

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

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FILE: B-209485**DATE:** July 25, 1983**MATTER OF:** SETAC, Inc.**DIGEST:**

1. Protest that a competitor allegedly used the protester's proprietary data in its proposal presents a dispute between private parties that is not for consideration under GAO's Bid Protest Procedures where the contracting agency did not participate in the alleged disclosure of the data.
2. Allegation that a competitor's proposal contains false representations in violation of 18 U.S.C. § 1001, a criminal statute, raises a matter outside GAO's bid protest function. Nevertheless, if a protester establishes that an offeror made misrepresentations in its offer that materially affected the evaluation, corrective action would be appropriate.
3. Request for best and final offers stating that no technical revisions are desired cannot reasonably be interpreted as precluding technical revisions that might make a proposal more competitive. Absent express contrary instructions, offerors should know that changes to their technical proposals are permitted in best and final offers.
4. Agency's evaluation of technical proposals for the offeror's "Approach/Understanding of Tasks" was reasonable even though the sub-factor was not expressly listed in the solicitation. While an agency must identify every major evaluation factor, it need not specify the various aspects of the major criteria, provided the aspects are reasonably related to, or are encompassed by, the stated criteria, which the record clearly shows is the case here.

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5. Where RFP lists the relative weights of the major evaluation criteria, but not the precise weights, there is no requirement that award be made to the offeror whose proposal receives the highest numerical ranking, or that selection officials adhere to the precise weights recommended to them by their advisers. Where selection officials, after evaluating proposals on a basis clearly consistent with the solicitation's scheme, reasonably regard proposals as essentially equal technically, cost or price may be the determinative selection factor, absent justification for an award to a more costly offeror.
6. GAO will not question an agency's technical evaluation or determination whether a proposal is in the competitive range unless shown to lack a reasonable basis or to violate procurement statutes and regulations. The protester's mere disagreement with the agency's judgment does not meet its burden of showing the agency's technical evaluation and competitive range determination were unreasonable.
7. Contracting agency's analysis of proposals for cost realism involves the exercise of informed judgment, and GAO therefore will not disturb a cost realism determination unless it is shown to lack a reasonable basis. Where the contracting agency independently reviewed the cost realism of offers against a Defense Contract Audit Agency's report based in part on the actual costs of prior performance, the analysis is not legally objectionable where no specific errors are alleged.

SETAC, Inc. protests the Navy's award of a cost-plus-fixed-fee contract to Frontier Engineering, Inc. to provide technical engineering support services for one basic year and two separate option years at the Tactical Aircrew Combat Training Systems, Fleet Analysis Center (FLTAC), Corona, California. The contract was awarded under request for proposals (RFP) No. N00123-82-R-0827, which was set

aside for small business concerns. Only two such firms--SETAC, the incumbent contractor, and Frontier Engineering--submitted offers. In response to discussions, SETAC offered a total cost of \$3,555,599, and Frontier a cost of \$2,784,250. Although the solicitation listed technical factors above cost in order of importance and SETAC received a technical score of 555 out of a possible 700 as opposed to Frontier Engineering's score of 529, the Navy determined the cost advantage of Frontier Engineering's proposal outweighed the technical advantage of SETAC's proposal. SETAC basically contends that the Navy's determination was unreasonable, and particularly complains that the Navy failed to downgrade Frontier Engineering's technical proposal for misstatements of the firm's qualifications and experience. SETAC also raises other protest grounds, including a complaint that FLTAC discouraged SETAC from changing its technical proposal during negotiations.

We dismiss the protest in part and deny it in part.

I. BACKGROUND

A. The Solicitation

The solicitation's scope of work included a list of broad tasks, and provided precise minimum qualifications and level-of-effort estimates for certain labor categories--program manager, senior project engineer, project engineer, senior engineer, electronics engineer, data technician, and more. The offeror's proposed labor rates times the estimated manhours for each category, plus the offeror's proposed fee, basically provided the basis for a cost evaluation. In addition, offerors were to submit separate technical and cost proposals for a separate evaluation of technical acceptability and to permit a cost realism analysis.

