

Ms. Davis



Comptroller General
of the United States

501294

Washington, D.C. 20548

Decision

Matter of: MVM, Inc.; Burns International Security Services

File: B-255483.4; B-255483.5; B-256428.2;
B-256430.2; B-256431.2; B-256433.2;
B-256434.2

Date: April 26, 1994

Barbara S. Kinosky, Esq., Kinosky & Associates, for MVM, Inc.; Ronald K. Henry, Esq., and Daniel J. Culhane, Esq., Kaye, Scholer, Fierman, Hays & Handler, for Burns International Security Services, the protesters. Robert A. Boonin, Esq., Eugene H. Boyle, Jr., Esq., and Butzel Long, for General Security Services Corporation, an interested party. Joan M. Gibson, Esq., Department of Justice, for the agency. Christine F. Davis, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Using the protester's proposed unit prices and consistent with the solicitation, an agency properly calculated the protester's evaluated price as \$45 million, rather than \$38.7 million indicated in the protester's proposal, on a firm, fixed-price, indefinite quantity contract for security services where the protester's proposed total price did not include various items of work.
2. The Cost Accounting Standards do not require an offeror's proposed, fixed prices to encompass all estimated performance costs.
3. A solicitation provision requiring the offeror to submit evidence that it has the necessary business licenses for contract performance may be satisfied at any time prior to award.
4. Under a solicitation for security guard services, an agency properly determined that the awardee's proposal reflected an ability to limit employee turnover where the proposed wages and fringe benefits as described in the technical proposal reasonably demonstrated this ability.
5. The General Accounting Office denies reconsideration of prior protest dismissals, which were dismissed as untimely

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since they were based on information that was not diligently pursued, where the requesting party merely expresses disagreement with the dismissals and provides evidence to support its protests' timeliness that was available during the initial consideration of the protests, but which was not presented at that time.

DECISION

MVM, Inc. and Burns International Security Services protest the award of a contract to General Security Services Corporation (GSSC) under request for proposals (RFP) No. MS-93-R-0032, issued by the Department of Justice, United States Marshals Service, for court security services in the 11th Judicial Circuit. MVM also requests reconsideration of our dismissal of its protests of five other contract awards to GSSC for court security services in other judicial circuits.

We deny the protests and requests for reconsideration.

The RFP, issued on March 8, 1993, required the contractor to provide a cadre of qualified court security officers for the 11th Judicial Circuit, which comprises nine judicial districts in Alabama, Georgia, and Florida. The mission of this security force is to deter and subdue any illegal or potentially life-threatening activities directed towards judges, jurors, witnesses, defendants, and other court personnel. In addition to the security officers themselves, the contractor was to provide all managerial and supervisory personnel, and any transportation, supplies, and equipment necessary to perform the court security services. The RFP contemplated the award of a firm, fixed-price, indefinite quantity contract for a base year with four 1-year options.

The RFP divided its requirements into six service categories. Category 1 security services were to be performed between the hours of 6:00 a.m. and 6:00 p.m. Category 2 security services were to be performed between the hours of 6:00 p.m. and 6:00 a.m., Sunday through Saturday, except federal holidays. Category 3 security services were to be performed on any of the 10 recognized federal holidays. Category 4 services were for training and qualifying new security officers, including orientation courses, background investigations, weapons qualification, medical examinations, and uniforms. Category 5 services were associated with incumbent security officers, including their annual medical examinations, weapons qualification, and uniforms. Category 6 security services consisted of overtime work. Unlike the "hourly" security services (Categories 1, 2, 3, and 6), the "employee start-up" services (Categories 4 and 5) were chargeable to the government only under certain circumstances--for example,

the government accepted responsibility for Category 4 services where the security officer to be replaced had been employed for at least 18 months in the same circuit, or had developed an illness which precluded his continuing employment, or had died; otherwise, the contractor was liable. The RFP advised offerors of the number of security officer positions and labor hour estimates required at each judicial facility, although the agency under the contract reserved the right to increase or decrease the positions/hours.

The RFP requested offerors to propose base year and option year fixed unit prices for each of the six service categories, relative to a specific 11th Circuit judicial facility. Categories 1, 2, 3, and 6 called for a price per hour, and Categories 4 and 5 called for a price per employee. The RFP requested offerors to support their hourly prices with cost breakdown information by location, e.g., direct labor rates, indirect rates, fringe benefit costs, and profit.¹ Offerors were asked to calculate their total prices for Categories 1, 2, 3, and 6, for each facility, while the agency assumed responsibility for calculating the total Category 4 and 5 prices.

