



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

Matter of: Safeguard Maintenance Corporation

File: B-260983.3

Date: October 13, 1995

Thomas J. Madden, Esq., Fernand A. Lavalley, Esq., and Carla Draluck Craft, Esq., Venable, Baetjer, Howard & Civiletti, L.L.P., for the protester.
Donald M. Suica, Esq., Duane M. Zezula, Esq., and Corlyss Drinkard, Esq., Department of the Treasury, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that proposal was improperly excluded from the competitive range is sustained where the procuring agency miscalculated the proposal in three significant respects and the record indicates that under a proper evaluation the proposal may have received a higher technical score than at least one higher-priced competitive range proposal.

DECISION

Safeguard Maintenance Corporation protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. IRS-94-0005, a total small business set-aside, issued by the Department of the Treasury, Internal Revenue Service (IRS), for janitorial services.

We sustain the protest.

The IRS issued the RFP on April 21, 1994, to procure janitorial, lawn and grounds maintenance, trash removal, snow removal, and related services at the Martinsburg Computing Center (MCC), Martinsburg, West Virginia, for a base period with 4 option years. The RFP solicited technical proposals and line item prices for fixed price and indefinite quantity work at the MCC main computing center and an MCC

annex that was under construction.¹ The RFP contained detailed cleaning and quality requirements, including frequency of cleaning. Among the services described in section J of the RFP was "utility work," which required the contractor to provide hours on a daily basis, beyond those required to perform the basic contract work, to cover other work that may be ordered by the contracting officer's technical representative (COTR).

Award under the RFP was to be made to the technically acceptable, responsible offeror whose proposal was most advantageous to the government, price and other factors considered. Technical considerations were said to be more important than cost. There were three technical factors described in the RFP, under each of which various subfactors were described. The specific weights of the factors and subfactors, expressed as a percentage on a 100-percent scale, were disclosed. The technical factors and their respective weights were "Management Capabilities"--40 percent, "Operating Plan"--25 percent, and "Experience"--35 percent. Among the subfactors of the management capabilities factor were "Organizational Plan"--10 percent, "Staffing"--10 percent, and "Training Programs"--4 percent. Among the Subfactors of the operating plan factor was "Timeliness"--4 percent. The two subfactors of the experience factor were "Prime Contractor's Project Experience"--25 percent and "Contract Personnel"--10 percent.

On June 24, the IRS received 14 proposals in response to the RFP, including Safeguard's. The proposals were evaluated by a two-member technical evaluation panel (TEP) that used an adjectival and weighted numerical rating system to determine each proposal's technical score.² The initial TEP evaluation identified eight technically "acceptable" proposals with point scores ranging from 48.70 to 88.60 points; Safeguard's proposal received a score of 51.20 points. The IRS rejected the remaining proposals. Without conducting discussions, the TEP then reevaluated the eight proposals and awarded revised scores ranging from 39.40 to 89.35 points; Safeguard's proposal received a score of 49.60 points.

¹Although the RFP work statement described the services to be performed at the annex as optional services, the contract automatically required these services to be performed upon completion and occupancy of the annex.

²The TEP assigned raw point scores under each subfactor based upon a decimal point scale from 0.0 to 1.0, which were equated with adjectival ratings. A numerical rating from .8 to 1.0 represented an "exceptional" rating, from .5 to .7 an "acceptable" rating, from .1 to .4 a "marginal" rating, and 0 an "unacceptable" rating. Each proposal's point scores were calculated by multiplying each subfactor's percentage weight by the decimal point score awarded by the TEP for that subfactor and adding the weighted scores to arrive at a total score.