For award purposes, the solicitation listed three evaluation criteria in descending order of importance-- Personnel, Management, and Cost. The first two criteria composed the major technical criteria. The Personnel criterion required resumes demonstrating the qualifications and experience of the personnel proposed to perform the work. The Management criterion required a description of management personnel's capabilities in the management of technical programs similar to those required by the solicitation. This criterion also stated that the offeror must submit a brief management plan indicating the controls

that would be exercised to effectuate timely performance and cost effectiveness under the contract, and including the proposed lines of responsibility, authority and communication within the proposed organization and in relation to the present organization.

Under the Cost criterion, the solicitation advised offerors that although cost was the least important factor, it nonetheless was important, and that "the degree of its importance will increase with the degree of equality of the proposals in relation to the other factors on which selection is to be based." The Cost factor involved an evaluation of the total cost to the Government, including an evaluation of the cost realism of the offeror's proposed costs.

B. Evaluation and Discussions

The technical evaluators reviewed initial technical proposals using the following evaluation matrix:

A. <u>Technical</u>	<u>Maximum Points</u>
1. Personnel Qualifications	400
2. Approach/Understanding of Tasks	120
3. Company Experience	90
4. Management Plan	90
total	700
 B. <u>Cost</u>	 300

The Navy reports (and the evaluation summaries indicate) that the technical factors numbered 2 through 4 were subfactors of the Management criterion listed in the solicitation. Thus, the relative importance of the major evaluation criteria listed in the solicitation was Personnel--40 percent, Management--30 percent, and Cost--30 percent.

Initial technical proposals received the following scores:

<u>Factor</u>	<u>Max Points</u>	<u>SETAC</u>	<u>Frontier Eng.</u>
Personnel Qualifications	400	316	264
Approach/Understanding of Tasks	120	89	103

Company Experience	90	83	80
Management Plan	90	67	82
		<u>555</u>	<u>529</u>

SETAC received a relatively low score under the Management Plan subfactor because it proposed three managers for the contract work who are also line managers in the SETAC corporate structure, raising the possibility of conflicts that might interfere with the performance of assigned contract tasks. The evaluators downgraded SETAC's score for Approach/Understanding of Tasks because a majority of the evaluators felt that SETAC did not respond specifically to all the major task descriptions outlined in the solicitation.

Notwithstanding that SETAC received a slightly higher technical score than did Frontier Engineering, the evaluators recommended that cost be the deciding selection factor since both offerors were deemed technically acceptable and there was no significant difference between the technical merits of the two offerors' proposals. In this regard, the cognizant Navy procurement officials decided that the noted deficiencies were minor and not readily correctable during discussions.

Concerning the initial cost proposals, the Defense Contract Audit Agency questioned \$78,000 of SETAC's proposed base year costs of \$1,193,089, and determined Frontier Engineering's proposed costs of \$886,505 to be reasonable. The contracting officer conducted negotiations with both offerors, in part to resolve the \$78,000 question about SETAC's offer. By letter, the contracting officer requested a best and final offer from both firms. The letter cautioned the offerors that proposed costs would be evaluated only for the basic contract period, although proposals had to demonstrate the reasonableness of option year costs. The letter also stated that, because the evaluation of technical proposals resulted in a finding that essential technical equality existed between offerors and whatever deficiencies existed were minor, no further technical information or revisions were desired. Offerors were cautioned that any such information had little or no potential to affect their technical standing.

In response, SETAC revised its cost proposal in a manner that the Navy considered to be realistic, and revised its technical proposal by replacing two proposed personnel and adjusting the hours of its project engineer. The Navy considered these changes to be minor, and they therefore had no effect on SETAC's technical score. Frontier Engineering made no technical changes. Thus, the offerors' technical scores were unchanged.

The Navy then evaluated best and final offers using a "normalization" method, that is, giving the highest ranked proposal in each of the two areas of technical ability and cost the maximum number of points available in those areas, and the other offer a fraction of the maximum score for each area in the same proportion as the offers' raw scores. See Francis & Jackson, Associates, 57 Comp. Gen. 244 (1978), 78-1 CPD 79. Thus, Frontier Engineering scored the full 300 points for cost and 667.21 for technical ability, whereas SETAC scored 234.51 for cost and the full 700 for technical ability. The overall (technical plus cost) scores were 967.20 for Frontier Engineering, and 934.50 for SETAC.