The RFP provided for award to that offeror whose proposal represented the "best value" to the government. Price was worth 40 percent and technical factors were worth 60 percent of the offeror's total score. The RFP further provided that between substantially equal proposals, the agency would make award to the lower-priced offeror and that between acceptable proposals with a significant difference in technical merit, the agency would perform a cost/technical tradeoff to determine whether the technically superior proposal was worth the associated price premium.

The RFP set forth three technical evaluation factors in descending order of importance: (i) company management, (ii) past related experience, and (iii) qualifications of key personnel. Each technical factor included a set of detailed subfactors, for which specific information was requested from the offerors. As relevant to this protest, one of the six company management subfactors required the offeror to explain "[t]he method by which [it] intends to limit turnover in the [security officer] and supervisory workforce" and to characterize its success in limiting

¹The RFP incorporated provisions implementing the Service Contract Act, 41 U.S.C. §§ 351 et seq. (1988), which requires the contractor to pay its covered employees minimum wages and fringe benefits, as determined by the Department of Labor.

turnover in past contracts.² The RFP also requested the offeror's compensation and benefits plan, by locale, for all contract employees, which would be used to evaluate the offeror's ability to retain any proposed incumbent security officers and to attract a sufficient number of new security officers to replace expected turnover during contract performance.

The total evaluated price for each offeror was calculated by the agency as the sum of the evaluated prices for each category at each facility, which were determined by multiplying the applicable unit price by the estimated hours or employees in accordance with designated formulas for each category to reflect the anticipated contract requirements.

In its Source Selection Plan, the agency provided for a 40-point price evaluation, whereby the low-priced proposal would receive the maximum 40 points and the remaining proposals would earn a relative percentage of 40 points depending upon their price. The technical evaluation was worth 60 points, representing 25 points for company management, 20 points for past experience, and 15 points for key personnel.

The Marshals Service received 15 proposals by the April 19 receipt date, including the proposals of GSSC, Burns, and MVM. These proposals were evaluated by a technical evaluation board (TEB). Based upon the initial technical and price evaluations, GSSC received the highest overall proposal score of 97.37 points--39.12 price points plus 58.25 technical points for its "excellent" technical proposal. Although the agency did not consider MVM's proposal to be technically excellent, MVM did receive 53.5 technical points, plus 35.23 price points, for the third highest proposal score, 88.73 points. Burns received the seventh highest proposal score of 81.95 points--43.75 technical points plus 38.2 price points. The agency considered each of these proposals technically acceptable and included them in the competitive range, along with seven other proposals.

Technical and price discussions commenced on June 22, 1993. Technical discussions centered on those areas of the offerors' proposals that required amplification or clarification. The agency received best and final offers (BAFO) from all offerors by August 2.

²A past experience subfactor also requested the offeror to identify its annual turnover rate for each contract listed as a reference in its proposal.

The agency performed a price analysis, as contemplated by the RFP,³ and calculated the offerors' BAFO prices, utilizing their offered unit prices for each category. GSSC was the low-priced offeror at approximately \$41.7 million, earning the maximum 40 price points; Burns was the third low-priced offeror at approximately \$42.6 million, earning 39.12 price points; and MVM was the ninth low-priced offeror at approximately \$45.1 million, earning 37 price points.

Not only was GSSC the low-priced offeror, it also earned the highest technical score, a near perfect 58.5 technical points out of 60. GSSC improved its technical score slightly during discussions based upon its elaboration of its company management proposal. In comparison, the agency maintained the technical scores of MVM (53.5 points) and Burns (43.75 points), whose discussion responses were not found to materially enhance their proposals' technical merit. MVM's technical score was the third highest and Burns's technical score was the seventh highest. Overall, GSSC ranked first with 98.5 points, MVM ranked third with 90.5 points, and Burns ranked seventh with 82.87 points.

The agency recommended GSSC's low-priced, technically superior proposal for award. In support of its selection decision, the agency recounted some of the awardee's numerous, documented technical strengths and observed that "GSSC displayed a thorough knowledge of all requirements as listed in the solicitation and provided the [agency] with an excellent technical proposal." The agency also emphasized that the awardee, which was currently performing guard services in 43 judicial districts, "has a proven track record for covering stations and safeguarding the interest of the [agency]," which would allow the agency "to continue receiving the benefits of superior service and outstanding performance" in this judicial circuit.

