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DECISION THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-187160 DATE: December 13, 1977

MATTER OF: Joseph Legat Architects

DIGEST:

1. In reviewing issues concerning technical evaluation of propcsals GAO protest function is not to conduct de novo evaluation of proposals, but to review record and consider whether agency's evaluation and conclusions--which are entitled to considerable weight--are clearly shown to have no reasonable basis.

2. Objection in protest after award that RFP failed to show relative weights of evaluation factors is untimely. Protests concerning apparent RFP improprieties must be filed prior to closing date for receipt of proposals. Where protester raised questions in preproposal context but failed to receive what it considered satisfactory answers, protester was charged with notice of adverse agency action at time for receipt of best and final offers at very latest.

3. Objections to qualifications of technical evaluation panel--mainly, that one evaluator was "more high school graduate"--are rejected. GAO will not normally become involved in appraising qualifications of agency's technical personnel, and in any event sees nothing untoward in evaluator in present case--individual having eight and one-half years' experience as engineer-technician--being on technical panel.

4. Alleged improper "intermingling" of technical and selection panels in negotiated procurement--same person acting as chairman of both panels, and one evaluator also on selection panel--is not shown to violate any law, regulation or RFP provision.

5. While GAO believes RFP could have been more explicit on exterior finish requirements for housing project, protester's contention that Army relaxed requirements for benefit of one offeror is not sustained. Moreover, if protester had taken similar approach as successful offeror, it would not, as contracting officer points out, have significantly improved its competitive position.

6. Objection to "substandard" kitchens in successful proposal for military family housing project is unsubstantiated as protester has not shown proposal failed to meet RFP requirements.

7. Floor plan circulation which Army objected to in protester's proposal for military family housing project--involving circulation through entire length of habitable rooms to reach other rooms--is factually distinguishable from circulation plans in successful proposal to which protester now objects. GAO cannot conclude Army had no reasonable basis for objecting to protester's plans while considering successful offeror's plans as within range of acceptability.

8. Protester's contention Army treated it unequally in regard to requirement for screening drying racks in military family housing project is without merit. Record indicates Army pointed out deficiencies in protester's proposal and afforded it opportunity to correct deficiencies in best and final offer.

9. Objection in protest after award that RFP established improper requirements concerning General's house and statutory cost limitation in military family housing project procurement is untimely. Also, no sufficient basis is seen on record to conclude that Army intentionally disregarded statutory limitation in making award to successful offeror.

10. Army has satisfactorily responded to protester's objections concerning informational deficiencies in turnkey housing proposal, relating to scale and completeness of drawings, and protester's contention that successful offeror furnished excess, unrequired data does not prove offeror was predetermined or preselected for award.

11. Protester fails to show impropriety in successful offeror's proposing various types of construction materials for certain requirements. Protester itself proposed some alternate materials, and as to other materials RFP does not appear to require offerors to specify particular types.

12. No evidence has been presented to support allegation that successful offeror improperly received "inside information" and was issued first copy of RFP, weeks before other offerors. Contracting officer points out that initial distribution of RFP was by mailing to 55 prospective offerors.

13. Alleged manipulations of numerical point scores in technical evaluation are denied in evaluators' affidavits, and after examination of record GAO cannot conclude that evaluators' assignment of additional points to successful offeror's revised technical proposal clearly had no reasonable basis.

14. Allegation that Army devoted insufficient time and effort to technical evaluation of proposals is rejected, as agency is in best position to judge such matters and applicable law and regulations do not prescribe amount of time which must be spent.

15. Contrary to protester's assertion, GAO believes subjective judgments are involved in technical evaluation even where numerical scoring scheme is being followed. Protester's extensive de novo evaluation and rescoring of proposals does not show agency's evaluation has no reasonable basis to support it.

16. GAO is aware of no law or regulation which required Army to withhold offerors' identities from evaluation and selection personnel. In negotiated procurement where offerors' proposals were identified by number, whether some personnel knew offerors' identities--as protester alleges--is not decisive, because such knowledge does not automatically establish any impropriety in evaluation and selection.

17. Where no evidence is presented to support alleged disclosure of offerors' prices in negotiated procurement, allegation is mere speculation. Also, GAO is aware of no law, regulation or RFP provision which was contravened because chairman of selection board knew offerors' prices prior to technical evaluation of best and final offers.

18. Allegations concerning manipulation of successful offeror's proposed best and final price have been satisfactorily explained by Army, which has shown that corrected total of price proposal is in accord with price reduction offeror made from price stated in its initial proposal.

19. Protester's general objections that discussions were mere gestures for public opinion furnish no basis for GAO conclusion that discussions were not meaningful where record shows Army discussed multiple deficiencies in offerors' proposals.

20. Where Army erred in failing to establish common cutoff date for submission of best and final offers but protester--whose proposal was rated sixth in evaluation--fails to allege or show prejudice, departure from Armed Services Procurement Regulation is not sufficiently serious to warrant corrective action with respect to award.

21. Contention that protest preceded award is without merit, since under language of Standard Forms 21 and 22 contract came into existence when notice of proposal acceptance was furnished to successful offeror. Whether to suspend contract performance during pendency of protest is for contracting agency to decide.

22. Extensive allegations of improper conduct by Army officials and unfair treatment of protester are found to be unsupported by substantive evidence, and are properly to be regarded as mere speculation and conjecture.

23. Allegations concerning possible criminal law violations are for resolution by Department of Justice and Federal courts, not GAO. After thorough review of record in protest concerning negotiated turnkey contract for military family housing, GAO finds no basis to refer any matters therein to Department of Justice for its consideration.

24. GAO believes that under circumstances of present case, no useful purpose would be served by considering procedural issue concerning alleged untimeliness of Army reports responding to protest.

25. Where architectural firm did not submit proposal, but rather assisted in preparation of construction company's proposal, and construction company has not claimed proposal preparation costs, architectural firm's claim for such costs is denied. Recovery of proposal preparation costs is premised on breach of implied contract between Government and offeror; there was no such contract between Government and claimant here. Also, protest costs are noncompensable in any event.

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I. Introduction

This is our decision on a protest filed by Joseph Legat Architects (JLA), Waukegan, Illinois, concerning request for proposals (RFP) No. DACA21-76-R-0111, issued by the Savannah District, United States Army Corps of Engineers. The RFP solicited proposals for the design and construction on a "turnkey" basis of 750 Army family housing units at Fort Stewart, Georgia. JLA alleges numerous improprieties on the part of the Army in awarding a contract (NO. DACA21-76-C-0150 (NEG)) to Cardinal Contracting Company, Inc., and Hunt Building Corporation, a Dallas, Texas, joint venture, doing business as Cardinal-Hunt (C-H). JLA seeks a reevaluation of the proposals and a reopening of negotiations. Also, JLA makes a claim for proposal preparation costs and for certain "damages."

As will become evident from our discussion of the issues in this decision, we believe the protest is based, to a very substantial degree, on JLA's misunderstanding of the applicable law.

II. Record in the Case

There have been multiple submissions by the protester and the Army. In our discussion of the issues, the major submissions are identified as follows:

Details of JLA Protest (August 31, 1976) . . . . . (P)

Army Report (November 12, 1976) .. . . . . (R)

JLA Comments on Army Report (December 10, 1976). . . . (C)

Army Supplemental Report (February 11, 1977) . . . . . (SR)

JLA Comments on Army Supplemental Report (February 23, 1977) . . . . . (SRC)

JLA Comments Following Protest Conference (March 25, 1977) . . . . . (CC)

Army Second Supplemental Report (May 12, 1977) . . . . (SSR)

JLA Comments on Army Second Supplemental Report (May 16, 1977) . . . . (SSRC)

III. Background

The RFP was issued on February 9, 1976, and was amended several times. Fourteen technical proposals were received. One of the offerors was Mercury Construction Company (Mercury), Montgomery, Alabama. The contracting officer states that Mercury had utilized the services of JLA in preparing its proposal (R, p.1). Offerors were assigned identifying numbers (Mercury was 260 and C-H was 101).

The contracting officer reports that after the technical proposals had been received in the Savannah District's Procurement and Supply Division they were transferred to the Family Housing Project Manager, who was also Chairman of the Technical Review Team, the National Evaluation Team, and the Selection Board (R, p.2). The Technical Review Team reviewed the proposals for compliance with the RFP's technical criteria and prepared comments. The National Evaluation Team then convened to evaluate the proposals. The National Evaluation Team had 10 voting members plus the chairman, who did not evaluate. The contracting officer states that the National Evaluation Team proceeded to evaluate the technical proposals in accordance with the RFP's evaluation factors and the Army's Technical Evaluation Manual (TEM) for one-step "turnkey" family housing negotiated contracts (R, p.3).

In this regard, paragraph 23 of the RFP, p. 9, as revised by amendment No. 0003, April 1976, provided in pertinent part as follows:

> "23. Proposal evaluation criteria. Proposal evaluation will consider both technical quality and cost. The major technical evaluation areas, in order of decreasing importance, are as follows:
>
> HOUSING UNIT DESIGN
> SITE DESIGN
> HOUSING UNIT ENGINEERING
> SITE ENGINEERING
>
> Within these four areas, proposals will be reviewed to determine compliance with minimum requirements of the RFP and numerical quality ratings will be assigned for each design factor listed in the Technical Evaluation Manual. Quality ratings will be assigned for separately priced desirable features. After the quality ratings of proposals have been determined, their relative value in terms of proposed price will be established by means of a price/quality ratio:

$$\frac{\text{\$ Price}}{\text{Quality Rating}} = \text{\$ Per Quality Point}$$

> The price/quality ratio shall be considered only as a statistical indicator in comparing technical quality with proposal prices. Contract award will be made, considering the specific limitations established in paragraph above, on the basis of price, technical and other salient factors considered in the Government's best interests. The major technical areas identified above, and their subsidiary factors to be considered in the evaluation of proposals are as follows:"

The RFP went on to describe the four major technical evaluation areas in some detail.