The Navy, based in part on the technical evaluators' recommendation that cost be the deciding award factor, determined that SETAC's slightly higher technical score (4 percent higher than Frontier Engineering) did not justify its approximately \$245,000, or 27 percent, higher cost, and therefore made an award to Frontier Engineering.

II. ANALYSIS

A. Awardee's Qualifications and Alleged Use of Protester's Proprietary Data

SETAC's principal complaint is that Frontier Engineering allegedly misrepresented its prior experience and used SETAC's proprietary data in its proposal. According to the protester, Frontier Engineering's president and two full-time employees had been SETAC employees who left SETAC to go into business on their own. The protester alleges that these individuals took proprietary data with them that they used in preparing Frontier Engineering's proposal. SETAC also complains that the proposal falsely describes Frontier Engineering as "a SETAC affiliate," and that the proposal cites prior SETAC contracts to demonstrate the firm's experience even though none of Frontier Engineering's employees significantly participated in the performance of the contracts. In SETAC's view, these allegedly false

statements violate 18 U.S.C. § 1001 (1976), a criminal statute, and should provide a basis for rejecting Frontier Engineering's offer.

Frontier Engineering's allegedly improper use of the protester's proprietary data does not provide a basis for our objecting to an otherwise valid award. A competitor's alleged use of another firm's data presents a dispute between two private parties that is not for consideration under our Bid Protest Procedures. Resource Development Institute, Inc., B-196204, October 10, 1979, 79-2 CPD 245. The courts, rather than this Office, are the appropriate forum to determine the parties' rights regarding allegedly proprietary data. Telemechanics, Inc., B-203428, B-203643, B-204354, October 9, 1981, 81-2 CPD 294. We dismiss this aspect of the protest.

Concerning the alleged violation of 18 U.S.C. § 1001, which imposes criminal penalties for knowingly making false statements to the Government, such matters are outside the scope of our bid protest function and should be referred to the Department of Justice. See E.C. Campbell, Inc., B-204253, February 2, 1982, 82-1 CPD 76.

Nevertheless, where it is established that an offeror made intentional misrepresentations that materially influenced the agency's consideration of its proposal, the proposal should be disqualified, see Informatics, Inc., 57 Comp. Gen. 217 (1978), 78-1 CPD 53, or the contract canceled where an award has been made. See New England Telephone and Telegraph Company, 59 Comp. Gen. 746 (1980), 80-2 CPD 225; 49 Comp. Gen. 406 (1966). Moreover, a contract could be terminated for the convenience of the Government where misrepresentations materially influenced the agency's consideration of the contractor's proposal, but it cannot be established that the misrepresentations were intentional. See New England Telephone and Telegraph Company, supra.

In this case, however, the protester has not established that Frontier Engineering's proposal contained misrepresentations. The allegations--that Frontier Engineering was not a SETAC affiliate and that it misrepresented certain of its proposed employees' experience--are unsupported. The burden is on the protester to present evidence affirmatively establishing its case, and unsupported allegations do not meet that burden. Gas Turbine Corporation, B-210411, May 25, 1983, 83-1 CPD 566.

B. Allegedly Misleading Discussions

SETAC states that upon receipt of the request for best and final offers it sought clarification from the contracting office. The protester alleges that it was told that technical scores were not equal, and SETAC's superior score therefore could justify an award to it rather than to an offeror whose proposal was lower priced but was not ranked as highly for technical ability. SETAC asserts that this reassurance and the statement in the Navy's letter that no technical revisions were desired caused SETAC not to change its mix of technical personnel in a manner that would have permitted SETAC to reduce its cost. The same Navy contracting activity, alleges the protester, had admonished SETAC in a previous procurement about changing a technical proposal after discussions in which the activity had stated no technical revisions were desired.

The Navy responds that SETAC was free to make technical changes to its proposal, and denies that any contracting official advised the protester that its technical superiority provided a basis for an award to SETAC.