In finding GSSC's proposed price to be fair and reasonable, the Marshals Service noted that GSSC's labor rates were commensurate with the current labor rates in each judicial district, such that "[o]verall wages proposed should ensure retention of the majority of [security officers] for the beginning of the new fiscal year." In addition, the agency complimented GSSC's pricing strategy, which anticipated a degree of employee turnover over the life of the contract and factored in the lower wages to be earned by new

³For example, the agency ensured that the offerors were not proposing to pay guards at rates less than required by the Service Contract Act wage determinations.

personnel in the option years.⁴ Although viewed as economical, this pricing strategy was not expected to compromise the effectiveness of GSSC's work force, since the wages proposed in each judicial district were reasonable and since the awardee possessed "extensive resources cited in [its] technical proposal for recruiting quality individuals." Finally, because GSSC's price was based upon adequate price competition, the agency did not require GSSC to submit certified cost or pricing data. See Federal Acquisition Regulation (FAR) § 15.804-3(a).

Shortly after the selection decision was made, the contracting officer initiated a review of GSSC's responsibility in accordance with the RFP, which required, among other things, evidence of current business licenses necessary for contract performance. In response to the contracting officer's request, GSSC submitted current business licenses for each state in the 11th Circuit, and otherwise satisfied the remaining responsibility criteria. Upon finding GSSC responsible, the agency made award to that firm and notified unsuccessful offerors on September 28. These protests followed.

In their initial protests, both protesters claim that the Marshals Service improperly calculated their BAFO prices and speculate that their prices may have been lower than the awardee's.⁵ In making their arguments, neither protester has computed its overall price, notwithstanding that MVM's and Burns's counsel were admitted to a protective order issued by our Office and received all relevant evaluation documentation to permit such a price calculation. In any event, we have independently calculated MVM's, Burns's and GSSC's prices, and find that the agency's price evaluation was generally proper. In this regard, while the figures we

⁴GSSC's option year prices increased at a lower rate than either MVM's or Burns's; in two judicial districts, GSSC's option year prices declined slightly from the base price.

⁵The protesters have alleged that the agency made cost realism adjustments to their proposed prices, which should have been the subject of discussions and which were improperly done. The record, in particular the TEB's spread sheets, shows that the agency did not adjust offerors' prices for cost realism--which would have been improper in the context of a firm, fixed-price contract. See PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366. Rather, the record shows that the Marshals Service used each offeror's proposed base and option year unit prices with the hourly/person estimates stated in the RFP to calculate the total evaluated price for that offeror.

calculate are not identical to the agency's in all cases, they do reflect that MVM's BAFO price was approximately \$3.3 million higher than the awardee's, and that Burns's BAFO price was approximately \$900,000 higher, as found by the agency.

In its protest, MVM initially argued that its proposed BAFO price was \$38.7 million dollars, which is the figure that appears on the Standard Form (SF) 1411 included in its BAFO. The agency responded that the SF 1411 price only represented MVM's Category 1 prices, not the prices for the remaining five categories specified in the RFP. MVM then conceded that the price on its SF 1411 did not represent all categories, but that it included both Categories 1 and 2. However, not only has MVM presented no evidence to support this contention, but our calculation confirms that MVM's SF 1411 price apparently is only for Category 1 services,⁶ and that MVM's prices for the remaining categories generally account for the difference between the total price stated on its SF 1411 and the total price calculated by the agency.

Burns's objection to the price evaluation focuses on a computational error admitted by the agency in its protest report, with respect to the calculation of offerors' Category 4 prices. During the price evaluation, the agency computed each offeror's Category 4 price by multiplying its proposed rates by the number of positions at a particular judicial facility. In its agency report, the agency states that this formula should also have included a 15 percent multiplier, which represents the Marshals Service's estimated liability for Category 4 "start-up" services.⁷ The agency discovered this error after award, but recalculated offerors' prices based upon the correct category 4 estimating model, multiplying each offeror's unit price by the number of personnel positions at that site by 15 percent. The agency states that, while this recalculation slightly altered the price differences among the offerors, it had no effect on the overall ranking.

Our computation confirms the agency's position. Since GSSC's category 4 unit prices were consistently much lower than Burns' (or MVM's), the use of the 15 percent multiplier slightly diminishes GSSC's overall price advantage.

⁶The figure that we calculated for Category 1, based upon MVM's unit prices and the estimates stated in the RFP, matches almost precisely the total figure that appears on MVM's SF 1411.

⁷As noted above, the RFP limits the government's liability for Category 4 "start-up" services to particular circumstances.