The TEM, a copy of which has been released to the protester by the Army, is a 17-page manual describing how proposals in negotiated turnkey family housing procurements are to be evaluated.

The contracting officer reports that the individual members of the National Evaluation Team evaluated each proposal in each evaluation area, subtotaled their individual rating sheets into the four major technical evaluation areas, and then added these subtotals together to obtain a cumulative total for each proposal. (R, p.3). The chairman then collected the individual evaluation sheets, added the total scores assigned each proposal by each evaluator, and averaged them. Offeror 101's proposal received 610 points and offeror 260's received 560 points. (R, p.4).

The Procurement and Supply Division then furnished to the chairman the assigned number of the offerors and the corresponding offered prices. The chairman determined the P/Q ratios as prescribed by the RFP, supra. Each offeror was ranked by its price schedule, quality point total and P/Q ratio (R, Tab H). In the initial evaluation, offeror 101 was ranked second as to price ($20,236,000), third as to quality points (610) and second as to P/Q ratio ($33,173.77). Offeror 260 was ranked eighth in price ($20,795,000), sixth in quality points (550) and sixth in P/Q ratio ($37,133.93) (R, p.4).

The contracting officer states that after this initial evaluation phase, the competitive range was reduced to nine offerors, including offeror 101 and offeror 260. These nine offerors were furnished with a

list of deficiencies and nonconforming areas, and negotiations were held. (R, p.5). Best and final offers were then submitted, and the National Evaluation Team reconvened to evaluate the revised proposals. (R, p.6). Offeror 101 was ranked first in price ($19,819,000), second in quality points (648.2) and first in P/Q ratio ($30,575.44). Offeror 260 was ranked seventh in price ($20,795,000), sixth in quality points (549), and sixth in P/Q ratio ($37,877.94) (R, Tab R).

The contracting officer states that the Selection Board convened on July 27, 1976, was furnished with these rankings, and recommended that an award be made to offeror 101. On July 30, 1976, a notice of award was sent to C-H, and on August 2, 1976, Mercury was notified of this. (R, p.6). JLA was given a technical debriefing by the Army on August 6, 1976 (R, p.6-7) and protested to our Office on August 17, 1976.

The present protest has been submitted solely by JLA. Mercury has not protested, has not joined in JLA's protest, and has not made any submissions to our Office in connection with JLA's protest. In this regard, our Bid Protest Procedures provide that a protest concerning a Federal agency's award of a contract may be submitted by an "interested party." 4 C.F.R. § 20.1(a) (1977). The exact nature of the relationship between JLA and Mercury is not clear from the record before us. However, considering JLA's involvement in the procurement, discussed infra, the nature of the issues raised, and the fact that the Army has not challenged JLA's status as an interested party, JLA is presumed to be sufficiently interested to protest. Enterprise Roofing Service, 55 Comp. Gen. 617 (1976), 76-1 CPD 5.

IV. Issues Relating to Evaluation and Selection

A. Scope of GAO Review

In addition to alleging various specific instances of misevaluation of the proposals by the Army, the protester has repeatedly suggested that our Office should conduct a de novo evaluation of the proposals (P, p.5; C, p.14; CC, p.8; SSRC, pp.29-31) and in this connection has recommended that we obtain assistance from the American Institute of Architects (P, p.1).

Before discussing the protester's specific contentions, we believe it is important at the outset to describe the scope of our review of the issues relating to the technical evaluation and selection. In this regard, the following statement from Houston Films, Inc. (Reconsideration), B-184402, June 16, 1976, 76-1 CPD 380, is pertinent:

> "It appears that HFI misunderstands both the scope of this Office's function under our Bid Protest Procedures and precisely what we did in reviewing this protest initially. When a bid protest is filed with this Office, we do not undertake full-scale independent investigations. Rather, as is clearly spelled out in the Bid Protest Procedures, see 4 C.F.R. Part 20 (1976), we review agency actions on the basis of a written record, which consists primarily of submissions from the protester, the agency, and other interested parties. In reviewing this record, we do not evaluate proposals, which is a function vested solely in the procuring agency. We also do not generally impose standards with respect to the selection of evaluation criteria and their relative weights, since that is primarily for the determination of the agency, which is in the best position to adjudge its needs. We do, however, consider the agency's evaluation was fair and reasonable and consistent with the stated evaluation criteria. The fact that an offeror disagrees with the evaluation of its proposal does not mean that the evaluation was unreasonable. What must be shown, as part of the written record, is that there is no reasonable basis for the agency's evaluation."

As indicated in Houston Films and in many other decisions of our Office, our function is not to evaluate the proposals anew ("de novo") and make our own determinations as to their acceptability or relative merits, but to examine the record and apply a standard of review to determinations already arrived at by the contracting agency. As we stated in Julie Research Laboratories, Inc., 55 Comp. Gen. 374 (1975), 75-2 CPD 232:

> "JRL has indicated that a 'thorough technical review' by our Office of the points at issue is necessary. At the outset, it is important to note our Office has never taken the position that we will substitute our judgment for the agency's--by conducting technical evaluations of proposals

and rendering determinations as to their acceptability--simply because a protest against the technical evaluation has been filed. On the contrary, our decisions have repeatedly emphasized that these functions are primarily the responsibility of the contracting agency, whose judgment will not be disturbed by our Office unless clearly shown to be without a reasonable basis. See, in this regard, Austin Electronics, 54 Comp. Gen. 60 (1974), 74-2 CPD 61; 52 Comp. Gen. 393, 399-400 (1972); 52 id. 382, 385 (1972).

"In this light, the question before us is not whether JRL's proposals are technically acceptable. Rather, the issue is whether, upon review of the record, the Army's actions in conducting the technical evaluation and arriving at a determination that the JRL proposals were unacceptable have been clearly shown to be without a reasonable basis."

In reviewing a contracting agency's determinations and considering whether they are shown to lack any reasonable basis, we have observed that given the range of judgment and discretion entrusted to responsible agency officials in the evaluation and selection process, the agency's determinations are entitled to "great weight." Olin Corporation, Energy Systems Operations, B-187311, January 27, 1977, 77-1 CPD 68, and decisions cited therein.

The protester contends that in appropriate cases our Office has conducted de novo technical evaluations of proposals, citing Globe Air, Inc., B-180969, June 4, 1974, 74-1 CPD 301 (P, p.5). This is incorrect. Globe Air involved a protester's challenge to several technical specifications in an invitation for bids, i.e., a formally advertised procurement. We found no reasonable basis for one of the specifications and recommended that the agency further review another specification. The case did not involve the evaluation of proposals in a negotiated procurement.

In view of the foregoing, we see no merit in the protester's view that our Office should undertake a de novo evaluation of the proposals.

B. Objection to RFP Evaluation Factors

The protester complains that the RFP's statement of evaluation criteria was deficient because it did not give the relative weights of technical design and price. JLA alleges that the Army should have advised offerors of the numerical weights it attached to these factors (P, pp.11-12).

The contracting officer maintains that this objection is untimely (R, pp.11-12). In this regard, our Office's Bid Protest Procedures provide that protests against apparent improprieties in an RFP must be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 20.2(a) (1977). Initial technical and price proposals were due on May 17 and 28, 1976, respectively (R, p.1 and Tab D-7). JLA filed its protest with our Office on August 17, 1976, after the contract had been awarded to C-H (See the discussion of this point infra).

In response, JLA maintains that in a series of letters to the Army from April 12 to May 3, 1976 (P, Enclosures 5, 7, 9 and 10) it attempted to point out improprieties in the RFP, but did not receive what it considered satisfactory answers from the Army (C, p.17).

Where a contracting agency does not accede to a protester's objections, the protester will at some point be charged with notice of adverse agency action. In JLA's case, this notice occurred at the very latest at the time for receipt of best and final offers in July 1976. See Sperry Rand Corporation (Univac Division) et al., 54 Comp. Gen. 408, 413 (1974), 74-2 CPD 276. It is not proper for an offeror which acquiesces in a particular procurement method or procedure to later complain, after award has been made to another, that the method or procedure was improper. Kappa Systems, Inc., B-187395, June 8, 1977, 56 Comp. Gen. 675, 77-1 CPD 412. JLA's objection to the RFP evaluation factors is untimely and will not be considered.

C. Qualifications of Technical Evaluation Team Members

JLA questions the qualifications of several of the Army's technical evaluators (C, pp.7-8). Primarily, JLA complains that one of the evaluators was "a mere high school graduate," and alleges that this typified "the casual, cavalier and irresponsible methods adopted by the Government in its evaluation, critique and selection" in a twenty million dollar procurement (JLA letter dated March 16, 1977).

In this regard, we have indicated that, in general, we will not become involved in appraising the qualifications of contracting agencies' technical personnel. Emventions Inc.--Request for Consideration, B-183216, November 28, 1975, 75-2 CPD 354; Gloria G. Harris, B-188201, April 12, 1977, 77-1 CPD 255. We see nothing untoward in the fact that one of the 10 evaluators was only a high school graduate. The record indicates, in this connection, that this individual had approximately eight and one-half years' experience in the Government as an engineer-technician. (R, Tab DD).

Further, we agree with the contracting officer (SR, p.10) that the other allegations--such as the one that two evaluators lacked the ability to evaluate proposals because, contrary to the Army's request, they submitted their affidavits on legal-size rather than letter-size paper--and the contention that two other evaluators do not understand the proper placement of kitchen sinks (C, pp.6-7) are trivial and frivolous.

