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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Magnum Medical Personnel, A Joint Venture

File: B-297687.2

Date: June 20, 2006

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DIGEST

Protest is sustained where the agency did not reasonably evaluate in accordance with the terms of a multiple-award solicitation the proposals of the protester and an awardee and where the protester, the lowest priced offeror, was competitively prejudiced by the agency's flawed evaluation.

DECISION

Magnum Medical Personnel, A Joint Venture¹ protests the award of a contract to Luke and Associates, Inc. under request for proposals (RFP) No. FA7012-05-R-0010, issued by the Department of the Air Force for direct care clinical support services, *i.e.*, the provision of high-quality healthcare workers to treat patients inside Air Force Medical Treatment Facilities (MTF) within the United States. Magnum protests the evaluation of its proposal and the agency's selection of Luke's proposal for award.

¹ The joint venture consists of two partners under a mentor/protégé arrangement recognized by the United States Small Business Administration (SBA). Specifically, the mentor is Sterling Medical Associates, Inc. and the protégé is Magnum Opus Technologies, Inc.

We sustain the protest.²

BACKGROUND

The RFP, issued as a total small business set-aside on May 13, 2005, stated the agency's intent to "award up to five" indefinite-delivery/indefinite-quantity fixed-price contracts for a 4-year basic contract period and two 3-year option periods to those responsible offerors whose proposals represented the best value to the government based on an integrated assessment of mission capability, past performance, proposal risk, and price. RFP at 210. Under the RFP, the evaluation factors were listed in descending order of importance with mission capability and past performance being equal in importance, and proposal risk being more important than price. The RFP stated that the non-price evaluation factors, when combined, would be considered significantly more important than price, but that price would contribute substantially to the selection decision.

The mission capability evaluation factor contained the following three subfactors, which were listed in descending order of importance: retain, recruit, and qualify. As relevant here, under the qualify subfactor, the agency would evaluate the adequacy, clarity, and executability of the offeror's management plan in terms of the offeror demonstrating the ability to provide personnel that would meet minimum qualification and security requirements and the capability of the offeror to submit complete and accurate security and, when required, credentialing packages. Under the RFP, the qualify subfactor would be met when the offeror's proposed "organizational structure and staffing plan," defined in the RFP as the offeror's

² This protest follows Magnum's earlier protest in which the Air Force took corrective action by referring the issue of Magnum's responsibility, based on the agency's concerns related to Magnum's "capability to provide the required services on a sustained basis at the [low] prices offered," to the SBA for the possible issuance of a certificate of competency (COC). Air Force Corrective Action Notice, Dec. 21, 2005. In the notice to our Office advising of the corrective action, previous Air Force counsel stated, "Although [Magnum] was not a successful offeror, after receiving the SBA response, the Air Force Source Selection Authority will reevaluate her [previous source selection] decision . . . that did not award [a] contract to [Magnum], and will issue a new source selection decision document." *Id.* Air Force counsel continued, "This action is not a promise to award a contract to [Magnum] if a COC is granted, but only a promise that Magnum will be fairly considered for a contract with due consideration to the SBA determination." *Id.* Although the SBA issued a COC to Magnum, the Air Force determined not to award a contract to Magnum. It is not clear why the Air Force referred the issue of Magnum's responsibility to the SBA in the first instance if it had no intention of awarding a contract to Magnum even if the SBA issued a COC to the firm. However, we need not address this in light of our conclusion that Magnum's proposal was not evaluated reasonably.

“internal processes that demonstrate efficiency and effectiveness in processing the required documentation [i.e., resumes, credentialing packages, and security documents] prior to the start of work under the task order,” showed the offeror’s ability to timely submit complete and accurate security and, when required, credentialing packages. RFP at 212-13.³

As explained by the agency during a conference call in which our Office and all parties to this protest participated, there are two types of healthcare workers--credentialed and non-credentialed. Credentialed healthcare workers, such as doctors, are those who have gone through a credentialing process and have obtained privileges through the applicable MTF credentialing committee in order to work at the facility. Under the RFP, the contractor must provide a complete, current, and accurate credentialing package for each proposed healthcare worker requiring privileges and must make these proposed workers available for an interview by the MTF during the credentialing process. The RFP further states that the credentials of each healthcare worker will be reviewed and privileges will be granted in accordance with Air Force Instruction 44-119, Clinical Performance Improvement, June 4, 2001. Performance Work Statement (PWS) § 4.10.1. In contrast, proposed non-credentialed healthcare workers, such as lab technicians and pharmacy technicians, do not need to go through a credentialing process in order to work at an MTF.