Nonetheless, even with the recalculation of Category 4, GSSC's overall price remains below Burns's by more than \$500,000 and below MVM's by \$3.1 million. Thus, we agree with the Marshals Service that the Category 4 calculation does not affect GSSC's status as the low-priced offeror.

MVM and Burns argue that GSSC's proposal did not comply with the Cost Accounting Standards (CAS), FAR Part 30.⁸ Allegedly, GSSC's fixed prices for each judicial district do not reflect the costs to be incurred in that district and therefore are not consistent with the CAS.

Contrary to the protesters' arguments, the CAS does not require an offeror's proposed, fixed prices to encompass estimated performance costs. See, e.g., Vitro Corp., B-247734.3, Sept. 24, 1992, 92-2 CPD ¶ 202 (below-cost price caps on a negotiated, CAS-covered contract are not objectionable). The CAS requirements are designed to ensure that a CAS-covered contractor consistently follows its cost accounting practices in accumulating and reporting any cost data, see FAR § 52.230-2, not that the contractor base its pricing on a particular allocation of costs. Thus, we see no merit to this argument.

Both protesters argue that the agency should have rejected GSSC's proposal because it failed to include current business licenses necessary for contract performance. Section M of the RFP required offerors to submit the applicable business licenses with their proposals, but stated that the offeror's ability to obtain current business licenses would be evaluated as a matter of contractor responsibility prior to award.⁹ A requirement that relates to the responsibility of the offeror, as does the licensing requirement in this case, may be satisfied at any time prior to award. Northcoast Redwood Tours, B-231770, July 6, 1988, 88-2 CPD ¶ 14. This is so, even if the solicitation calls for the submission of the licenses with the offeror's proposal. SDA, Inc.--Recon., B-249386.2, Aug. 26, 1992, 92-2 CPD ¶ 128. Thus, the absence of the business licenses

⁸The RFP incorporated FAR § 52.230-2, which generally provides that, unless the contract is exempt from CAS coverage pursuant to 48 C.F.R. §§ 9903.201-1 and 9903.201-2, the contractor shall disclose its cost accounting practices and account for any costs incurred under the contract consistent with those cost accounting practices.

⁹Section H of the RFP, "Special Contract Requirements," stated that the proposed contractor shall furnish the licenses for the responsibility determination within 14 days after a request by the contracting officer, as occurred in this case.

in GSSC's proposal did not warrant the proposal's rejection. GSSC could, and did, produce all the necessary business licenses prior to award during the course of its responsibility determination.

Burns and MVM protest that the agency improperly evaluated GSSC's ability to limit employee turnover under one of the company management subfactors.¹⁰ The protesters argue that, while the agency favorably reviewed GSSC's ability to limit turnover in the technical evaluation, GSSC's price proposal allegedly reflects an intent to encourage employee turnover. Specifically, the protesters note that GSSC's price proposal reflects only a slight rate of increase in option year prices, which indicates that GSSC intends to replace numerous incumbent security officers with new officers, and to pay the new officers "substantially lower wages," which will further encourage turnover.

The evaluation of proposals is within the discretion of the procuring agency, since it is responsible for defining its needs and the best method of accommodating them, and must bear the burden resulting from a defective evaluation. Chaffins Realty Co., Inc., B-247910, July 8, 1992, 92-2 CPD ¶ 9. In cases where an agency's evaluation is challenged, our Office will not independently weigh the merits of a proposal; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. OPSYS, Inc., B-248260, Aug. 6, 1992, 92-2 CPD ¶ 83.

The agency found that GSSC's compensation plan shows that incumbent security officers will receive comparable payment and fringe benefits to those received under the predecessor contract, as well as appropriate wage increases. New security officers would be paid at a wage lower than incumbent wages, but not lower than the wages mandated by the Service Contract Act, and would receive annual pay increases at the same rate as incumbents. In addition, the agency found that GSSC had provided lucrative health and life insurance benefits for all employees, and had designed its retention plan around monetary incentives, awards programs, and a strict policy of promotion from within, which the agency considered invaluable in reducing turnover. Based upon the foregoing, the agency found that GSSC had demonstrated in its proposal its ability to limit

¹⁰Although MVM raised this issue in its initial protest, it did not substantively respond to the agency's defense of its actions in any subsequent protest filings.

turnover.¹¹ These findings, which are supported by the record and which are not rebutted by the protesters, belie that GSSC intends to encourage turnover or to pay new employees unreasonably low wages. Nor does GSSC's pricing necessarily suggest that high turnover will result, given GSSC's favorably regarded pay and benefits package for its employees as well as the agency's determination that this pricing will not compromise the effectiveness of GSSC's work force.