We have held that, absent express contrary instructions, offerors should know that changes to their technical proposals are permitted in best and final offers. Systems Group Associates, Inc., B-198889, May 6, 1981, 81-1 CPD 349. If the protester means to argue that the language of the letter requesting best and final offers could be interpreted as prohibiting technical revisions, we believe that such an interpretation is unreasonable. The letter did not prohibit technical revisions, but merely stated that none were desired in light of the essential equality of technical proposal and the lack of any major deficiencies in the proposals. The plain meaning of the advice in the letter that no further technical information or revisions were desired is that the Navy did not require any revisions to remedy deficiencies or significant weaknesses in the offeror's technical proposals, not that the agency actually was precluding revisions that offerors thought would enhance their competitive positions. Moreover, the record indicates the protester did not interpret the request for best and final offers to prohibit technical revisions, since SETAC's best and final offer included revisions to its technical proposal--as stated previously, SETAC replaced two proposed personnel and adjusted the hours of its project engineer. We therefore cannot conclude, on the record presented, that SETAC was misled by the Navy's request for best and final offers.

The only evidence on the protester's disputed allegation that a contracting official informed SETAC that its proposal was sufficiently technically superior to justify an award to SETAC is the conflicting statements of the protester and the contracting agency. In such a case, we are constrained to accept the contracting agency's version of the facts, because the protester has failed to meet its burden of proof. See Photonics Technology, Inc., B-200482, April 15, 1981, 81-1 CPD 288.

SETAC's allegation that contracting officials had previously admonished it for including technical revisions in its best and final offer, where the request for such offers stated no technical revisions were desired, is unsupported and, more importantly, has no relevance to this protest. The protester has failed to show that the circumstances in the prior procurement had any similarity to those in this case, and thus has failed again to meet its burden of proof.

We therefore deny the protest as it relates to allegedly misleading discussions.

C. Evaluation of Technical Ability Versus Cost

SETAC argues it should have received the award because of its alleged technical superiority notwithstanding its more costly proposal. The protester complains that the FLTAC technical evaluators failed to adhere to the evaluation factors and weights originally recommended by the FLTAC personnel who prepared the requisition for the engineering support services. The requisition included a recommended evaluation plan where the Personnel factor was weighted 60 percent, Management 30 percent, and Cost 10 percent. SETAC contends that adherence to this scheme would have resulted in a greater discrepancy between SETAC's higher ranked technical proposal and Frontier Engineering's, which allegedly would have justified an award to SETAC despite the greater cost. SETAC further complains that the Navy added a new factor to the evaluation scheme, Approach/Understanding of Tasks, that was not included in the plan accompanying the requisition.

SETAC's complaint that the FLTAC technical evaluators failed to use the numerical evaluation weights recommended in the requisition does not present a proper basis to object to an otherwise valid award. Selection officials are relatively free to determine the manner in which

proposals will be evaluated so long as the method selected provides a rational basis for a source selection, and the actual evaluation comports with the established evaluation criteria stated in the solicitation. Boone, Young & Associates, Inc., B-199540.3, November 16, 1982, 82-2 CPD 443. Here, the relative weights assigned to the various evaluation factors simply were listed in the RFP in descending order of importance (precise weights for each factor were not indicated), and the evaluation weights assigned obviously were consistent with that scheme. The fact that the agency may have considered another evaluation scheme at some point provides no legal basis to object to an evaluation that was consistent with the basis on which offers were invited. See Bunker Ramo Corporation, 56 Comp. Gen. 712 (1977), 77-1 CPD 427.

As to the decision to accept the lowest cost proposal instead of the one that received the most technical evaluation points, point scores are merely guides for decision-making by source selection officials whose responsibility it is to determine whether technical point advantages are worth the cost that might be associated with a higher scored proposal. Telecommunications Management Corp., 57 Comp. Gen. 251 (1978), 78-1 CPD 80. Selection officials therefore have broad discretion in determining the manner and extent to which they will make use of technical or cost evaluation results, and may make cost/technical tradeoffs. Id. We have recognized that where cost is assigned points as an evaluation factor along with other factors, the fact that a proposal receives the highest number of points does not in itself justify acceptance of the highest scored proposal without regard to price. The Jonathan Corporation, B-199407.2, September 23, 1982, 82-2 CPD 260. The designation of cost or price as a subsidiary evaluation factor means only that where there is a technical advantage associated with one proposal, that proposal may not be rejected merely because it is higher in price. It does not mean that, when technical proposals are deemed to be essentially equal, price or cost will not become the controlling factor. Lockheed Corporation, B-199741.2, July 31, 1981, 81-2 CPD 71.