D. Alleged Improper Organization of Evaluation and Selection Panels

JLA also contends that having one person act as Chairman of the Technical Review Team, National Evaluation Team, and Selection Board compromised the objectivity of the procurement and is in contravention of "Military Housing procurement policies" (C, pp.4-5). Further, the protester contends that unspecified "procurement policies" were contravened by the improper "intermingling" of technical evaluation and selection personnel, because the Chairman and one technical evaluator were also members of the Selection Board (P, p.1; C, p.2).

As we are aware of no law, regulation or RFP provision which was violated by the above-described arrangements, JLA's contentions furnish no basis for legal objection to the contract award.

E. Specific Objections to Evaluation

1. Exterior Finish Materials

JLA contends that RFP Statement of Work--Technical Standards section 3.5.18.1.1 required brick, concrete masonry, or stucco to be used as exterior finish materials on the first floor, and that in the negotiations with offeror 260 (R, Tab K, items 3, 6, 9 and 11) the Army specifically called attention to this point, resulting in offeror 260 changing its proposal to add masonry (P, p.25).

The protester contends that, in contrast, offeror 101's proposal (R, attachment 3, sheets A-9, A-12, A-15, A-16 and A-19) showed wood siding on the entire elevations of buildings in some instances, that the acceptance of this constituted unequal treatment of the two offerors by the Army, and that offeror 101 should have received no points for these obviously defective parts of its proposal (P, pp.25-26).

RFP Statement of Work--Technical Standards section 3.5.18 provided in pertinent part as follows:

> "3.5.18. Exterior Finish Materials. Emphasis shall be placed on low maintenance and durability for exterior finish materials. Except for accent panels, no materials other than those listed below will be accepted. (Accent panels are defined as panels above doors and above or below windows).
>
> "3.5.18.1 In the base bid, materials for exterior finish of walls will be chosen from the following list.
>
> "3.5.18.1.1. Finishes below the second floor framing line of two-story units or below the soffit line of one story units are, in the order of preference, as follows:
>
> "Brick.
>
> "Concrete masonry units that are factory scored, fluted or striated, with integral finish.
> Stucco with integral color.
>
> "3.5.18.1.2. Finishes above the second floor framing line are, in the order of preference, as follows:
>
> "Brick
>
> "Concrete masonry units that are factory scored, fluted or striated, with integral finish.

Stucco with integral color.
Factory prefinished siding with a 15 year warranty on the finish (lap siding limited to maximum 8" width). See paragraph 3.5.19.3. below.
Prefinished aluminum siding with backing.

"3.5.18.2. As a deductive item (to be provided in lieu of masonry or stucco proposed in base bid), factory prefinished siding with a 15 year warranty on the finish (lap siding limited to maximum 8" width). See paragraph 3.5.19.3. below.

"3.5.18.3. As a further deductive item (to be provided in lieu of factory prefinished siding proposed as a deductive above) factory stained wood shingles or field stained face grade textured plywood (APA unsanded B grade veneer for fact ply and C grade for inner and back plies) of southern pine, fir or cedar." (Emphasis in original.)

The contracting officer points out that contrary to section 3.5.18.1.1, offeror 260's proposal indicated materials other than brick, concrete masonry or stucco on first floor elevations (R, attachment 6, sheets 8, 15, 19 and 22) and that these areas were completely exposed to the elements. In contrast, offeror 101's proposal indicated paneled exteriors on first floor elevations, but only in areas protected from the elements, such as under patios and porches. In areas exposed to the elements, offeror 101 proposed materials specified in RFP section 3.5.18.1.1 (R, pp. 18-19).

JLA responds that the RFP explicitly stated which materials were acceptable for first floor elevations, and that it did not state that other materials might be acceptable provided they were not exposed to the elements (C, p.24). The protester further contends that if offeror 260 had been allowed to eliminate the same amount of exterior brick and to use the same interior materials that offeror 101 did, it could have lowered its price by $850,000 (CC, p.6). Subsequently, JLA referred to the amount involved in changing exterior finishes as "thousands of dollars" (SRC, p.17).

The contracting officer points out, however, that offerors were requested to give deductive prices for deleting all masonry or stucco and providing factory siding instead, and that offeror 260 indicated

it would subtract only $175,000 for deleting all masonry. The contracting officer further notes that the exterior areas in contention comprise a very small percentage of total first floor elevations, and that if offeror 260 had deleted masonry in these areas, only a very small percentage of the $175,000 quoted for deleting all masonry would be involved (SSR, pp.7-8).

The protester responds that the point is that offeror 101 saved vast sums of money by deleting its brickwork in the areas involved (SSRC, p.27). JLA further contends, without explanation, that the exterior areas in question in offeror 101's proposal are not "protected" (SSRC, p.24). The protester repeats that the RFP did not provide for deviations in exterior finishes of the type taken by offeror 101, and asserts that offeror 101's nonconforming exterior finishes would not provide required durability against such risks as accidental scrapes by automobiles, lawnmowers, or garden tools, or balls thrown by playing children. (SSRC, pp.24-25).

As the protester notes, RFP section 3.5.18, supra, does not explicitly provide that first floor exterior finish materials other than brick, concrete masonry or stucco might be considered acceptable if they were protected from the elements. We believe that it would have been preferable for the RFP to have stated this explicitly. However, we note that under the turnkey concept of negotiated procurement, the Government does not provide comprehensive design specifications but rather relies on the offerors to exercise their inventiveness in designing buildings to meet certain stated requirements. RFP section 3.5.18 begins by calling for emphasis on low maintenance and durability, which reasonably implies that protection from the elements is one of the Army's underlying considerations in specifying certain types of exterior finish materials. The kind of durability the Army had in mind is further indicated by RFP section 3.5.19, which provided certain requirements concerning painting of exterior materials, and for guarantees that exterior siding materials would not require maintenance for cracking, chipping, crazing, blistering, flaking, peeling, erosion or fading of the finish for specified periods of time. This suggests to us that the primary concern was protection from the elements and not, as the protester suggests, protection from collisions of objects with the exterior finish materials.

In this light, we believe it would be difficult to conclude that the agency acted wholly without a reasonable basis in accepting a proposal which offered specified exterior materials except in certain

areas which, however, were protected from the elements. In other words, we believe a reasonable argument can be made, as the contracting officer suggests, that such a proposal substantially conformed to the RFP requirement.

In any event, even if we concluded that the Army erred in not amending the RFP to provide that other exterior finishes could be offered in areas protected from the elements, an objection to the award would not be warranted. We agree with the contracting officer's observation that if offeror 260 had proposed other finishes in lieu of masonry in a similar manner as offeror 101 did, offeror 260 would not have significantly improved its competitive position. Even if offeror 260 had been able to reduce its price by the full $175,000 amount it quoted for eliminating all masonry and substituting factory siding, it would still have been ranked sixth in price/quality ratio.

2. Kitchens

The protester alleges that all 750 kitchens in offeror 101's proposal are "substandard." (P, p.31). JLA contends, without any detailed explanation, that some countertop spaces, some drawer spaces, some shelving spaces, some wall and base cabinent requirements, "as well as other areas" do not meet the requirements of section 3.5.4 of the RFP Statement of Work and that the location of the kitchens is "bad to absolutely poor." JLA lays particular stress on the location of the kitchen sink, contending that it is on the wrong (left) side of the dishwasher in all of offeror 101's kitchens (P, p.31; C, p. 5).

We note that RFP Statement of Work--Technical Standards section 3.5.4.3 merely provides that the dishwasher shall be installed adjacent to the kitchen sink. Also, the contracting officer points out that offeror 101's proposal met the minimum square footage requirements for cabinets, storage, countertop space, etc., and that the protester has not provided any detailed substantiation of its arguments (SR, p.28) We believe the contracting officer's statement adequately responds to the protester's contentions.

3. Floor Plan Circulation

The protester contends there was unequal treatment of offerors 101 and 260 by the Army in regard to RFP Statement of Work--Technical Standards section 3.5.1.2, which stated in part: "It is mandatory

that plans do not use habitable rooms as halls for entry into or for primary circulation within the unit."

JLA contends it was required to redesign 400 of its units because the Army objected to circulation between a dining room or kitchen to reach a family room. JLA contends that offeror 101 was allowed greater latitude because offeror 101's drawings show that an Army housewife must walk through her living room from her kitchen to serve food in the dining room, or must walk out through a hall, through a foyer, out the front door, on to a balcony, and into an exterior storage area to reach her freezer, or must carry groceries or garbage through a living room or family room to the kitchen (P, pp.26-27).

JLA maintains that since offeror 101's proposal provided for circulation through habitable rooms, it should have been evaluated as nonconforming to the RFP and should have received no points in this area of the evaluation (SSRC, p.21).

The contracting officer points out that in offeror 101's proposal (R, attachment 3, sheet A-17) the kitchen opens into a living room-dining room combination, and that immediately upon leaving the kitchen one would be in the dining room. Similarly, the kitchen is adjacent to the family room, separated by a counter, and it is a strained interpretation to say that groceries or garbage must be carried through the family room because, at most, one would take only two steps through the corner of the family room to reach the kitchen. The contracting officer states that the protester is correct that to go from the kitchen to the freezer area, one must go through a hall, foyer and patio. The contracting officer expresses the view that offeror 101's proposal in these respects was not nonconforming to the RFP requirement (R, pp.20-21). The contracting officer also points out that a successful proposal in a procurement of this type does not necessarily have the best design in each area (SR, p.27).