Based upon there revised evaluation, the IRS established a competitive range consisting of the three highest-ranked offers rated as follows:

Offeror	Price	Points
Miracle Services, Inc.	[DELETED]	89.4
Potomac Valley Custodial Services	[DELETED]	79.6
Spotless Janitorial Services	[DELETED]	70.1

The IRS eliminated from the competitive range Safeguard's lower-rated proposal priced at [DELETED]. The TEP summarized Safeguard's proposal deficiencies as follows:

Safeguard's proposal reflects a lack of experience in ADP [automatic data processing] facilities similar to the size and complexity of MCC. Additionally, Safeguard's proposal did not meet the SOW [statement of work] requirements in the subfactors of Organizational Plan, Staffing and Training under the Management Capabilities criterion."

Discussions were conducted with the competitive range offerors, and best and final offers (BAFO) were received by March 13, 1995. Because the IRS determined that none of the BAFOs met all of the requirements,³ the IRS conducted a second round of discussions and received revised BAFOs by March 15. Under the final evaluation, Potomac Valley's BAFO, priced at [DELETED] was the highest rated with a score of 83.8 points.⁴ Spotless' BAFO, priced at [DELETED], received a score of 78.3 points. Miracle's revised BAFO was rejected as unacceptable for failing to propose sufficient hours. Award was made to Potomac Valley on March 29.

³As discussed in detail below, none of the competitive range proposals met IRS' requirement that the contractor provide 34 utility hours per building.

⁴Potomac Valley was the incumbent contractor for these services.

Safeguard then protested the evaluation and exclusion of its proposal from the competitive range.⁵ The TEP Chairman, after reviewing the protest, reevaluated Safeguard's proposal and lowered its score from 49.6 points to 32.6 points; in this reevaluation the Chairman basically lowered Safeguard's score to zero for the training, timeliness, and prime contractor's project experience subfactors.⁶

Safeguard contends that its proposal was unreasonably evaluated and unequally evaluated as compared to the evaluation of the other proposals. The specific subfactors that Safeguard asserts were misevaluated were organizational plan, staffing, training, timeliness, and prime contractor's project experience. Safeguard argues that but for the agency's improper evaluation its proposal would have scored comparably with the competitive range proposals and would have been included in the competitive range.

In reviewing an agency's decision to exclude a proposal from the competitive range, we look first to the agency's evaluation of proposals to determine whether the evaluation had a reasonable basis. Intown Properties, Inc., B-249036.3, Jan. 15, 1993, 93-1 CPD ¶ 45. Although we will not independently determine the merits of a proposal, in reviewing an agency's evaluation, we examine the record to ensure that the evaluation was reasonable and consistent with the evaluation criteria. A.G. Personnel Leasing, Inc., B-238289, Apr. 24, 1990, 90-1 CPD ¶ 416. Such judgments by their nature are often subjective; nonetheless, the exercise of these judgments in the evaluation of proposals must be reasonable and must bear a rational relationship to the announced criteria upon which competing offerors are to be selected. NITCO, B-246185, Feb. 21, 1992, 92-1 CPD ¶ 212.

Based upon our review, we find that the IRS unreasonably evaluated Safeguard's proposal under the organizational plan, staffing, and prime contractor's project experience subfactors and unreasonably reevaluated Safeguard's proposal under the training and timeliness subfactors, such that the record does not support the elimination of Safeguard's proposal from the competitive range.⁷

⁵On April 5, the IRS notified this Office of its determination to override the stay and proceed with performance under the contract based upon urgent and compelling circumstances. See 4 C.F.R. § 21.4(b) (1995).

⁶None of the other proposals was reevaluated.

⁷As discussed further below, we find the TEP Chairman's post-protest reevaluation was generally unreasonable. While we consider the record, including statements and arguments made in response to a protest, in determining whether an agency's selection decision is supportable, we accord greater weight to contemporaneous source selection materials than to documents which were prepared in response to

(continued...)

With regard to the organizational plan subfactor, the IRS awarded Safeguard's proposal zero out of a possible 10 points. The basis for this evaluation, as documented in the contemporaneous evaluation sheets, was that Safeguard's proposal assertedly did not provide for an on-site project manager, which the IRS alleges was required by the RFP.