Burns protests that the agency overlooked certain weaknesses in GSSC's technical proposal, which were identified in the individual evaluators' worksheets, in developing its TEB consensus score. In addition, Burns claims that the TEB did not penalize GSSC's proposal for certain weaknesses identified by the individual evaluators, although Burn's proposal was downgraded for similar weaknesses.

The record refutes Burns's contentions. In deriving each offeror's consensus score, the TEB averaged the scores given by the individual evaluators under each subfactor. Any weaknesses identified by an individual evaluator resulted in a reduced individual score and, accordingly, a reduced overall score. Our review of the record reflects that the individual evaluators in fact reduced GSSC's proposal score for perceived weaknesses, which were then blended into GSSC's overall score. The evaluation of Burns's proposal was performed in exactly this manner, except that Burns's proposal was found to suffer from more weaknesses and deficiencies than GSSC's.

Although Burns complains that the TEB consensus report did not reflect the negative comments made by some evaluators with respect to GSSC's proposal, it is apparent from the record that the individual evaluators differed in some respects in their assessment of GSSC's proposal. For example, while one evaluator considered the awardee's retention plan to be "weak," the remaining three evaluators viewed that retention plan very favorably, documenting the numerous strengths that ultimately appeared in the consensus report. The same is true for GSSC's past experience; whereas one evaluator criticized GSSC's past performance as being confined to Marshals Service security contracts, the remaining evaluators considered GSSC's past performance-- which included 43 Marshals Service contracts in 35 states-- to be extensive. In our view, the TEB consensus report reasonably reconciles these difference of opinion and accurately characterizes the merits of GSSC's proposal.

¹¹The agency also evaluated GSSC's turnover rates for prior contracts as "extremely low" under the past experience subfactor.

See Dragon Servs., Inc., B-255354, Feb. 25, 1994, 94-1 CPD ¶ 151; Schweizer Aircraft Corp., B-248640.2; B-248640.3, Sept. 14, 1992, 92-2 CPD ¶ 200. There is no basis in the record to find that GSSC's proposal did not deserve the excellent, near-perfect score it received.

The remaining issues raised in these protests involve MVM's allegation that the agency improperly evaluated its technical proposal and Burns's allegation that the discussions it received were inadequate.¹² Even assuming there is merit to these contentions, we do not believe that either protester suffered competitive prejudice. As competitive prejudice is an essential element of any viable protest, we will not address these issues on the merits. See PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, supra.

For example, MVM questions the 2.25-point difference between its score and the awardee's under the past performance subfactor; the 1-point difference between their scores under the key personnel subfactor; and the Marshals Service's failure to increase MVM's company management score by 0.25 points following discussions, as it did with the awardee.¹³ Even if MVM were given the benefit of every scoring increase, its technical proposal score would only increase by 3.5 points, which does not surpass the awardee's technical score. Given that GSSC's proposed price was also much lower than the protester's, MVM's disagreement with its technical evaluation would provide no basis for overturning the award. Id.

Similarly, Burns challenges the adequacy of discussions, but does not allege that more comprehensive discussions would have enabled it to achieve the same level of technical excellence which GSSC's proposal was evaluated to possess. Nor do we believe that Burns could have done so, given its more numerous relative weaknesses and the nature of the

¹²In its initial protest, Burns protested in general terms that its proposal may have been misevaluated. Upon receipt of the agency report and documentation explaining the technical evaluation, Burns only contested that the discussions were not meaningful.

¹³MVM also argues that the TEB's failure to increase its proposal score demonstrates bias. MVM has not produced, nor can we find, any evidence to support this contention; we will not attribute bias in the evaluation of proposals on the basis of such inference or supposition. Smith Bright Assocs., B-240317, Nov. 9, 1990, 90-2 CPD ¶ 382.

discussion questions that it alleges should have been asked.¹⁴ Since GSSC was the low-priced offeror, and Burns does not allege that it could have overcome GSSC's near-perfect technical score (which we found reasonably justified) had it obtained the more extensive discussions it states were necessary, Burns has failed to demonstrate competitive prejudice. Id.

In sum, based on our review, the protesters have provided no basis to sustain the protests of the GSSC award for the 11th Circuit security guard services.