Indeed, cost cannot be ignored by an agency in the selection process. Lockheed Corporation, supra. Where selection officials reasonably regard proposals as being essentially equal technically, cost or price becomes the determinative factor in awarding a contract no matter how it is weighed in the evaluation scheme, absent explicit

justification for an award to a more costly offeror. CompuServe Data Systems, Inc., B-206274, May 20, 1982, 82-1 CPD 482; see also The Jonathan Corporation, supra. The RFP in this case essentially informed all offerors of this fact by stating, in the section announcing the evaluation criteria, the following:

"Although cost is the least important factor, it is an important factor and should not be ignored. The degree of its importance will increase with the degree of equality of the proposals in relation to the other factors on which selection is to be based."

Thus, the Navy had the right to make an award on the basis of cost because it determined that the protester's and Frontier Engineering's offers were essentially equal technically. See Bunker Ramo Corporation, supra. We will discuss whether the Navy properly determined the proposals to be essentially equal in the next section.

Concerning the evaluation of offers for Approach/ Understanding of Tasks, the Navy asserts that the criterion was a subfactor of the major Management criterion listed in the RFP. The evaluation documents, which we have examined, show that to be the case. While it is well settled that the evaluation and evaluators must conform to the scheme set forth in the solicitation, the procuring agency is not required to identify the various aspects of the major criteria, provided that the aspects are reasonably related to, or are encompassed by, the stated criteria. Human Resources Research Organization, B-203302, July 8, 1982, 82-2 CPD 31.

We believe that the offeror's demonstrated understanding and approach to tasks is reasonably related to the requirements established by the Management criterion, especially the requirement for a management plan. Moreover, the solicitation specifically advised offerors that "the technical proposal should be sufficiently specific, detailed and complete to clearly and fully demonstrate that the offeror has a thorough understanding of the requirements for, and technical problems inherent in, the achievement of the specifications and work program," and that the offeror "has a valid and practical solution for each contemplated problem." The solicitation further required a complete explanation of the offeror's proposed procedures

and techniques. We therefore see nothing unfair in this aspect of proposal evaluation.

D. Fairness of the Technical Evaluation

SETAC argues that the technical evaluators were inconsistent in their evaluation of the two proposals, since the evaluators deducted points from SETAC's score under the Management Plan subfactor because SETAC assigned certain line managers within their organization to perform contract-management tasks, but did not disqualify as unacceptable Frontier Engineering executive managers who were assigned to key positions.

The evaluators further erred, argues the protester, by failing to disqualify Frontier Engineering for deficiencies noted in the evaluation summary. The evaluators noted that three of the offeror's employees were assigned to tasks for which they lacked the precise qualifications required by the solicitation, and that the firm would require a learning period for some tasks and some additional managerial support for logistics. The evaluators also noted that Frontier Engineering had not yet obtained a facility in Corona, California as required by the solicitation. In this regard, SETAC complains that Frontier Engineering had also failed to obtain a facility in the Washington, D.C. area as also required by the solicitation.

In response, the Navy points out that both SETAC and Frontier Engineering had points deducted for assigning line managers or managers to working-level tasks. In SETAC's case, the Navy deducted 23 points out of a possible 90 under the Management criterion for this and other deficiencies concerning SETAC's proposed management plan. The deficiency was also noted in the narrative evaluation summary. According to the Navy, 8 points were deducted from Frontier Engineering's Management score including some points for the same type of deficiency. Regarding its alleged failure to reject Frontier Engineering's initial proposal and to disqualify certain of Frontier Engineering's personnel for failure to meet qualifications required by the solicitation, the Navy reports that while the evaluators noted that Frontier Engineering had proposed assigning three individuals to tasks for which they lacked the precise qualifications required by the RFP, nothing in the evaluation scheme required that the Navy reject the offer for that reason.