Under the organizational plan subfactor, the RFP required the following information:

"[p]rovide a plan depicting the structure of the corporation; the local office and the authority and responsibilities of the on-site management to solve problems, assign work, hire personnel; and the abilities and skills available for local performance. Also important in this plan is the apparent intent and ability of the corporate headquarters to support the custodial operations at the [MCC]."

In addition, section G.1.3 of the RFP stated that the contractor shall provide a "Project Manager" with the authority to make any no-cost contract technical hiring and dismissal decisions, or special arrangements regarding the contract. The RFP further stated that the project manager shall be responsible for the overall management and coordination of the contract, shall act as the central point of contact for the government, and shall have full authority to act for the contractor in the performance of the required services.⁸ Section H.19 advised that the project manager was required to possess recent experience in the management of custodial operations of the approximate size and complexity of the IRS buildings.

⁷(...continued)

protest contentions. Alliant Techsvstems, Inc; Olin Corp., B-260215.4; B-260215.5, Aug. 4, 1995, 95-2 CPD ¶ 79. This reevaluation is particularly questionable since none of the other proposals was reevaluated.

⁸The RFP further stated that the project manager or designated representative must respond within 4 hours after being notified of the existence of a problem.

Safeguard's proposal contained an organizational chart⁹ and narrative describing the structure of its corporation and organization. The proposal described its local office as well as the authority and responsibilities of on-site management to solve problems, assign work, and hire personnel. It further described the skills available for local performance as well as its ability to support the MCC operation. Safeguard proposed a project manager,¹⁰ who was to be located off-site and who was to assist in the on-site management, which was to be led by a specifically identified on-site supervisor.¹¹ Safeguard assigned the contract functions that the RFP reserved to the project manager under G.1.3 to the on-site supervisor, including no-cost hire and fire decisions. As indicated in Safeguard's proposal, the on-site supervisor was to report directly to the project manager and the project manager was "to assist the on-site supervisor in the daily routine of job performance and project personnel management," but the right to hire or fire the on-site supervisor was reserved to the company president.

We find, however, no requirement in the RFP for the project manager to be located on-site; neither do we find any suggestion of a preference for an on-site project manager.¹² Moreover, the IRS has not pointed to any provision in the RFP precluding the delegation of these project manager duties, or otherwise explained

⁹The chart is a line chart that depicts the president at the head with a vertical line drawn below to the center of the next level that reflects two individuals labeled program managers on a horizontal line opposite from each other. Two diagonal lines, which connect with the center line leading to the president, are drawn below this level, one going to the on-site supervisor at MCC and the other going to another Safeguard program manager.

¹⁰Safeguard identified this individual by name in the space provided in G.1.3 for designating the project manager, and this individual was the designated program manager appearing on the level of Safeguard's organizational chart below the president with a diagonal line drawn between the program manager and the proposed on-site supervisor at MCC on the level below on the organizational chart.

¹¹Safeguard proposed the incumbent contractor's project manager to be its on-site supervisor.

¹²The protester persuasively argues that the RFP requirements reasonably can be interpreted to permit an off-site project manager because, under G.1.3, the project manager is only responsible for the overall management and coordination of the contract and is permitted to act through a designated representative, and because the RFP contains a 4-hour limit for the project manager to respond to the agency.

why Safeguard's proposal did not meet the substance of the IRS' requirements, given that Safeguard proposed an on-site management figure with the same authority reflected in G.1.3 and experience required by H.19.¹³

While the IRS may have considered an on-site project manager to be more desirable and might have properly lowered Safeguard's score in light of this concern, since the RFP did not require an on-site project manager and since Safeguard met the requirement to have an on-site management official with the appropriate authority and experience, we find that the IRS had no reasonable basis for scoring Safeguard's proposal with zero points for this subfactor. See Gardiner, Kamy & Assocs., B-258915.2, Apr. 12, 1995, 95-1 CPD ¶ 193; J.M. Cashman, Inc., B-233773, Apr. 14, 1989, 89-1 CPD ¶ 380.