Both credentialed and non-credentialed healthcare workers must meet the security requirements contained in the RFP in order to gain physical access to the MTF, as well as to gain access to the medical information computer system at the MTF where patient documentation and information is entered and accessed in the course of treatment. More specifically, with respect to security requirements, since healthcare workers under the contract will have access to, or will process, information requiring statutory privacy protection, the RFP requires the contractor to apply for a National Agency Check with Inquiries (NACI) prior to the start of performance for each proposed healthcare worker under the contract in accordance with specified Department of Defense Directives and Air Force Instructions. In this regard, under the RFP, the contractor must have each of its proposed healthcare workers make an appointment with the appropriate security organization at the MTF where service is to be provided, with each worker being fingerprinted and required to complete the applicable forms related to holding a public trust position. The RFP requires the contractor to advise its healthcare workers that a positive report is needed as a condition of employment under the contract. PWS § 4.8. In addition, because the MTF will conduct criminal history background checks on all proposed healthcare workers who are involved on a frequent and regular basis with the delivery of

³ The RFP defined the timeframe for submittal of security and credentialing packages as not later than 30 calendar days before the start of work. Magnum and Luke each proposed to comply with this 30-day requirement.

healthcare to children under the age of 18 (for example, those working in a pediatric clinic), the RFP requires the contractor to ensure that the applicable forms are completed by the proposed healthcare worker for submittal. PWS § 4.10.2. Thus, whether credentialed or non-credentialed, each proposed healthcare worker must satisfy the RFP's security requirements.

Under the RFP, a color rating (blue/exceptional, green/acceptable, yellow/marginal, or red/unacceptable) would be assigned to each proposal for each of the mission capability subfactors; these subfactor ratings would not be rolled up into an overall color rating for the mission capability evaluation factor. A proposal risk rating (high, moderate, or low) would be assigned to each of the mission capability subfactors. A performance confidence assessment (high confidence, significant confidence, satisfactory confidence, unknown confidence, little confidence, or no confidence) would be assigned to the past performance evaluation factor. In making the integrated assessment of the technical evaluation factors and price, and in accordance with the relative importance assigned to the evaluation factors as described above, the RFP stated that any of the evaluation considerations could influence the agency's selection decision.

The RFP instructed that an offeror's proposal was required to be clear and concise and to include sufficient detail for effective evaluation and for substantiating the validity of stated claims. The RFP advised that an offeror should assume that the agency has no prior knowledge of an offeror's experience and that the agency would base its evaluation on the information presented in the offeror's proposal. The RFP further instructed that the agency reserved the right to make the awards based on initial proposals without conducting discussions.

Twenty-eight firms submitted initial proposals by the stated closing time. The agency awarded contracts to the five most highly rated offerors, whose initial proposals were determined eligible for award without the need to conduct discussions. (These proposals received at least a green/low risk rating for each of the mission capability subfactors and at least a satisfactory confidence rating for past performance; the evaluated prices of these proposals were considered fair and reasonable.) Following is the agency's evaluation of the proposals of Magnum, the lowest priced offeror in the competition, and the five offerors which were awarded contracts, including Luke:⁴

⁴ In its report to our Office, the Air Force produced, with the agreement of Magnum, the proposals of, and the evaluation documentation for, only Magnum and Luke. Consistent with its action as taken in Magnum's earlier protest (which ultimately resulted in the SBA's issuance of a COC to Magnum), the Air Force, in the current protest, did not stay performance by the first four awardees; the Air Force only stayed performance by Luke since only the fifth award is in dispute. Accordingly,

(continued...)