We note that the circulation in offeror 260's initial proposal which the Army objected to (R, attachment 6, sheet 3) involved direct circulation from the entrance foyer through the entire length of the kitchen or dining area to the family room (types A and C units), or from the entrance foyer through entire length of the kitchen, or the the entire length of living room and dining area, to the family room (type B unit).

In our view, the requirement of section 3.5.1.2 of the RFP is not so unequivocal and inflexible as to leave no room for reasonable interpretation by the Army. In view of the factual differences between offeror 101's and offeror 260's proposals, described supra, we see no grounds to conclude that the Army had no reasonable basis in deciding that offeror 260's circulation failed to meet the RFP requirement while at the same time judging that offeror 101's circulation fell within the range of acceptability.

4. Drying Racks

JLA alleges unequal treatment by the Army of offerors 101 and 260 in regard to the evaluation of, and negotiations concerning, the RFP requirement for screening of drying racks.

The RFP's Statement of Work--Technical Standard section 3.5.20.6 required privacy fencing at a minimum height of five feet to provide enclosed, visually private yards for all nonapartment units and ground level apartment units. It also provided: "Screen fencing shall also be provided as an integral part of design to conceal service elements such as trash receptacles, clothes drying, etc."

The contracting officer points out that offeror 101's proposal placed the drying racks outside the privacy fences, and they therefore met the requirement for screening since the racks cannot be seen by the occupants of the units which the racks serve. (R, p.19; SR, p.26).

One of the protester's objections is that offeror 101's drying racks would not be hidden from the occupants of the second floor apartments. (SRC, p.17). However, RFP section 3.5.20.6 does not establish any explicit requirement of this nature. Whether offeror 101's placement of the drying racks outside the privacy fences met the requirement for screening is a matter of technical judgment for the Army to decide. We see no grounds to conclude that the Army's judgment clearly lacked a reasonable basis.

JLA further contends there was unequal treatment of the offerors because the Army categorized the location of the drying racks for three senior officer units in offeror 260's proposal as nonconforming, while allowing offeror 101 to place hundreds of drying racks in a similar position (outside privacy fences) (P, p.25). The basis for this allegation is not clear. The protester apparently refers in this regard (P, p.25) to item 10 of a list of deficiencies sent by

the Army to offeror 260 prior to the negotiations (R, Tab K). Item 10 of the list refers initially to sheet 21 of the 260 proposal and states in pertinent part: "[S]creened drying area shall be provided. Private fencing for visually private yard shall be provided * * *." As the contracting officer points out, this has reference to the fact that sheet 21 of offeror 260's proposal (R, attachment 6) does not show any drying racks. (R, p.17; SR, p.26) Elsewhere on the list of deficiencies (item 2), the Army referred to sheets 5-7 of offeror 260's proposal and stated in part "Drying area shall be screened * * *." The contracting officer indicates that this has reference to the fact that while sheets 5 through 7 (noncommissioned officer housing units) show drying racks, they are located within the privacy fences and therefore are not screened as required (R, p.18; SR, p.26). None of this information substantiates JLA's contention that the Army categorized the location of drying racks for three senior officer units in offeror 260's proposal as nonconforming while allowing offeror 101 to place its drying racks in a similar location outside the privacy fences.

The protester maintains, however, that the point is that offeror 260's three drying racks in question located outside the privacy fence could not be seen by any other residents and, therefore, should have qualified as properly screened (C, p.23). We note that this does not respond to the contracting officer's observation that sheet 21 of offeror 260's proposal failed to show any drying racks. JLA apparently maintains that since sheet 21 deals with technical floor plans there should have been no requirement to show drying racks on it. (SRC, p.17). In this regard, these matters should have been taken up by offeror 260 in the negotiations if offeror 260 or JLA believed that (1) the three drying racks in question were actually offered and properly screened in the initial proposal, and (2) it was unreasonable for the Army to require drying racks to be shown on the technical floor plans. If offeror 260 or JLA failed to receive what it considered to be adequate responses by the Army in the negotiations, it should have protested when it received constructive notice that the Army declined to accede to its position--i.e., at the closing date for receipt of best and final offers. See Sperry Rand Corporation (Union Division) et al., supra.

Related to this point is JLA's contention that it was required by the Army to show in its revised proposal how it would screen drying racks outside the privacy fences (SRC. p.17), whereas offeror 101 proposed 750 drying racks outside privacy fences that are not screened.

We are unable to see what this establishes. As already indicated, the Army determined in its technical judgment that offeror 101's method of screening drying racks by placing them behind privacy fences was acceptable. Also, the Army pointed out to offeror 260 certain deficiencies in its proposal, discussed supra. The memorandum of the negotiations, a copy of which was provided to offeror 260 by the Army's letter dated July 3, 1976 (R, Tab N) stated in pertinent part: "Contractor will propose revised screened drying areas to meet the requirements of the RFP." It is up to an offeror to determine whether and in what manner it wishes to revise its proposal after negotiations. Lawrence Johnson & Associates, Inc., B-181597, January 29, 1975, 75-1 CPD 63. Rather than treating offeror 260 unequally, as JLA alleges, it appears that the Army pointed out deficiencies in offeror 260's proposal and gave it an opportunity to correct those deficiencies in its best and final offer.

F. General's House

JLA also complains of the Army's actions in regard to the application of the statutory cost limitations and the requirements concerning the general officer's house.

The RFP (page 6) provided information concerning statutory cost limitations. The RFP stated that $19,683,500 had been programmed as the total amount of funds available for site work under the contemplated contract, and that in no case could the cost of a single unit exceed $47,500 including pro rata cost of on-site utilities and site development. It also stated that proposals in excess of this amount may not be considered, and that proposals must comply with RFP requirements.

Also, section 1.4 of the Project Requirements called for one general officer's house with a minimum net floor area of 2,058 square feet and a maximum of 2,205 square feet.

JLA believes that the Army set up requirements for a general's house in the $100,000-plus range, and that by doing so it required offerors to either falsely attest in their proposals that the cost of any one unit would not exceed $47,500, or suffer the consequence of having their proposals rejected (P, p.35). This argument clearly alleges improprieties in the RFP. Under our Bid Protest Procedures, protests against apparent improprieties in an RFP must be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 20.2(b)(1) (1977). In this regard, the record shows that by letter to the Army dated April 27, 1976 (P, enclosure 5) JLA stated that it could not

design a general officer's house, even at the minimum square footage of 2,058, without eliminating some required interior finishes or exceeding the $47,500 limitation. The Army responded by letter of May 11, 1976 (P, enclosure 6) stating essentially that proposals had to comply with the RFP as written.

JLA did not protest prior to the closing date for receipt of proposals. The offeror with which JLA was associated, Mercury, submitted a proposal. JLA later stated that the general officer's house in Mercury's (offeror 260's) proposal would cost a minimum of $90,000 (C, p.28).

We think the foregoing circumstances clearly indicate that JLA cannot now be heard to complain that offeror 260 was treated unfairly in the competition. If JLA believed that the Army was imposing improper requirements on Mercury, it should have protested prior to the closing date for receipt of initial proposals. In any event, JLA has not alleged or shown prejudice to offeror 260 as a result of the statutory cost limitation and the minimum square footage requirements for the general's house.

The remaining arguments by the protester are to the effect that the Army is thwarting the intent of Congress by purchasing a general's house which exceeds the statutory limitation. In this regard, JLA describes the general's houses proposed by offerors as "palatial" and alleges that they "ranged in price from a low of $90,000 * * * to approximately $200,000 * * *" (P, p.36). The protester contends that the Army had a "premeditated knowledge" that the statutory limitation was being exceeded (C, p.29).

As JLA notes, several of the 10 evaluators' affidavits commented on this issue. Two evaluators expressed the view that some or all of offerors' proposed general's houses possibly exceeded the statutory limitation (R, Tabs EE and FF); one commented that the general's houses appeared very costly in most proposals (R, Tab GG) and the fourth stated he had no knowledge of the cost of the general's house (R, Tab HH). On the other hand, the contracting officer points out that in Public Law 93-166, November 29, 1973, 87 Stat. 661, Congress established certain space limitations for family quarters, and provided in section 509(a) a maximum net floor area of 2,310 square feet for the quarters of a general officer who is also a post commander. Public Law 93-166 and other annual authorization acts for military construction

also provide the statutory cost limitations in question. Moreover, the contracting officer points out that cost savings are obtained through a contractor's mobilization and volume purchasing for a 750-unit project. The contracting officer expresses the view that in rural south Georgia where Fort Stewart is located, it is not inconceivable, but probable, that a house of 2,310 square feet could be built for $47,500 at an approximate cost of $20.56 per square foot (SR, pp.30-31).

The protester has responded to this with some calculations based upon the gross square footage of offeror 101's proposed general's house (SRC, p.19 and enclosure 8). JLA contends that garages, patios, landscaping, basements, utility spaces and other areas must be included within the square foot computation, and that based upon this and the $20.56 cost per square foot cited by the contracting officer, offeror 101's proposed general's house is a $90,000-$120,000 residence. However, we note that section 509(a) of Public Law 93-166 refers to space limitations in terms of "net floor area," and goes on to specifically exclude basements, service spaces instead of basements, attics, garages, carports, porches and stairwells from the meaning of this term. Thus, we do not think that JLA's analysis effectively responds to the contracting officer's statement.

The protester further contends that the chairman of the Army's technical and selection panels and an Army attorney admitted to JLA that offeror 101's proposed general's house exceeds the statutory limitation (C, p.29). However, the chairman and the attorney, in subsequent affidavits (SR, Tabs LL and VV), deny the alleged admissions.