Based upon its post-protest reevaluation, the IRS nevertheless argues that the zero score is justified because the organizational chart and narrative allegedly are ambiguous in that the relationships between the corporate president, project manager, and on-site supervisor assertedly cannot be clearly discerned from the submitted material. As indicated by our foregoing discussion, we find no real ambiguity in Safeguard's proposal. For example, while IRS makes much of the alleged confusion attendant with the use of the terms on-site program manager and program manager in Safeguard's proposal in addition to on-site supervisor and project manager, we note that the term on-site program manager only appears in a part of the organizational plan with a heading that is clearly marked "[r]esponsibility for work performance - on-site supervisor," so it is obvious that this term is synonymous with on-site supervisor. Further, the proposal clearly reflects that its reference to program manager is synonymous with Safeguard's proposed project manager, since within its corporate structure this is identified as being the same individual--the TEP Chairman concedes that Safeguard inserted the name of its program/project manager in the space in the RFP provided for identifying a project manager, Hearing Transcript (Tr.) at 16--so there should have been no reasonable basis for confusion. Also, IRS' argument that Safeguard's narrative, which indicates

¹³Save for the express titles, our review reveals that the structure of Safeguard's organization was consistent with those offers in the competitive range, in that an on-site management figure was proposed to carry out the day-to-day activities contained in sections G.1.3 and H.19 of the RFP, who was in turn to be supervised by an off-site manager. While the IRS contends that Safeguard's proposal's restriction of its project manager's ability to fire the on-site supervisor, by reserving this authority in the president, and the assignment of the project manager's duties to the on-site supervisor, contravenes the terms of G.1.3, we are not persuaded that Safeguard's proposed structure radically departed from the intent of that provision.

that the on-site supervisor reports directly to the program manager, may conflict with the organizational chart, which assertedly could be read as indicating that the on-site supervisor reports to the president, is belied by any reasonable reading of Safeguard's proposal, which clearly shows the respective roles and responsibilities of these individuals.

In sum, the IRS had no reasonable basis to award Safeguard's proposal zero points for the organizational plan subfactor. See Gardiner, Kanya & Assocs., supra; J.M. Cashman, Inc., supra. While the IRS may have had a reasonable basis to award less than a perfect score for this subfactor, we find, based on our review of Safeguard's organizational plan and IRS' evaluation of the competitive range proposals, that Safeguard's proposal could have received as many as 8 points under a proper evaluation for this subfactor.

Under the staffing subfactor, Safeguard also received zero of the 10 possible points. As indicated by the contemporaneous documentation, the IRS determined that Safeguard's proposal failed to provide sufficient explanation and assurance of the availability, on a timely basis, of personnel of the right skill mix and levels of competence to assure contract performance¹⁴ for two reasons: (1) the project manager was not located on-site¹⁵ and (2) Safeguard's proposal failed to propose 34 utility hours per week for both the MCC main building and annex, which the IRS asserts was required by the RFP.

First, as discussed above, there was no requirement that the program manager be located on-site and the record indicates that this individual can respond to IRS within the 4 hours required by the RFP. Thus, this reason does not provide a basis for a zero rating under the staffing subfactor. Id.

With respect to utility work, section J of the RFP required the contractor to provide daily "utility work" at the discretion of the COTR; the contractor is required to make available the "indicated [utility] man hours," which are stated to be 6 hours per day Monday through Friday and 2 hours per day on Saturday and Sunday.¹⁶ The utility hours "may be for any location or type of work specified within the scope of [the] contract" and would be used to "service high public use areas, high

¹⁴The staffing subfactor required offerors' proposals to contain this information.

¹⁵The IRS determined that Safeguard's designated program manager may not be available on a timely basis because the individual also was listed in its organizational plan as a program manager on another project.