	Mission Capability/Proposal Risk			Past Performance	Evaluated Price
	Retain	Recruit	Qualify	Confidence	
Magnum	Green/Low	Blue/Low	Yellow/Moderate	Significant	\$(deleted)
Awardee #1	Green/Low	Green/Low	Green/Low	Significant	\$(deleted)
Awardee #2	Blue/Low	Green/Low	Green/Low	Satisfactory	\$(deleted)
Awardee #3	Blue/Low	Blue/Low	Green/Low	Significant	\$(deleted)
Awardee #4	Green/Low	Blue/Low	Green/Low	Satisfactory	\$(deleted)
Awardee #5/ Luke	Green/Low	Green/Low	Green/Low	Satisfactory	\$(deleted)

Source Selection Decision Document, Nov. 10, 2005, at 5, 11, 17, 22-25, 32.

In its proposal, in addressing the qualify subfactor under the mission capability evaluation factor, Magnum offered a self-assessment of low risk in the areas of the joint venture providing personnel meeting minimum “qualifications and security” requirements, providing structures for processing “resumes, credentialing packages and security documents,” and providing timely submission of “resumes and security/credentialing packages.” Magnum referred to a strategy of [deleted]; that is, prior to the receipt of paperwork from the candidate, Magnum would use [deleted] to ensure that “all qualifications, credentialing and security requirements” would be met by each candidate. Magnum stated that it employs [deleted], each of whom was experienced in meeting “credentialing/security and start-up requirements” for MTFs. Magnum stated that resumes would be submitted for approval within 30 days of award, and that credentialing and security packages would be submitted at least 30 days prior to the start of provider services at an MTF. Magnum’s Initial Proposal at 49-50.

Magnum also provided a descriptive listing of [deleted] “[deleted] milestones” in order for it to meet task order start-up under the contract. For example, within [deleted] days [deleted], Magnum stated that “completed [MTF]-specific security documentation [would be submitted] to [the contracting officer’s representative] for technical review, and [would] be forwarded to [the] appropriate MTF sources for security approval.” In addition, at least [deleted] days [deleted], Magnum stated that it would “[c]onfirm that all [healthcare] providers and staff ha[d] been cleared by base security and [would] be able from a security point of view to begin providing services in a timely manner.” *Id.* at 14.

Magnum further explained that the joint venture had structures in place to meet all current timeframes required by the agency; that checklist timelines generated for start-up of each task order would be monitored daily by the project manager and

(...continued)

the agency’s evaluation of the proposals of Magnum and Luke is the focus of this protest.

assigned location administrator as part of the joint venture's normal contract start-up; and that any potential for submittal deadlines not being met would require notice to the corporate officers of the joint venture partners so that additional staff could be assigned and additional measures could be taken in order to return to timely processing. Finally, Magnum pointed out that the "qualifications/security requirements [in this RFP were] very similar" to requirements that the joint venture had performed under other government contracts [deleted]. Id. at 49.

In its proposal, in addressing the qualify subfactor under the mission capability evaluation factor, Luke stated that its "credentialing process is performed and the security and credentialing package submitted in [deleted] days." Luke stated that the "Security and Credentialing packages are prepared by [deleted] and re-confirmed by [deleted] prior to submittal to the MTF credentialing manager." Luke continued by stating that its process uses its "[deleted] to assist in eliminating incomplete or missing information from being submitted to the MTF. This process for 'credentialing and privileging' is provided in Figure 4.2-1 [a flowchart entitled "Medical Staff Credentialing and Privileging Clearance Process"] . . . [and] Figure 4.2-2 provides a timeline for [its] credentialing process." Luke's Initial Proposal at II-33-34.

In its credentialing and privileging flowchart, Luke made reference to "security." For example, in one block in the flowchart, Luke stated that the [deleted] would review "explanation of Credentialing & Security process to applicant" and that the [deleted] would note the receipt of documents [deleted]. In another block in the flowchart, Luke stated that the [deleted] would review "remaining credentialing & security requirements and plan[] follow-up call with applicant." In yet another block, Luke stated that the [deleted] would "Send[] packet to Credentialing & Security Inspector." Id. at II-35-36.

In addition, Luke's proposal contained a [deleted] listing of milestones showing the number of days involved in its "process that ensures that deliverables are submitted ahead of time." This listing of milestones referred to Luke's "credential process" and to the preparation, inspection, signature, and completion of the "Credentialing Packet." In this listing of milestones, Luke's only reference to "security" was in the final line which stated, "Max. Days to Prepare Security and Credentialing Package" is [deleted] days [deleted]. Id. at II-37.