Also, the protester's contention that offerors' proposed general's houses were "priced" from $90,000-$200,000 is not accurate. As the contracting officer points out, offerors' prices were expressed in terms of a total price for the project (750 units), with certain deductives. (R, p.22). Moreover, the statutory limitation is phrased in terms of the "cost" of family housing units, not an offeror's proposed price.

Considering all of the foregoing circumstances, we find no sufficient basis on the record to conclude that the Army was intentionally disregarding the statutory limitation in making an award to offeror 101.

G. Alleged Informational Deficiencies in Successful Proposal

JLA alleges that in several respects offeror 101's proposal failed to contain necessary data. One of the issues raised concerns the

drawings submitted by offerors with their proposals. While the details are rather involved, JLA essentially contends that certain landscaping, cluster plan and site engineering drawings submitted by offeror 101 did not meet the requirements specified in RFP section 24c, page 11, because they were in the wrong scale or were incomplete. (P, pp. 31-32). The contracting officer responds that there were some minor deviations in offeror 101's drawings, but that offeror 260's drawings were also deficient in certain respects (cluster plans and cross sections) (SR, pp.22-25). \ disputes the contracting officer's position. (SRC, pp.15-16).

We believe the contracting officer has adequately responded to the protester's contentions and that extended discussion of the issue is unnecessary. The contracting agency is in the best position to judge whether the drawings submitted by offerors are adequate for the purposes of evaluation. The limited significance of these issues, particularly as regards the scale of drawings, is suggested by the protester's comment that if the Army had wanted certain of offeror 260's drawings in a different scale, the protester could have complied with a few hundred dollars' worth of additional camera work (SRC, p.16). We agree with the contracting officer's observation that minor deviations in offerors' drawings do not evidence any impropriety in the evaluation and selection process (SR, p.25).

JLA also contends that offeror 101 specified four alternate types of pipe for the gas distribution system, and that the Army's evaluation gave 101 the maximum allowable number of points for the highest quality pipe specified, whereas the proposal should have received points consistent with the lowest quality pipe offered. (P, pp. 33-34). The contracting officer points out, however, that offeror 260 itself indicated alternate types of gas piping, and that the protester should not now be heard to complain (SR, p.29). We agree with the contracting officer. See Elgar Corporation, B-186660, October 20, 1976, 76-2 CPD 350. In addition, the contracting officer points out that the pertinent RFP provision, section 3.3.2.6 of the Statement of Work--Technical Standards, does not indicate that one type of pipe would receive more quality points than another (R, p.21). Moreover, neither of the two evaluators who addressed this point in their affidavits indicates that points were assigned to offeror 101 on the basis of a maximum amount for the best of several types of pipe offered (R, Tabs EE and HH).

The protester further asserts that offeror 101's proposal was unspecific as to the precise type of storm sewer piping, manholes, catch basins, sanitary sewer piping, and water distribution piping

and appurtenances, whereas offeror 260 specified a particular type in each instance (P, p.32 and enclosure 18; C, p.26). However, we note that the pertinent sections of the RFP's Statement of Work--Technical Standards (3.3.1, 3.3.4 and 3.3.5) did not require offerors to specify the particular type of pipe or the specific type of the other features and equipment referred to by the protester.

H. Alleged Excessive Data in Successful Proposal

The protester further alleges that offeror 101's proposal contained data which was not required and should not have been accepted, such as ink perspectives and color photographs (P, p.31). There follows in the record an exchange between the protester and the contracting officer (C, p.24 and SR, pp.28-29) as to whether certain materials submitted by offeror 101 (R, attachment 5) contain "perspectives." Without laboring the details, we believe the contracting officer has satisfactorily responded to the protester's contentions.

In a similar vein, JLA alleges that offeror 101 was the only offeror to submit certain data (sewer profiles and miscellaneous underground engineering work) "in contemplation of being awarded the job." (P, p.43). The protester and the contracting officer go through further exchanges on this point (R, p.24; C, p.34; SR, p.20). In our view, that an offeror has submitted more than what is required proves very little, and certainly does not demonstrate, as the contracting officer observes, that the offeror was in any way preselected or predetermined to receive the award.

A related point is JLA's contention that C-H (offeror 101) had "inside information" (P, p.43) and was issued the very first copy of the RFP, weeks before other prospective offerors (C, p.36). JLA offers no evidence to support these allegations, and the contracting officer points out that the initial distribution of the RFP was by mail, on February 13, 1976, to 55 prospective offerors, one of which was C-H (SR, p.35).

I. Alleged Manipulation of Points

The protester maintains at length that the numerical scoring of offerors' proposals in the technical evaluation was manipulated (P, pp.4, 6-9, 41, 45; C, pp.5, 10-12; SRC, pp.6-8, 11; SSRC, pp.6-9, and elsewhere). Initially, JLA contended that it discovered the manipulations when it examined offerors' proposals at the post-award

debriefing (P, p.4) and that unidentified Government "representatives" were responsible for them (P, p.41). Subsequently, the protester pointed to the chairman of the Army's technical and selection panels as the person in the logical position to have accomplished the manipulations (C, pp.1-6).

JLA's main argument is that offeror 101's best and final offer was manipulated upward by being accorded 38 additional quality points and that offeror 260's best and final offer was manipulated downward in the point scoring. (P, pp.8-9). The contracting officer, in this regard, has pointed out that actually both offerors gained points in the technical evaluation of the revised proposals. Offeror 260's proposal went from 560.4 points to 565.78 points, and offeror 101's proposal advanced from 610 to 645.89 (R, pp.9-10). (The contracting officer states that the differences between these totals and those presented to the Selection Board, supra, were due to the correction after award of mathematical errors in the addition of quality points (R, p.9); the corrected totals did not alter the offerors' relative standing.) Also, the chairman's affidavit (R, Tab II) expressed the view that offeror 101's revised proposal reflected many improvements, i.e., the site plan was improved in street and block pattern, open space, variation of structure setback, preservation of natural features and other areas, while some unit plans were improved in terms of functional arrangement and appearance.

The protester, however, denies that offeror 101's revised proposal shows the improvements mentioned by the chairman (C, p.10). The contracting officer responded that the record of the individual evaluators' scoring indicates that the evaluators assigned additional points to offeror 101's revised proposal in the areas of site design, housing unit design and housing unit engineering, thereby increasing offeror 101's technical score (SR, pp.14-15). The protester's position is that the Army cannot and has not shown how the additional points were legitimately assigned to offeror 101's proposal (C, p.10; SRC, p.11). Specifically, JLA denies that offeror 101's site plan was improved in street and block pattern, variation of structure setback, preservation of natural features or other areas (C, p.10).

In this regard, we believe the Army's position is simply that the evaluators considered offeror 101's revised technical proposal and decided, in the exercise of their judgment, to accord it additional points in certain areas. While we have examined the record of the evaluators' numerical point scoring and offeror 101's revised proposal drawings (R, attachments 1 and 4, respectively) it is not, as already indicated, our function either to evaluate the changes in offeror 101's proposal or to decide what, if any, additional points should have been assigned. These are functions of the Army's technical evaluators, and we cannot say based upon the record that the assignment of the additional points to offeror 101's proposal clearly has no reasonable basis.

There are also allegations by JLA to the effect that the chairman instructed evaluators to ignore certain nonconforming items in proposals and caused evaluators to add or subtract quality points from various proposals, including those of offeror 101 and offeror 260 (CC, pp.6-7). The individual evaluators submitted affidavits to the Army in response to the protester's contentions. While the language of the affidavits varies, we think it is fair to say that all of the evaluators essentially deny being subjected to improper influence, coercion, or manipulation (R, Tabs Y, Z, AA, BB, CC, DD, EE, FF, GG and HH). Also, the chairman's affidavit (R, Tab II) also denied that any evaluator or any evaluator's work was manipulated at any time during or after the evaluation.

Finally, the protester has furnished no evidence to substantiate its contention (C, p.35) that the Army "doctored" the individual evaluators' scoring sheets (R, attachment 1) before furnishing them to our Office, and the contracting officer flatly denies this allegation (SR, p.35).

J. Alleged Insufficient Effort In Evaluation

JLA alleges that the Army spent only about $26,000 on the evaluation and selection process, and that this demonstrates the casual treatment accorded offerors' proposals (P, p.47). The contracting officer responds that although exact figures are lacking, the Government probably spent much more than $26,000, and that in any event the evaluation and selection procedures were proper (R, pp.25-26). The protester responds that an insufficient amount of time (4 days) was spent on the technical evaluation, calculates that evaluators had only about 2 minutes to look at each sheet of drawings, and asserts that these allegations are substantiated by the affidavits in which several evaluators state they cannot recall from memory various specific items in proposals (C, pp.6-7). The contracting officer responds that in his judgment an adequate amount of time was spent in the evaluation (6 working days, including evening work by some evaluators), and that he considers it perfectly reasonable that evaluators would not remember, 6 months after the fact, specific items in proposals which were identified only by number (SR, p.10). The protester replies that no rebuttal is necessary, since the lack of a conscientious evaluation approach speaks for itself (SRC, p.10).

We believe the Army is in the best position to judge how much time and effort must be invested in the evaluation and selection process. Applicable law and regulations do not prescribe any specific amount of time which must be spent. The protester's disagreement with the Army furnishes no grounds for us to conclude that the Army's actions were clearly without any reasonable basis. This conclusion is supported by the fact that we have not found the protester's specific objections to the technical evaluation, supra, to be meritorious.