MVM has also requested reconsideration of our dismissal of its protests of five separate contract awards to GSSC for security guard services under the following RFPs, issued by the Marshals Service: RFP No. MS-93-R-0030 (10th Judicial Circuit), RFP No. MS-93-R-0031 (6th Judicial Circuit), RFP No. MS-93-R-0033 (9th Judicial Circuit), RFP No. MS-93-R-0034 (8th Judicial Circuit), and RFP No. MS-93-R-0039 (3rd Judicial Circuit).

GSSC received these contract awards on various dates in September 1993, but MVM did not protest the awards until February 14, 1994. In support of its timeliness claim, MVM stated in its protests that it first discovered its protest bases on January 28, 1994, when it received a supplemental agency report in response to its 11th Circuit protest. This report addressed MVM's allegation, raised in a December 14 amended protest, that the agency improperly calculated its BAFO price at \$45 million, not at \$38.7 million, the figure appearing on its SF 1411.¹⁵ MVM claimed that the information contained in this January report cast doubt upon the agency's price calculations under the other solicitations.¹⁶

¹⁴For example, the protester argues the agency should have been more specific in asking Burns to "[e]laborate on relevant biographical information for contract and district managers," when the agency was actually concerned about the absence of law enforcement experience on the part of these key personnel. However, Burns does not argue that its contract and district managers in fact possess the requisite law enforcement experience specified in the RFP.

¹⁵As discussed above, this contention with regard to the present RFP had no merit.

¹⁶MVM also protested the awards based upon the agency's failure to evaluate GSSC's proposals for consistency with the CAS. MVM made no attempt to establish the timeliness of this issue, which it raised with respect to GSSC's 11th
(continued...)

We dismissed the protests as untimely on February 22, 1994, because MVM failed to diligently pursue the information forming the bases of protest. In dismissing the protests, we found that MVM had presented no evidence that it promptly inquired as to its proposal evaluation under the above solicitations. Indeed, MVM asserted that these protests were based upon information contained in a supplemental agency report, generated more than 4 months after the awards were made. This passivity, in our view, did not satisfy the protester's obligation to diligently pursue the bases for its protests.¹⁷

MVM concedes that it learned of the awards for four judicial circuits in September 1993, but now states that the agency did not notify it of the 9th Circuit award until December 20, 1993, and did not provide a debriefing on any of these protested awards until February 7, 1994. MVM thus argues that our decision was "factually in error" for failing to recognize the proper chronology of events, and that its protests should have been considered timely.

MVM did not furnish any information in its initial protest regarding its notification or debriefing in the 9th Circuit procurement. Nor did MVM mention that while it was notified of the other awards in September 1993, it only requested debriefings on all five of these awards on December 22.¹⁸ Instead, MVM's exclusive claim to timeliness in its initial

¹⁶ (...continued)

Circuit award on October 19, 1993, nor does MVM request reconsideration of our dismissal of this issue.

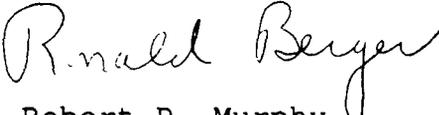
¹⁷In the alternative, we noted that the agency furnished MVM all price evaluation documentation for the 11th Circuit procurement in its first agency report, filed on December 1, 1993, such that MVM's February 14 protests were untimely, even if not dismissable for lack of diligent pursuit as described above. 4 C.F.R. § 21.2(a)(2) (1993). Specifically, the December agency report disclosed that the Marshals Service did not evaluate MVM's BAFO price at the price stated on its SF 1411, which prompted MVM to protest its price evaluation on December 14. Thus, we found that MVM could have protested its price evaluation in the other judicial circuits at least by that date, if not earlier, even assuming the information had been diligently pursued. While the protester expresses disagreement with this conclusion, nothing in MVM's reconsideration request persuades us that it was incorrect. R.E. Scherrer, Inc.-- Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

¹⁸This too does not constitute diligent pursuit of its protest grounds.

protests was information it allegedly first learned of in the January 28 agency report. In sum, there was nothing in its protest from which we could divine the chronology of events to which MVM now refers in its reconsideration request.

Where, as here, a protest is untimely on its face, a protester, which does not satisfy its obligation to include in its protest all information necessary to demonstrate the protest's timeliness, will not be permitted to introduce such information for the first time in a reconsideration request. 4 C.F.R. § 21.2(b). Since MVM did not present the explanation purportedly justifying the timeliness of these protests in its initial protests, which were dismissed as untimely on their face, we decline to reconsider these dismissals.

The protests and the requests for reconsideration are denied.


for Robert P. Murphy
Acting General Counsel