¹⁶This totals 34 hours per week.

complaint, special cleaning requirements, or in assisting in the loading, unloading, and/or distribution of supplies, carpets, furniture or other items."

The IRS argues that the RFP required 34 weekly utility hours per building, primarily relying on the language in section B that required separate pricing for the main MCC building and the annex.¹⁷ See Tr. at 86-88. The IRS contends that because offerors were required to provide the services contained in section J at both buildings and section J required 34 utility hours, the RFP required 34 utility hours per building.

However, as indicated above, under section J, the designated 34 utility hours may be used for "any location." The RFP did not explicitly state that 34 utility hours would be required per building. Accordingly, we find that the RFP's requirement for such hours is ambiguous at best.¹⁸ In addition, none of the competitive range offerors proposed more than a total of 34 utility hours in their initial offers. While one of these offerors (the awardee) also received a zero score under this subfactor apparently for this reason, the record shows that the other two competitive range offerors received perfect or near perfect scores under this factor, even though their proposals did not evidence 34 utility hours per building.¹⁹ Under these circumstances, the IRS appears to have had no reasonable basis for downgrading Safeguard's proposal for its asserted failure to propose adequate utility hours. J.M. Cashman, Inc., supra.

¹⁷Under the line item entitled "Fixed Price Work" for both the main building and the annex the RFP stated as follows:

"BASIC SERVICES: Contractor shall provide the janitorial and related services as described in Sections C, G, H, & J."

¹⁸The TEP Chairman testified that historically the IRS had used only 30 percent of the required 34 utility hours and that all utility hours are generally not used, Tr. at 93, so it may be reasonable to conclude that the RFP actually intended that the 34 utility hours was to cover both buildings.

¹⁹Moreover, the record shows that the agency made award to Potomac Valley, even though its BAFO still only specified 34 utility hours for the main building, despite several rounds of discussions where this was a subject. Although the IRS now argues that the awardee met the requirement because it agreed to additional utility hours at the awardee's expense, the fact remains that the awardee's staffing charts only actually proposed a total of 34 utility hours, as was the case with Safeguard's proposal. Tr. at 100-104.

In defending the protest and in the reevaluation, the IRS reports that Safeguard's zero rating was justified because the proposal failed to provide sufficient explanation and assurance of the personnel of the right skill mix and levels of competence and experience. These post hoc reasons are not supported by the record.

Specifically, while the IRS argues that Safeguard's organizational plan contained contradictions that would result in no enforceable commitment from Safeguard to provide any management figures—which, as discussed above, IRS claims are unknown—our review, as explained above, confirms that Safeguard's proposal clearly described its management structure, and we note that the same management figures are reiterated in the section of Safeguard's proposal describing its staffing. Thus, contrary to the IRS' assertions, Safeguard's management was clearly discussed in an unambiguous way and the management figures are identifiable.²⁰

The record actually suggests that Safeguard's proposal provided all requested information and should have received a high rating for the staffing subfactor. Safeguard proposed to staff the contract with 14 employees, one of whom was the program/project manager on Safeguard's current staff, and the rest of whom were from the incumbent's staff, including Safeguard's proposed on-site supervisor who, as previously noted, served as the project manager under the incumbent contract. See Tr. at 28. Safeguard provided the resumes and employment applications of these individuals, which indicated immediate availability at the start of the contract.²¹ In addition, the proposal contained Safeguard's detailed manpower estimates, which exceeded the government's, and its labor hour staffing plans for the buildings.

Although the IRS argues that the lack of actual commitment from any incumbent employees was critical in now determining that Safeguard did not provide adequate assurance of the availability of personnel, the RFP did not require offerors to

²⁰While the IRS cited the inability to identify management figures and the prospect that Safeguard's project manager might have conflicting responsibilities, we note that Spotless's proposal was rated highly for staffing, even though it proposed an interim project manager, who also had other responsibilities, to serve for only the first 6 months of the contract with the actual project manager to be a "promising local West Virginian" to be identified after start of the contract. Tr. at 160-162.