K. Protester's De Novo Evaluation

JLA has furnished what it describes as a de novo evaluation of portions of offeror 101's and offeror 260's technical proposals (CC, second enclosure). In this 24-page document, the protester analyzes the proposals in regard to site design and some elements of housing unit design, including variety in facades, staggering of units, structural orientation, buffering, open spaces, variation in structural setbacks, street and block patterns, fenestration, visual effect of carports and garages, shadow effect, exterior materials and textures, exterior proportions, exterior appearance, vehicle storage, and various interior functional arrangements, logistics, and amenities.

The protester accords offeror 260's proposal 370.3 points and offeror 101's proposal 113.9 points in these areas, and projects this result to conclude that, in the evaluation of all areas (totaling 1,000 points), offeror 260 would receive 765 points and offeror 101 would receive 235.

The protester states that its evaluation is based upon information furnished to it by the Army concerning the breakdown of the 1,000 total quality points into the areas of site design, site engineering, dwelling unit design and dwelling unit engineering (CC, pp.1-2). JLA believes its evaluation is probative evidence and shows that the assignment of quality points is not a subjective matter, but rather a definite series of mathematical formulas, area determinations, and applications of other objective criteria (CC, pp.2-3). JLA believes its assessment is "a proper and honest evaluation" and states that it is "absolutely unable" to find a single item in offeror 101's proposal that is better than the items contained in offeror 260's proposal (CC, p.3). In this connection, JLA has submitted several sample boards showing the actual types of exterior and interior materials proposed by offeror 260.

To the extent that the protester's evaluation deals with alleged nonconforming items in offeror 101's proposal (exterior finish materials and floor plan circulation), these issues have already been addressed. In the remaining areas, JLA does not allege or demonstrate how offeror 101's proposal was nonconforming to specific RFP requirements. Rather, the protester is expressing a difference of opinion between itself and the technical judgments made by the Army's evaluators as to the relative merits of the proposals. Contrary to the protester's assertion, we believe subjective judgments are inevitably involved even where a numerical point scoring scheme is being followed in a technical evaluation. As already noted, the fact that the protester disagrees with the agency's evaluation does not demonstrate that the evaluation has no reasonable basis to support it. Also, "It is not our function to evaluate proposals, and we will not substitute our judgment for that of the cognizant contracting officials by making an independent judgment as to the precise numerical scores which should have been assigned each proposal * * *." PRC Computer Center, Inc., et al., 55 Comp. Gen. 60, 68-69 (1975), 75-2 CPD 35, and decisions cited therein. For these reasons, JLA's de novo evaluation furnishes no basis for an objection to the award.

L. Alleged Compromise of Offerors' Anonymity During Evaluation

JLA has alleged at length that the anonymity of the offerors was compromised during the evaluation. Primarily, the protester contends that certain Army personnel learned that offeror 260 was Mercury and that offeror 101 was C-H, despite the fact that offerors were supposed to be identified only by number.

The only pertinent RFP provision appears to be on page 1, where it is stated that offerors were required to identify their technical proposals only by number, and that "The Evaluation Board will not have access to the names of the offerors or the price schedules." (Emphasis in original.)

In response to JLA's allegations, the Army furnished the evaluators with copies of JLA's detailed statement of protest dated August 31, 1976, and requested them to respond in affidavits to any or all of the allegations, including the one regarding compromise of offerors' anonymity. (R, Tab X). Affidavits furnished by six of the evaluators

essentially deny that offerors' anonymity was compromised (R, Tabs Y, AA, BB, EE, FF and HH). The team chairman's affidavit (R, Tab II) states in part: "No names were given to any member of the Technical Review, Evaluation Team or Selection Board at any time until after award of contract." As for the remaining evaluators, one stated that no price proposals were disclosed to him during the evaluation (R, Tab CC); one stated that his evaluation was unbiased, objective and professional, and that he was not subjected to influence or coercion (R, Tab Z); another, similarly, denied any improper influence by the contracting officer or the team chairman (R, Tab GG); and another stated that the accusations against the evaluation team and its chairman were totally false (R, Tab DD).

We have difficulty understanding the point of the protester's contentions. To put this issue into proper perspective, it may be helpful to begin by noting that there is no requirement in the applicable statute (see chapter 137 of title 10, U.S.C. (1970)) or regulations (sections III and XVIII, ASPR (1976)) that the identities of offerors in a negotiated procurement be withheld from an agency's evaluation and selection personnel. JLA contends that the military services' "standard" TEM provides that neither the Evaluation Team nor the Selection Board shall be aware of the identity of offerors (P, p37). We note that while the Army was proceeding in this procurement with the intention that offerors' identities were not to be disclosed to the Selection Board (R, p.6; R, Tab S), the Army TEM merely refers to withholding offerors' identities and prices from the Evaluation Team (R, attachment 2, sections AIII and BIII). As the contracting officer points out, maintaining offerors' anonymity in the Selection Board proceedings to the extent possible was considered a desirable procedure (SR, pp. 37-38).

In any event, we note that the TEM is an internal agency publication for the guidance of Army personnel, not a regulation. It has been held that similar internal agency guidelines do not create or define substantive rights in offerors. Kirschner Research Institute et al., B-186489, B-186492, September 27, 1976, 76-2 CPD 289; Means Construction Company and Davis Construction Company, a joint venture, 56 Comp. Gen. 178 (1976), 76-2 CPD 483.

Moreover, we believe JLA has failed to appreciate the fact that much more serious disclosures of information in negotiated procurements than the kind which is alleged here do not necessarily establish that

a resulting award is improper or illegal. For instance, ASPR § 3-507.2(a)(1976) prohibits public disclosure prior to award of any information contained in any proposal, and ASPR 3-805.3(c) (1976) prohibits auction techniques, such as indicating to an offeror that its price is not low in relation to another offeror's price. These regulations have the force and effect of law. Nonetheless, in several cases it has been held that the fact that one offeror's proposed prices, for example, have become known to another offeror prior to award does not per se prevent the competition from continuing and an award being made. See TM Systems, Inc., 55 Comp. Gen. 1066 (1976), 76-1 CPD 299; Axel and Deutschmann, B-187798, May 12, 1977, 77-1 CPD 339. See, also, Airco, Inc. v. Energy Research and Development Administration, 528 F.2d 1294 (7th Cir. 1975).

In view of the foregoing, we do not think that knowledge of the offerors' actual identities by members of the evaluation team, even if established, would be sufficient in itself to preclude an award from being made or to establish that the award was improper. The fact that evaluators obtain such knowledge does not automatically establish that proposals were therefore improperly evaluated. Cf. in this regard, Development Associates, Inc., B-187756, May 5, 1977, 56 Comp. Gen. 580, 77-1 CPD 310, a case where one of the evaluators, a Government employee, had previously been fired by a company whose proposal was determined to be technically unacceptable. We expressed the view that it would have been appropriate for the evaluator to have disqualified himself immediately upon learning that his former employer had submitted a proposal, but declined, in the particular circumstances involved in the case, to accede to the protester's demand that we recommend the convening of a new evaluation panel to reevaluate the proposals.

We believe that the foregoing discussion disposes of the protester's contentions. The only additional allegation which merits discussion is JLA's contention that the chairman of the technical and selection panels has continually misrepresented the facts by claiming that he was unaware of offerors' identities until the time of selection, and that these misrepresentations are being supported by the contracting officer. (SRC, p.2).

We disagree. In two affidavits (R, Tab II; SR, Tab LL) the chairman never explicitly denies that he was aware of offerors' identities, nor does he admit that he was. He merely points out that "No names were given any member of the Technical Review, Evaluation Team or Selection Board at any time until after award of contract."

(R, Tab II). As already indicated, whether the chairman knew offerors' identities is not decisive; such knowledge on the part of a member of the Evaluation Team does not automatically establish any impropriety in the evaluation or selection. Moreover, we think the contracting officer's statements, fairly read as a whole, merely indicate that to the best of his knowledge and belief, the Army personnel involved in the procurement attempted to preserve offerors' anonymity. As the contracting officer states: "[M]y investigation into this matter convinces me that [the chairman] at all times refrained from learning the identities of any of the proposers." (SR, p.3).

M. Alleged Improper Disclosure of Offerors' Prices

JLA alleges that the improper procedure of disclosing offerors' prices to the chairman and "possibly" the Selection Board--prior to the technical evaluation of the best and final offers--is a breach of "turnkey procurement procedure" (P, p.40).

As the contracting officer points out, the chairman calculated the dollars-per-quality point ratios for each of the initial proposals (SR, p.6). We are aware of no law, regulation or RFP provision which was contravened by this arrangement. As the contracting officer further notes, the protester has presented no evidence to corroborate its contention that offerors' prices were disclosed to the Selection Board prior to the time the Board convened (R, p.23), nor has the protester shown what law, regulation or RFP provision would have been violated if such disclosure occurred.

JLA further alleges it would appear that the chairman improperly disclosed offerors' prices to C-H. The protester states that this speculation is reinforced by the facts that C-H was allowed to submit its best and final price several days after the other offerors and that C-H reduced its price in its best and final offer by a staggering $417,000 (C, p.32).

No evidence has been presented by JLA to show that an improper disclosure of offerors' prices occurred, and the protester correctly labels its allegations as speculation. See Ocean Technology, Inc., B-183749, October 29, 1975, 75-2 CPD 262; 53 Comp. Gen. 5 (1973). In our view, the Army's error in failing to establish a common cutoff date for submission of best and final offers (see the discussion infra) does not in itself establish that there was any improper disclosure of prices. Moreover, the fact that an offeror makes a substantial price reduction in its best and final offer does not prove

that a price leak occurred, because it is not uncommon for offerors to reserve their lowest-priced proposals until the final round of negotiations. See Engineered Systems, Inc., B-184098, March 2, 1976, 76-1 CPD 144; Adam David Company, B-186053, July 28, 1976, 76-2 CPD 88; Bell Aerospace Company, 55 Comp. Gen. 244, 251 (1975); 75-2 CPD 168.