The Navy explains that its major concern under the personnel category was to ensure that proposed individuals meet the minimum requirements for each specified position, e.g., the RFP specifically required a program manager, senior project engineer, a senior engineer, and an electronics engineer, and those failing to meet the requirements for those positions received no points at all. Frontier Engineering's proposed project engineer fell into this category and thus received no points. Another evaluation concern was that personnel proposed for tasks, although meeting the minimum requirements for their positions, possess qualifications making them well suited to perform the tasks. Thus, the Navy felt that although Frontier Engineering's proposed senior project engineer and data technicians met the requirements the RFP contained for those positions, these personnel were not properly assigned to several tasks. For this reason, points were deducted from Frontier Engineering's Personnel score for these individuals.

We do not independently determine the relative merits of proposals since the evaluation of proposals is the function of the procuring agency. The Jonathan Corporation, supra. We therefore will not question an agency's technical evaluation unless the protester shows the agency's judgment lacked a reasonable basis or the agency otherwise violated procurement statutes or regulations, Science Information Services, Inc., B-207149.2, November 29, 1982, 82-2 CPD 477, including the requirement that the actual evaluation comport with the evaluation criteria established in the RFP. See Telecommunications Management Corp., supra. We apply the same standard to a review of the agency's determination whether an initial proposal is in the competitive range, and thus eligible for revisions through discussions. Spectrum Leasing Corporation, B-205781, April 26, 1982, 82-1 CPD 383. In this respect, we have recognized that contracting officials have considerable discretion particularly with respect to technical considerations. Id.

Applying these principles, we believe the Air Force's methodology--giving no points only where proposed personnel fail to meet the RFP's minimum requirements for their labor category--was reasonable, and did not conflict with the stated evaluation scheme. We therefore lack any basis for objecting to it.

Concerning SETAC's argument that Frontier Engineering's initial proposal should have been rejected without

discussions, it is improper in a negotiated procurement to exclude an offeror from the competitive range solely on the basis of technical considerations unless its proposal is technically unacceptable. Exclusion from the competitive range is not justified merely because a proposal is technically inferior. Simpson, Gumpertz & Heger, Inc., B-202132, December 15, 1981, 81-2 CPD 467. In deciding whether to exclude a proposal from the competitive range without discussions, the agency should consider the following factors:

- (1) how definitively the RFP called for the detailed information, the omission of which was relied on by the agency for excluding a proposal from the competitive range,
- (2) the nature of the deficiencies, that is, whether they tended to show that the offeror did not understand what it was required to do under the contract, or whether they merely made the proposal inferior but not unacceptable,
- (3) whether deficiencies were so extensive that the offeror essentially would have to rewrite its proposal to correct them,
- (4) whether only one offeror was found to be in the competitive range, and
- (5) whether the deficient proposal represented a significant cost savings.

See Spectrum Leasing Corporation, supra.

We believe the agency reasonably determined that the deficiencies noted by the evaluators made the proposal inferior--causing point deductions which were taken--but not unacceptable, especially since the agency found the nature of the deficiencies to be minor, the rejection of Frontier Engineering's proposal would have resulted in a competitive range of one, and the proposal offered a cost saving.

With respect to the RFP's requirement that the contractor have an office in Corona and the Washington, D.C. area, nothing in the RFP required the offeror to have such offices prior to award, and the agency only could evaluate the protester's ability to meet the requirement at that time. Therefore, Frontier Engineering's failure to have such offices or to list them in the proposal was not a basis for rejection of its offer. In any event, the initial offeror proposed an office in the Washington, D.C. area that Frontier Engineering could occupy if awarded the contract, and the best and final offeror identified an office in Corona.

The real thrust of the protester's complaints regarding the fairness and reasonableness of the evaluation is that Frontier Engineering should not have received as high a point score as it did, because it allegedly misrepresented its qualifications and because of the deficiencies noted by the evaluators. As we explained in subsection A, if Frontier Engineering expropriated SETAC's proprietary data and used it to bolster Frontier Engineering's qualifications for this contract, that does not provide a basis for our objecting to an otherwise valid award. Regarding the deficiencies noted by the evaluators, the protester has not shown that the evaluators unfairly or unreasonably evaluated the offerors' proposals, but basically disagrees with the evaluators' judgment as to the extent Frontier Engineering's proposal should have been downgraded for the deficiencies. The protester's mere disagreement with the agency's judgment does not meet the protester's burden of showing that the evaluation was unreasonable. Spectrum Leasing Corporation, supra. Moreover, we point out that even if the point differential between SETAC's and Frontier Engineering's technical scores had been somewhat greater, it would not have precluded the Navy from reasonably determining their technical merits as being essentially equal. See Lockheed Corporation, supra.