²¹Safeguard represented that it had permission to use the resumes and also furnished a separate letter from the incumbent's project manager granting Safeguard permission to use this individual's resume for the on-site supervisor position.

provide any evidence of employment commitments. The non-incumbent competitive range offerors, whose proposals received perfect or near perfect ratings for this subfactor, also proposed to hire the employees of the incumbent, but did not provide any more evidence of commitments from these individuals than did Safeguard; to the contrary, the record shows that Safeguard's proffered evidence of the availability of personnel was on a par with, and in one case more extensive than, that reflected in the competitive range proposals.

In light of the above, we find that the IRS' zero rating of Safeguard's proposal under the staffing subfactor was unjustified, and that Safeguard may have been entitled to as much as a perfect score for this subfactor, particularly given the information reflected in its proposal as compared to that reflected in higher-rated competitive range proposals.

With regard to the prime contractor's project experience subfactor, the IRS awarded Safeguard 13.75 out of 25 points. In the post-protest reevaluation, the IRS changed this score to zero. The sole reason that IRS downgraded Safeguard's proposal under this subfactor in the initial evaluation was that it contained no evidence that the listed projects involved janitorial experience at ADP centers. See Tr. at 67-68, 77-78, 129.

Under this subfactor, the RFP advised offerors to "[l]ist at least three projects of similar size and complexity to the subject project," to "[b]e certain to emphasize experience in custodial operations in ADP centers, and that "[g]reater experience would receive greater emphasis." The RFP also cautioned that the proposal may be ranked lower if the customer point of contact—who can verify the quality of contract performance—cannot be reached by the government because of misinformation provided in the proposal.

Safeguard's proposal listed 28 custodial projects in response to this subfactor, but did not specifically mention that any of the projects involved an ADP center. The protester argues that the fact that the 28 projects involved custodial experience should have been discerned from the prefatory language introducing the projects; and indeed the record, as developed during this protest, reflects that all of the listed 28 projects did involve ADP centers. See Tr. at 132, 134-136, 141-149. Since an offeror has the burden of submitting an adequately written proposal, an agency may downgrade a proposal for lack of detail pertaining to the requirements of an RFP, or consider a more detailed proposal superior, if the proposal fails to include requested information. Formal Management Sys., Inc., B-259824, May 3, 1995, 95-1 CPD ¶ 227; SBS Technical Servs., B-259934, Apr. 19, 1995, 95-1 CPD ¶ 205. Thus, in light of the specific direction to emphasize ADP centers, Safeguard ran the risk of

being downgraded by failing to clearly do so.²² See Baker Support Servs., Inc., B-257054.2, Jan. 20, 1995, 95-1 CPD ¶ 29.

Nevertheless, the TEP Chairman testified that during the evaluation he specifically noticed that the IRS headquarters complex was among the projects listed by Safeguard and acknowledged that he was personally aware that this building possessed significant ADP space that was maintained by Safeguard. Tr. at 131-132, 135-136. He also testified that he believed that he is specifically precluded from taking into account this personal knowledge in an evaluation. Tr. at 145. However, an agency may properly use information known by its own evaluators, as with any other references, to aid in the evaluation of proposals, including evaluating offeror experience, and may not simply ignore personally known information about an offeror's prior experience merely because it was not mentioned in the proposal. See G. Marine Diesel; Phillyship, B-232619; B-232619.2, Jan. 27, 1989, 89-1 CPD ¶ 90; Inlingua Schools of Languages, B-229784, Apr. 5, 1988, 88-1 CPD ¶ 340. Thus, the TEP Chairman's personal knowledge that the IRS headquarters complex listed in Safeguard's proposal contained ADP space, for which Safeguard provided custodial services, was appropriate for consideration during the initial evaluation. Since the RFP only required 3 projects to be listed (Safeguard listed 28 projects), and the IRS was aware that Safeguard had at least one project with directly relevant experience, it would seem that Safeguard would be entitled to as many as 4 more points than the 13.75 points awarded under the initial evaluation.²³ In this regard, our review reveals that Spotless listed only two projects involving ADP centers in its proposal and was only downgraded by 4 points for this reason.