N. Allegations Concerning Successful Offeror's Proposed Price

The protester contends that there were manipulations and improper negotiations in connection with C-H's best and final price proposal (C, item VI, and elsewhere).

We believe that the Army's reports have satisfactorily responded to this contention (SR, pp.39-40; SSR, pp.4-5). Briefly, C-H's best and final offer (R, Tab P) submitted a price schedule with the breakdown of the lump-sum price into three areas for the Army's administrative purposes. The three prices were incorrectly totaled ($18,819,000) and the Army corrected the total ($18,839,000) (SR, p.39). The C-H cover letter stated that the price proposal "Schedule II" replaced the Schedule II contained in the initial proposal and represented a price reduction of $477,000. The Schedule II price in the initial proposal (R, Tab G) was $20,296,000. However, the $477,000 figure in the letter was crossed out and a handwritten "$457,000" was inserted. The Army states this change was made by C-H (SR, p.39). In other words, the best and final offer indicated that C-H was reducing the Schedule II price in its initial proposal by $457,000, resulting in a best and final price of $19,839,000 for Schedule II, as the corrected total of the price breakdown in the best and final offer indicates. In this regard, there were several price schedules with varying prices depending on the length of the bid acceptance period involved, and C-H's best and final offer offered, as requested (R, Tab O), a 30-day acceptance period.

We find the Army's explanation to be reasonable and believe no useful purpose would be served by discussing the protester's continuing objections to the Army's reports (CC, pp.10-13 and SSRC, pp.18-20).

O. Applicability of Prior GAO Decision

Throughout the course of its protest JLA has repeatedly relied upon our decision in the matter of Corbetta Construction Company of Illinois, Inc., 55 Comp. Gen. 201 (1975), 75-2 CPD 144, modified, in

part, 55 Comp. Gen. 972 (1976), 76-1 CPD 240, and on other decisions of our Office cited therein (P, pp.1-3, 17, 23-24, 28-29, 31, 34, 38; C, pp.10, 27, 35; JLA March 16, 1977, letter CC, pp.6-7; SSRC, pp.15-17, and elsewhere). In Corbetta we sustained a protest concerning the Naval Facilities Engineering Command's award of a negotiated contract for the design and construction of military family housing units on a turnkey basis.

We agree with the contracting officer (SSR, p.4) that Corbetta is easily distinguishable from the present case. Reduced to its simplest terms, our decision in Corbetta sustained the protest because the Navy failed to conduct written or oral discussions with offerors in the competitive range as required by law (10 U.S.C. § 2304(g) (1970) and ASPR § 3-805 (1974 ed.)). In contrast, the Army in the present case conducted both written and oral discussions with offerors in the competitive range.

JLA contends, however, that Corbetta is similar to the present case because in both situations the successful proposal was nonconforming in numerous respects to mandatory RFP requirements, and the agency nonetheless accepted the proposal, thereby waiving those requirements and depriving other offerors of an equal opportunity to compete (SSRC, pp.15-17).

We note that in Corbetta, the protester's allegations and the Navy's reports responding to them documented numerous uncertainties, ambiguities and deficiencies both in the successful proposal and in other proposals within the competitive range. The Navy had not conducted any discussions with the offerors, but instead had proceeded with an award, apparently relying on a "blanket offer" in the successful proposal. As we pointed out in the second Corbetta decision, our decision in the case was not premised on the substitution of our technical judgment for the judgment of the Navy's technical evaluators. Rather, we held that given the facts of record, the applicable law led to a conclusion that the Navy had failed to conduct required discussions, and that the award was therefore improper.

In contrast, the present case involves the protester's challenge to the technical judgments of the Army's evaluators in circumstances where the Army conducted discussions with the offerors, to the extent it believed necessary. The Army's reports deny the protester's contentions that the successful proposal was nonconforming in numerous

respects to the RFP requirements. For reasons already discussed in detail, we do not find the protester has shown that the Army's judgments clearly lacked a reasonable basis.

JLA further contends that "the revised and increased price allowed proposer 101" is similar to Corbetta, where the Navy improperly accepted a late price modification which increased the successful offeror's price (SSRC, p.16). The issue concerning the correction of offeror 101's proposed price has already been discussed. Also, the Army's error in failing to establish a common cutoff date for submission of best and final offers is treated infra. For reasons which will be discussed, this error alone is not sufficient reason to sustain JLA's protest.

P. Meaningful Discussions

JLA contends that the Army's negotiations with offeror 260 and offeror 101 were mere gestures for public opinion and were just another vehicle for manipulating quality points and price (P, p.9). Also, the protester contends the record does not disclose that the Army ever sought to resolve the many technical uncertainties in offeror 101's proposal (C, p.27).

Written or oral discussions in a negotiated procurement must be meaningful, and to this end the Government must usually furnish information to offerors as to the areas in which their proposals are deficient, so that the offerors are given an opportunity to satisfy the Government's requirements. See 51 Comp. Gen. 431 (1972). However, the content and extent of discussions needed to satisfy the requirement for meaningful discussions is a matter primarily for determination by the contracting agency, whose judgment will not be disturbed unless clearly without a reasonable basis. Austin Electronics, 54 Comp. Gen. 60 (1974), 74-2 CPD 61.

The record in the present case shows that the Army sent offeror 101 and offeror 260 lists of deficiencies in their proposals. The list sent to offeror 101 includes 13 items (R, Tab M). The list sent to offeror 260 includes 14 items, several of which cover more than one area in which the proposal was found to be noncompliant with the RFP (R, Tab K). The Army's memoranda of the discussions further document the specific deficiencies discussed with offerors during the negotiation sessions (R, Tabs N and O). JLA's broad, general allegations furnish no grounds for our Office to conclude that meaningful discussions were not conducted by the Army in this case.

Q. Submission of Best and Final Offers

JLA alleges that C-H was allowed more time than the other offerors to submit its best and final offer, because the other offerors submitted their best and final offers by July 9, 1976, and C-H was allowed to submit its best and final offer on July 12, 1976 (C, p.36); SRC, p.22-23).

The contracting officer states that offerors were given up to 10 days after their negotiation sessions to submit their best and final offers. Thus Mercury, which had its negotiation session on June 30, 1976 (R, Tab N), was given until July 9, 1976; for C-H, the dates were July 1 and July 11, 1976, respectively (R, Tab 10). Since July 11 was a Sunday, C-H was instructed to submit its best and final offer on Monday, July 12, 1976 (SR, p.34). The contracting officer therefore denies that C-H was allowed more time than the other offerors to submit its best and final offer.

JLA's allegations indirectly raise the only meritorious objection in its protest. ASPR § 3-805.3(d) (1976) requires that at the conclusion of discussions, a final, common cutoff date for submission of "best and final" offers be established. The cutoff date must be common to all offerors in the competitive range, not sequential; it is immaterial that offerors are given an equal amount of time to revise their proposals. 50 Comp. Gen. 117, 124-125 (1970). The Army in this case failed to comply with ASPR § 3-805.3(d)(1976).

However, JLA has not alleged or shown any prejudice to the offeror with which it was associated, Mercury, by reason of the Army's failure to comply with the regulation. See 52 Comp. Gen. 161, 166 (1972); contrast 50 Comp. Gen. 1 (1970). As already noted, Mercury has not protested or joined in JLA's protest; also, Mercury was rated sixth in the evaluation. In these circumstances, we do not believe the departure from ASPR is sufficiently serious to warrant a recommendation for corrective action by our Office with respect to the award. However, by letter of today we are calling this deficiency in the procurement to the attention of the Secretary of the Army.

V. Alleged Award of Contract Notwithstanding Pending Protest

JLA alleges that its protest was filed with our Office (August 17, 1976) before the contract was awarded to C-H (P, p.15) and that our Bid Protest Procedures and ASPR § 2-407.8 (1976) required

the Army to withhold an award until its protest was decided (CC, p.27). JLA maintains, citing 50 Comp. Gen. 357 (1970), that no contract is formed if a protest is filed prior to the "acceptance" of a contract by the contractor (P, p.15). In JLA's view, the contract did not come into existence until November 17, 1976 (SSRC, p.23), when the contracting officer signed the Standard Form 23 award document.

The Army's position is that its notice of award to C-H, dated July 30, 1976 (R, Tab T), consummated the award. In this regard, JLA objects to the fact that it was given no advance notice of this purported award by the Army (C, p.19-20) and maintains that this failure violated applicable procurement regulations (SRC, p.14).

The Army's July 30, 1976, notice advised C-H that its proposal dated May 28, 1976, as modified by C-H's letter of July 9, 1976, in the sum of $19,839,000, was accepted. It also provided: "Acceptable performance and payment bonds (if required) must be furnished upon execution of the formal contract. * * * A formal contract will be prepared and forwarded to you for execution. Acknowledge receipt of this Notice of Award in the space provided below and return * * * one copy to this office." The acknowledgement by C-H is signed and dated August 2, 1976.

The RFP included language in the Standard Form 21 (December 1965) to the effect that the offeror agreed, upon written acceptance of its offer mailed or otherwise furnished, to execute Standard Form 23 ("Construction Contract") and to give performance and payment bonds. It also included paragraph four of Standard Form 22 (October 1969 edition), which notes that if the offeror fails to execute the "further contractual documents" and provide the required bonds, "his contract may be terminated for default."