The yellow rating assigned to Magnum's proposal for the qualify subfactor under the mission capability evaluation factor was defined by the RFP as "marginal," that is, "Does not clearly meet some specified minimum performance or capability requirements delineated in the [RFP], but any such uncertainty is correctable."

RFP at 211.⁵ In addition, the “moderate” proposal risk rating assigned to the qualify subfactor was defined by the RFP as “Can potentially cause disruption of schedule, increased cost, or degradation of performance. Special contractor emphasis and close government monitoring will likely be able to overcome difficulties.” RFP at 215.

More specifically, for the qualify subfactor, the agency, as reflected in the initial and final consensus evaluations, determined that while Magnum proposed a “proactive” credentialing process,⁶ Magnum’s “process for security package information [was] not detailed” and this “lack of clarification regarding the submission process for security packages increases [the] risk of unsuccessful contract performance and can potentially cause disruption of program schedule.” Magnum’s Technical Evaluation at 8-10. The agency did not believe that Magnum specifically addressed its internal processes for the collection of the security information or that Magnum had conveyed that the contents of the security packages would contain the information required by the government. While noting that Magnum stated that any risk would be mitigated through its pre-screening of the credentials of proposed healthcare workers and that this process was similar to other work that the joint venture had performed, the agency nevertheless concluded that Magnum failed to clearly describe in its proposal its internal processes for satisfying the RFP’s security requirements. The agency characterized this aspect of Magnum’s proposal as an “uncertainty” and as a “weakness.” Proposal Analysis Report at 190-91.

The green rating assigned to Luke’s proposal for the qualify subfactor under the mission capability evaluation factor was defined by the RFP as “acceptable,” that is,

⁵ In its Memorandum of Law, the agency characterized Magnum’s proposal as “technically unacceptable,” and in its Statement of Facts, the agency characterized Magnum’s proposal as “not technically acceptable.” Neither of these phrases is found in the contemporaneous evaluation or source selection record. In the course of developing the protest record, the agency acknowledged that “there was inconsistent terminology between the Memorandum of Law, the Statement of Facts[,] and the contemporaneous record.” The agency continued by stating that it “was not [its] intention to convey that Magnum’s proposal was rated ‘unacceptable’ or ‘technically unacceptable.’” Agency Statement, May 8, 2006, at 1-2.

⁶ The agency initially characterized Magnum’s proactive approach to credentialing as a strength; however, as part of the final consensus evaluation, the agency removed this strength, explaining that the [deleted] in Magnum’s proposal did not guarantee compliance and that Magnum’s proactive credentialing process was not an exceptional aspect of its proposal since credentialing was the offeror’s responsibility and Magnum’s approach in this regard did not represent an increased benefit to the government above and beyond what was required by the RFP. Magnum’s Technical Evaluation at 8-9.

“Meets specified minimum performance or capability requirements delineated in the [RFP]; proposal . . . [has] no deficiencies but may have one or more strengths.” RFP at 211. In addition, the “low” proposal risk rating assigned to the qualify subfactor was defined by the RFP as “Has little potential to cause disruption of schedule, increased cost or degradation of performance. Normal contractor effort and normal government monitoring will likely be able to overcome any difficulties.” RFP at 215.

Notwithstanding the initial concerns of at least one evaluator who commented that Luke’s proposal “specifically mentions security package requirements, but process details for security [were] not given,” Luke’s Technical Evaluation at 1, the agency determined, as reflected in the final consensus evaluation, that Luke’s proposal contained no uncertainties or weaknesses. *Id.* at 7-8. The agency also commented favorably on Luke’s proposed [deleted] system for tracking healthcare workers’ credentials and certifications to ensure timely renewal notification in order to prevent any disruption in patient care. *Id.* at 7; Proposal Analysis Report at 72.⁷

In making her best-value determination, the source selection authority (SSA) noted that the RFP allowed the agency to award the contracts on the basis of initial proposals without conducting discussions. The SSA further noted that because the agency received a sufficient number of initial proposals that met the minimum requirements of the RFP, discussions with the offerors would not be necessary prior to making the awards. Accordingly, the SSA awarded contracts to the five most highly rated offerors. As relevant here, with respect to the fifth award, the agency did not perform a comparative analysis, or make a tradeoff, between the proposals of Magnum and Luke because, according to the agency and as described above, Magnum was not eligible for award without the agency conducting discussions with the firm due to the yellow/moderate risk rating assigned to Magnum’s proposal for the qualify subfactor under the mission capability evaluation factor. Agency Statement, May 8, 2006, at 3-4; Agency Final Statement, May 15, 2006, at 2.