As noted above, the post-protest reevaluation of the TEP Chairman also resulted in a lowering of Safeguard's score for the training subfactor from 1.6 of 4 possible points to zero points, and for the timeliness subfactor from 1.8 of 4 possible points to zero points. While we cannot say IRS' initial scores for these subfactors were unreasonable, we find no support for the reevaluation resulting in zero scores for these subfactors.

²²The competitive range proposals stressed ADP center custodial experience in most of the projects listed.

²³We find no support in the record for IRS' reevaluation resulting in a zero score for this subfactor. IRS' newly advanced reasons that it could only contact two of the listed points of contact after this protest was filed and that Safeguard's description of each custodial services project was identical do not justify a zero rating. J.M. Cashman, Inc., *supra*.

With regard to the training subfactor, Safeguard's proposal described training programs applicable both to supervisory and other personnel "to improve, enhance, and ensure [that they] are able to perform the [contract] tasks." IRS' primary complaint about Safeguard's training proposal was that it contained no believable "commitment" to provide the training described, which IRS described as confusing. Our review indicates that Safeguard's proposal addressed the training requirements as indicated in the RFP, and while we cannot find, on this record, that the initial score for this subfactor was unwarranted, there is no support for a zero rating, since Safeguard's proposal described a training program that, if implemented, was apparently acceptable. J.M. Cashman, Inc., supra.

With regard to the timeliness subfactor, section C.3 of the RFP required all service calls to "be addressed within 5 minutes in an emergency and within 15 minutes for routine service requests." The initial low rating under this subfactor and the zero rating on reevaluation were based on a statement in Safeguard's proposal that responses to service calls would be made within 1 hour. Tr. 169-170. However, the proposal also contained repeated specific promises that Safeguard would comply with the required 5- and 15-minute response times. Tr. at 170-172. While we cannot say Safeguard's initial rating was not warranted, we do not find the assignment of zero points in the post-protest reevaluation was justified; we note that this type of problem is easily resolvable during discussions. See Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530.

In conclusion, our review indicates that Safeguard's proposal was misevaluated in three significant respects,²⁴ and that had the proposal been properly evaluated the proposal may well have received a higher technical score than did the lowest-rated but more costly offer that was included in the competitive range, with the result that Safeguard's proposal would have been included in the competitive range.

We recommend that the IRS reevaluate proposals consistent with this decision and establish a new competitive range as appropriate, and proceed with meaningful discussions, receipt of BAFOs, and a new selection decision. If Potomac Valley is then determined to be not entitled to the award, Potomac Valley's contract should be terminated and award made to the offeror found to be cost advantageous under the RFP evaluation criteria. Alternatively, if it is no longer feasible, in light of the time that has elapsed since the award was made, to reopen the competition, the IRS, rather than exercise the options in the contract, should conduct a new

²⁴We also note that the IRS evaluated Safeguard's proposal with a lower score for the contract personnel subfactor of the experience factor than the competitive range proposals. This score seems questionable, inasmuch as Safeguard proposed the incumbent work force and the incumbent protect manager to be the on-site supervisor.

procurement. Safeguard is also entitled to recover its costs of filing and pursuing the protest, including reasonable attorneys' fees, 4 C.F.R § 21.6(d) (1995), and since the basic contract period has been performed for which Safeguard did not have fair opportunity to compete, its proposal preparation costs. 4 C.F.R. 21.6(d) (2); see Pacific Util. Equip. Co., B-259942, May 16, 1995, 95-2 CPD ¶ 114. The protester should submit its certified claim for costs directly to the agency within 60 days of receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

Comptroller General
of the United States