

**Proposed Guidelines
Option B**

1. Guidelines

a. *Technically Unacceptable Proposals*

Where a proposal has been determined to be "technically unacceptable" as the result of the initial review, the proposal need not be evaluated against cost and other non-cost factor(s), provided that all of the following conditions are met:

- (1) the solicitation advised offerors that an evaluation of cost and other specific non-cost factor(s) would not be conducted on any offeror whose proposal is determined to be "technically unacceptable" as the result of the initial review of proposals;
- (2) the proposal was evaluated against the primary factor(s)¹ included in the solicitation; and
- (3) any other non-cost factor(s) included in the solicitation is/are of minimal importance relative to the primary factor(s).

b. *Technically Acceptable Proposals Excluded from the Competitive Range*

When a proposal is determined to be acceptable as the result of the initial review, but the score, evaluation comments, proposed costs, or relative ranking of the proposal clearly supports the offeror's exclusion from the competitive range, the proposal need not be evaluated against other non-cost factors, provided that all of the following conditions are met:

- (1) the solicitation advised offerors that an evaluation of other specific non-cost factor(s) would not be conducted on any proposal that would not be admitted to the competitive range on the basis of the results of the evaluation of the primary factor(s) and the cost factor.
- (2) the proposal was evaluated against the primary factor(s) included in the solicitation;
- (3) any other non-cost factor(s) included in the solicitation is/are of minimal importance relative to the primary factor(s); and,

¹ A factor or factors that are of paramount importance in the selection decision
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- (4) the contracting officer has concluded that a favorable evaluation of the proposal against all other non-cost factors, or an unfavorable evaluation of all other acceptable proposals against all other non-cost factors, would not affect the determination to exclude the particular offeror from the competitive range. *The contracting officer's determination must be adequately documented in the Competitive Range Determination or the Source Selection Determination.*

c. *Proposals Included in the Competitive Range*

The contracting officer may establish the competitive range based on the results of the initial review of technical and cost proposals, and postpone the evaluation of other non-cost factors, provided that the following conditions are met:

- (1) the solicitation advised offerors that an evaluation of other specific non-cost factor(s) would be conducted only on those proposals included in the competitive range;
- (2) the proposal was evaluated against the primary factor(s) included in the solicitation;
- (3) other non-cost factor(s) included in the solicitation are of minimal importance relative to the primary factor(s); and
- (4) the evaluation of other non-cost factor(s) is accomplished prior to the conduct of discussions.

d. *Proposals Eliminated on the Basis of Efficient Competition*

The competitive range may not be further reduced for the purposes of efficiency unless all proposals within the competitive range have been evaluated against all factors stated in the solicitation.

2. **Assessment of Risks**

The following risks are associated with this option:

- a. "Technically acceptable" offerors would be eliminated prior to full evaluation of their proposals.
- b. It may be difficult to discern whether the "best case/worse case" scenario has been properly applied if a traditional scoring method is not used to evaluate non-significant non-cost factor(s).
- c. The FAR standard that requires evaluation of all proposals against all factors prior to elimination of offerors has been applied consistently by the Comptroller General in numerous protest cases.

Notwithstanding the fact that the guidelines include controls that attempt to minimize, to some degree, the risks involved, the use of this option could result in increased protest activity. With limited exceptions, case law has clearly established that the courts will find for the offeror whenever agencies operate contrary to the FAR standard.