⁷ Similar to its conclusion with respect to Magnum, the agency determined that Luke’s [deleted] system for tracking workers’ credentials and certifications relies heavily on technology being used at the MTFs by the workers and does not necessarily ensure that the workers will timely complete their renewals, only that they will receive a reminder to complete them. Accordingly, the agency concluded that this strength was not beneficial to the government in a way that would justify any additional cost because each MTF was responsible for tracking this information for all licensed providers. Luke’s Technical Evaluation at 7; Proposal Analysis Report at 72.

ISSUE AND ANALYSIS

Magnum argues that for the qualify subfactor under the mission capability evaluation factor, the agency failed to reasonably and equally evaluate its proposal and Luke's proposal. In making this argument, Magnum points out that one of the evaluators who questioned Magnum's own alleged lack of internal security process details raised a similar question about Luke, commenting that Luke's proposal did not give process details for security. Magnum notes that while this evaluator's initial concern with respect to its own proposal became a part of the agency's final consensus evaluation, there is no explanation in the contemporaneous evaluation record, nor was any explanation provided by the agency during the development of this protest record, for why the same initial concern with respect to Luke's proposal was not similarly carried through to the final consensus evaluation for that firm's proposal. Since Luke's proposal was not downgraded for failing to clearly discuss its internal processes for satisfying the RFP's security requirements, Magnum maintains that its proposal should have been similarly evaluated, as opposed to being downgraded. In addition, Magnum argues that its proposal, in fact, was more detailed in terms of describing an internal process for addressing the RFP's security requirements than was Luke's proposal. Finally, Magnum, the lowest priced offeror in the competition (which was determined responsible by the SBA even with its low price), argues that it was competitively prejudiced *vis-à-vis* Luke as a result of the agency's flawed evaluation of the qualify subfactor.

In reviewing a protest against an agency's proposal evaluation, we will consider whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. See, e.g., Sytronics, Inc., B-297346, Dec. 29, 2005, 2006 CPD ¶ 15. We will not sustain a protest absent a showing of competitive prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). In the circumstances of this protest, we conclude that the agency failed to reasonably evaluate the proposals of Magnum and Luke for the qualify subfactor under the mission capability evaluation factor and that Magnum was competitively prejudiced by the agency's flawed evaluation.

Here, for the qualify subfactor, the RFP required an offeror to demonstrate that it could provide healthcare workers who would meet the RFP's minimum qualification and security requirements and that it could timely submit, as applicable, complete and accurate security and credentialing packages. The RFP stated that the qualify subfactor would be met when an offeror's "internal processes" demonstrated the offeror's efficiency and effectiveness in timely processing, for example, the required security and credentialing packages prior to the start of work under the task order.

We agree with Magnum that there is nothing in the record that establishes why Magnum's proposal for the qualify subfactor should have been downgraded in comparison to Luke's proposal for this subfactor. In this regard, Magnum, like Luke, proposed to satisfy the RFP's security and credentialing requirements together as part of a single internal process. More specifically, Magnum, like Luke, described an internal process for satisfying the RFP's security requirements that was linked to, and was a part of, each firm's respective internal process for satisfying the RFP's credentialing requirements. Magnum, like Luke, referenced "security" in the context of discussing an internal process for credentialing, for which both offerors received favorable evaluation comments. Finally, Magnum, like Luke, focused on a security process for credentialed healthcare workers, but neither firm separately addressed a process for security for non-credentialed healthcare workers. While the agency credited Luke with addressing the RFP's security requirements as part of its internal process for satisfying the RFP's credentialing requirements, there is nothing in the record that explains why Magnum's proposal, which basically appears to provide the same information as Luke's proposal, should not have received the same credit.