In our view, this language means that the agency's written acceptance of the offer, mailed or otherwise furnished, results in a binding contract. See B-176941, November 28, 1972; S. J. Groves & Sons Company, 55 Comp. Gen. 937, 954 (1976), 76-1 CPD 205. Accordingly, the contract came into existence when the Army's July 30, 1976, notice was mailed or otherwise furnished to C-H, and JLA's contention that its protest preceded the award is without merit.

JLA's reliance on 50 Comp. Gen. 357 is misplaced, as that decision does not deal with the effect of a protest on the award of a contract to another party, but with the question whether the filing of a protest

has the effect of extending the bid acceptance period of a protester's bid. Further, ASPR does not require advance notice of a proposed award to unsuccessful offerors; rather, pursuant to ASPR § 3-508.3, notice is given to the unsuccessful offerors after the award has been made.

The protester also maintains that 50 Comp. Gen. 357 and 45 Comp. Gen. 417 (1966) are precedent for our Office to suspend the "administrative processing" of the contract until the protest is decided. (P, p.2). These decisions do not so hold. Rather, we have consistently taken the position that whether contract performance should be suspended pending our Office's decision on a protest is a matter for the contracting agency to decide. See, for example, 46 Comp. Gen. 53 (1966); 50 id. 447 (1970). In a similar vein, JLA maintains that Albano Cleaners v. United States, 455 F.2d 556 (Ct. Cl. 1972), and 52 Comp. Gen. 215 (1972) are authority supporting its contention that "further consummation" of the award should have been held up (CC, p.26). We are unable to see how these cases support the proposition advanced by the protester.

VI. Alleged Improper Conduct by Army Officials

As the foregoing discussion of the issues indicates, the protester in this case has vigorously asserted maladministration by the Army of the entire procurement. Also, JLA has repeatedly alleged, in extremely strong language, various instances of improper conduct on the part of the chairman of the technical and selection panels, the contracting officer, and other Army officials. Many of these allegations have already been touched upon in our discussion of the issues, supra. The remainder, to the extent that they involve noncriminal allegations which our Office can consider, are an assortment of allegations or suggestions of misrepresentations of facts by the Army, manipulations of the procurement, favoritism towards C-H, and bias towards the protester, many of them expressed in the form of invective directed at various individual Army personnel.

We believe no useful purpose would be served by discussing these allegations in detail. However, the general tenor of the protester's contentions can be summed up through the following statement in JLA's March 16, 1977, letter to our Office: "The pattern of the Army's grossly negligent conduct, as evidenced by the sheer weight of circumstances and observed fact, is of such

questionable character that the entire procurement must be stamped as fraudulent."

We disagree. Sweeping allegations of improper conduct prove nothing. Such allegations are to be considered not in the abstract, but only in relation to the particular actions taken by the agency in the procurement, such as those discussed at length supra.

For cases where somewhat similar allegations of improper conduct were made, but not substantiated, see Federal Leasing Inc., et al., 54 Comp. Gen. 872 (1975), 75-1 CPD 236; Julie Research Laboratories, Inc., 55 Comp. Gen., supra, at 385-388. See also Radix II, Inc., B-184913, January 22, 1976, 76-1 CPD 37. A protester or claimant has the burden of affirmatively proving its case; we have stated that "It must be emphasized * * * that unfair or prejudicial motives will not be attributed to individuals on the basis of inference or supposition." A.R.F. Products, Inc., 56 Comp. Gen. 201, 208 (1976), 76-2 CPD 541; see also Onyx Corporation, B-187599, July 20, 1977, 77-2 CPD 37. Where the written record fails to clearly demonstrate alleged unfair treatment of the protester by individual agency officials, the protester's allegations are properly to be regarded as mere speculation. Julie Research Laboratories, Inc., supra; Sperry Rand Corporation, 56 Comp. Gen. 312, 319 (1977), 77-1 CPD 77. In addition, we believe the protester fails to understand that it may be difficult or impossible for it to establish--on the written record which forms the basis for our Office's decisions in protests--the existence of unfair treatment which is allegedly based upon the subjective motivations of an agency's procurement personnel. See Environmental Protection Agency--request for modification of GAO recommendation, 55 Comp. Gen. 1281, 1287-1288 (1976), 76-2 CPD 50. In this regard, a bid protest conference, such as the one held at the protester's request in the present case, is not a formal hearing with sworn testimony and examination of witnesses. Julie Research Laboratories, Inc., supra.

For the reasons already discussed, we do not believe that the protester's specific objections to the Army's actions in conducting the procurement establish the type of bad faith misconduct which is alleged. We believe the protester's sweeping allegations of dishonest, improper conduct by Army officials are not substantiated by evidence and are properly to be regarded as mere speculation and conjecture.

The protester has also suggested that Army personnel may have violated criminal statutes. (P, p.6; C, p.3). JLA has stated that it has been in contact with the Federal Bureau of Investigation, that it intends to seek the prosecution of several Army officials, but that it is refraining from pursuing this course of action until our Office decides the protest (SRC, pp.3-4).

In this connection, JLA has made certain allegations concerning the withdrawal of a separate protest concerning this procurement. On August 10, 1976, Ecoscience, Inc., filed a protest with our Office concerning the award to C-H. Ecoscience had submitted a proposal and was identified as offeror 140 in the procurement. By message to our Office dated August 30, 1976, Ecoscience withdrew its protest. The message did not state any reasons for the withdrawal.

The protester alleges that the "cardinal reason" for the withdrawal was a promise to Ecoscience that it would be awarded a separate construction contract at Fort Polk, Louisiana, if it withdrew its protest (SSRC, p.4). JLA does not state who made the alleged promise.

In this regard, the contracting officer has stated (SSR, p.2):

> "Ecoscience, in its protest, had contended that the Government did not evaluate an alternate site plan which had been submitted in response to the request for best and final offers. It was established by the Government that the alternate site plan submitted by Ecoscience contained incorrect housing unit plans and the correct housing unit plan would not fit on the site plan submitted. It was the Government's position that the Ecoscience plan was unacceptable in that form, and Ecoscience was so advised. Ecoscience was represented by competent counsel, and the Government is not privy to Ecoscience's reasons for withdrawing its protest. The Savannah District has absolutely nothing to do with projects at Fort Polk, which is under the jurisdiction of another district."

The protester states (SSRC, p.4) that this response does not come to grips with the allegations in an affidavit dated March 25, 1977, executed by Mr. Joseph J. Legat of JLA (CC, Enclosure 3). In

the affidavit, Mr. Legat states, among other things, that in several conversations he had with a vice president of Ecoscience, the vice president stated that "The reason for dropping (or withdrawing) their protest on the 750 Family Housing Units Fort Stewart project was in order that they would receive the Fort Polk Housing Project award, and was not that they had become aware that their dwelling units would not fit on the Site Plan * * *."

The interpretation and enforcement of the criminal laws of the United States are functions of the Attorney General and the Federal courts and are not matters within our Office's jurisdiction. Libby Welding Company Inc., et al., B-183872, October 1, 1975, 75-2 CPD 204. In the present case, after a thorough review of the record, we find no reason to refer any of the matters covered therein to the Department of Justice for its consideration. Whether JLA wishes to pursue these matters with the Department of Justice is for it to decide.

VII. Alleged Untimely Army Reports

The protester has complained several times (e.g., C, p.31; SRC, p.2; CC, pp. 27-28) that the Army has taken an excessive amount of time to furnish its reports to our Office responding to the protest. In view of the protester's lengthy submissions and the nature of the issues raised, we do not find it remarkable that the Army required more time to prepare its reports than might be the case in most protests. In any event, as our decision denies JLA's protest, we do not believe extended discussion of this procedural issue would serve any useful purpose.

VIII. Claim for Proposal Preparation Costs and Damages

JLA also claims proposal preparation costs on the basis of alleged arbitrary treatment of the Mercury proposal by the Army. (P, p.47-49).

Bid or proposal preparation costs may be recoverable when it is shown that arbitrary and capricious action by the Government towards a claimant has denied the claimant fair and honest consideration of its bid or proposal. See, generally, T & H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345, and decisions cited therein. It has been held that the Government's failure to give fair and honest consideration breaches an implied contract which is formed by the Government's

solicitation of bids or proposals and the submission of a bid or proposal in response to the solicitation. See University Research Corporation - Reconsideration, B-186311, August 16, 1977, 77-2 CPD 118. In this regard, in Bell & Howell Company, 54 Comp. Gen. 937 (1975), 75-1 CPD 273, we held that the submission of an unsolicited proposal did not give rise to any obligation by the Government to fairly and honestly consider the proposal.

In the present case, the Army's RFP solicited proposals. However, the record does not show that JLA submitted a proposal. Rather, as indicated previously, the proposal referred to by JLA was submitted by an offeror with which JLA was associated, Mercury. Mercury has not asserted any claim for the costs of preparing its proposal, nor has it indicated that JLA is authorized to pursue a claim on its behalf. In these circumstances, since there is no indication of any implied contract between the Army and JLA, it follows that there could be no breach of contract by the Army, and JLA's claim for proposal preparation costs is therefore denied.

JLA also claims "damages," apparently consisting of the costs of pursuing its protest (P, p.48). In this regard, it has been held that protest costs are not compensable. Descomp, Inc. v. Sampson, 377 F. Supp. 254 (D. Del., 1974).

IX. Conclusion

The protest is denied.

As noted supra, by letter of today we are calling to the attention of the Secretary of the Army our conclusion that ASPR § 3-805.3(d) (1976) was not fully complied with in this procurement, due to the lack of a common cutoff date for best and final offers, and suggesting that this information be brought to the attention of responsible procurement personnel to prevent a recurrence in future procurements.

Deputy Comptroller General
of the United States