We therefore deny the protest regarding the propriety of the technical evaluation.

E. Reasonableness of the Cost Realism Analysis

Finally, SETAC questions the Navy's analysis of the realism of Frontier Engineering's proposed costs. SETAC complains that the Navy failed to consider the cost of learning and start-up problems anticipated by the technical evaluators, and suggests that Frontier Engineering's proposed costs were unreasonable. SETAC also alleges that Frontier Engineering is "buying-in," which in this case presumably means the firm has submitted unrealistically low cost data for evaluation purposes while anticipating that it will incur greater costs under this cost-plus-fixed-fee contract.

The Navy's cost analysis primarily involved a review of the reasonableness of the offerors' proposed labor rates and other costs. The offerors did not have to propose a level of effort since the solicitation provided estimated level of efforts (in terms of labor hours) for each labor category. The Defense Contract Audit Agency and the negotiator reviewed the offerors' proposed labor and

overhead rates and determined Frontier Engineering's rates to be reasonable in every respect. While Frontier Engineering did reduce its proposed rates for four labor categories in its best and final offer, a Navy negotiation summary relates that the firm based the revised rates on discussions with the Defense Contract Audit Agency auditor regarding minimum acceptable increases in current actual rates. The Navy's negotiator found the best and final offer's rates and proposed fee reasonable.

We have consistently held that a contracting agency's analysis of competing cost proposals involves the exercise of informed judgment, and we therefore will not disturb a cost realism determination unless it lacks a reasonable basis. Prospective Computer Analysts, B-203095, September 20, 1982, 82-2 CPD 234. The agency is not necessarily required to conduct an in-depth cost analysis or verify each and every cost item of the offeror's cost proposal. Hager, Sharp & Abramson, Inc., B-201368, May 8, 1981, 81-1 CPD 365. We have also indicated that where the agency has reviewed the offeror's proposed costs against a Defense Contract Audit Agency audit report, as well as against its own estimate of the previous contract's actual costs, we will find the cost analysis technique a reasonable exercise of the agency's discretion. See JVAN, Inc., B-202357, August 28, 1981, 81-2 CPD 184. Since the Navy independently reviewed the cost realism of offers against the Defense Contract Audit Agency's report, based in part on the actual costs of the prior contract, we believe the Navy's technique here is not legally objectionable. See Southern California Ocean Studies Consortium, 56 Comp. Gen. 725 (1977), 77-1 CPD 440.

The protester's allegation that the cost analysis failed to take into account certain deficiencies noted by the technical evaluators--the anticipated costs of learning and start-up problems--ignores the fact that the Navy considered these deficiencies to be technical deficiencies which were taken into account in the technical evaluation, resulting in an appropriate loss of points. Since such costs may be speculative and difficult to estimate, reflecting more of a technical deficiency than a quantifiable cost factor, we believe the agency's approach was reasonable.

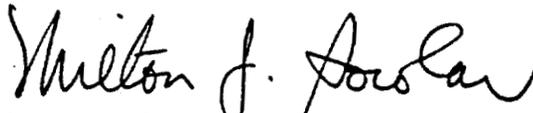
Except for making a vague suggestion that Frontier Engineering's costs were unreasonably low, the protester has failed to submit any other evidence that the Navy's determination otherwise was unreasonable. SETAC thus has failed to meet its burden of affirmatively proving its

B-209485

case. See Medical Services Consultants, Inc; MSH Development Services, Inc., B-203998, B-204115, May 25, 1982, 82-1 CPD 493.

We therefore deny the protester's arguments that the Navy failed to perform an adequate analysis of Frontier Engineering's proposed costs' realism.

The protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States