhancements would actually be required. Subsequently, the agency determined both Jade's proposal and CACI's proposal, excluding the special option, to be technically acceptable. Following the submission of best and final offers, the agency determined that Jade's low price was fair and reasonable based on a competitive price comparison with CACI's proposal and a comparison with the independent government cost estimate. Consequently, award was made to Jade.

CACI complains that the agency performed an inadequate cost evaluation by not determining probable cost based on the number of hours required by each offeror for contract performance. Essentially, CACI contends that because of the ModSim II enhancements included in its offered option, it would perform at a more efficient level than Jade, resulting in a reduced number of contract hours. Consequently, the protester believes that the probable cost of its proposal would be lower than Jade's.

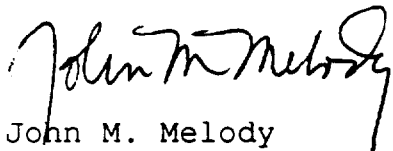
CACI's protest of the cost evaluation is untimely. A protest based upon an alleged impropriety apparent from the face of a solicitation must be filed with either the contracting agency or our Office prior to the receipt of proposals to be deemed timely filed under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (1990). Our Regulations provide for dismissal of untimely protests without consideration on the merits. 4 C.F.R. § 21.3(m)(7). When the propriety of a dismissal becomes clear only after information is provided by the

contracting agency, we will dismiss the protest at that time.
4 C.F.R. § 21.3(m).

CACI's dispute concerns the method the agency used to calculate total price for evaluation purposes. However, the agency's evaluation was conducted precisely in accordance with the RFP's evaluation provisions. The method of price calculation announced in the RFP made no provision for consideration of the number of hours required for contract performance by individual offerors, as CACI urges the agency should have done; rather, as indicated above, the RFP stated that the minimum estimated number of hours it specified would be used to calculate the total contract cost for each offeror. Thus, CACI's protest concerns an alleged impropriety apparent from the solicitation which the firm should have protested prior to the closing date for receipt of proposals; because CACI did not do so, its protest is untimely and will not be considered. Laketon Refining Corp. et al., B-235977.2 et al., Jan. 4, 1990, 90-1 CPD ¶ 10.

To the extent that CACI believes its enhanced software should have been the starting point for the requested services rather than the software provided for in the RFP, the firm's dispute is with the minimum needs of the government. This also is an alleged impropriety on the face of the solicitation that had to be raised prior to the closing date for receipt of proposals. See Security Defense Sys. Corp., B-237826, Feb. 26, 1990, 90-1 CPD ¶ 231.

The protest is dismissed.



John M. Melody
Assistant General Counsel