Moreover, in certain respects, as pointed out by Magnum, it could reasonably be argued that Magnum's proposal was more descriptive than Luke's proposal in terms of addressing an internal process for satisfying the RFP's security requirements. For example, Luke merely inserted the word "security" into some of the blocks in its credentialing and privileging flowchart and, in its [deleted] listing of milestones, Luke referred exclusively to a "credential process" and to a "Credential Packet," only inserting the word "security" in the final line where it stated that the "security and credentialing package" would be prepared in [deleted] days [deleted]. In contrast, Magnum narratively described its credentialing process, including specifying the number of [deleted] employed by the joint venture who were experienced in meeting, for example, credentialing and security requirements for MTFs; providing a descriptive listing of [deleted] milestones in order for it to meet task order start-up under the contract; explaining that daily monitoring by the project manager and other administrative personnel would occur to ensure submittal deadlines would be met; and, explaining that, if necessary, additional staff would be assigned and other measures would be taken to return to timely processing.⁸ On this record, it is difficult to understand the basis for the agency's view that Luke's proposal for the qualify subfactor addressed the RFP's security requirements in a way that was materially superior to the way in which Magnum addressed these requirements in its proposal. Further, other than its conclusory statement that a majority of the evaluators determined, as reflected in the final consensus evaluation, that Luke

⁸ In its proposal, Magnum also pointed out that the credentialing and security requirements in the RFP were very similar to requirements that the joint venture had performed under other government contracts [deleted]. The record shows that Magnum was credited for its record of successful past performance, as reflected by the significant confidence past performance rating assigned to its proposal.

satisfied the RFP's security requirements, including providing a description of its internal process for satisfying these requirements, there is nothing in either the contemporaneous evaluation record or in the agency's submissions filed during our consideration of this protest (including the previously referenced conference call) that in any way reasonably or meaningfully addresses how the agency reached its final consensus evaluation concerning this matter.

Therefore, on this record, we do not believe that the agency has reasonably supported its conclusion that, with regard to the qualify subfactor, Magnum's proposal merited a lower rating than Luke's proposal. As a result of the agency's flawed evaluation, we conclude that the qualify subfactor was not a reasonable discriminator in terms of deciding whether the proposal of Magnum or Luke represented the best value to the government in terms of a fifth award (where the agency made the awards on the basis of initial proposals without conducting discussions). In other words, the record is devoid of any explanation of the substantive differences in the two proposals which would justify the agency's determination that Luke's proposal for satisfying the RFP's security requirements was superior to Magnum's proposal in terms of addressing these requirements.

Finally, we conclude that, as a result of the agency's flawed evaluation, Magnum was competitively prejudiced. The record establishes that had the agency reasonably evaluated the proposals of Magnum and Luke, these proposals would have been rated the same for two of the mission capability evaluation subfactors (retain and qualify), and Magnum's proposal would have been rated higher than Luke's proposal for the recruit subfactor. In addition, the record shows that for the past performance evaluation factor, Magnum's proposal received a significant confidence rating, while Luke's proposal received only a satisfactory confidence rating. Finally, Magnum's evaluated price was approximately [deleted] percent less than Luke's evaluated price.⁹ Therefore, we conclude that, but for the flawed evaluation of Magnum's proposal for the qualify subfactor, Magnum's higher rated, lower priced proposal, not Luke's lower rated, higher priced proposal, would have been selected for award.

RECOMMENDATION

We recommend that the agency make an award to Magnum. If the agency determines that it is not appropriate to make six awards, we recommend that the agency terminate Luke's contract for the convenience of the government. In addition, we recommend that the agency reimburse Magnum for the reasonable

⁹ It is worth emphasizing that once the SBA issued the COC to Magnum, the agency determined that Magnum was a responsible offeror in terms of its low price. Addendum to Source Selection Decision Document, Mar. 6, 2006, at 2. For this reason, Magnum's low price could not be a basis to deny an award to the firm.

costs of filing and pursuing this protest, including reasonable attorneys' fees.¹⁰ Magnum's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days of receiving this decision. Bid Protest Regulations, 4 C.F.R. § 21.8(f)(1) (2006).

The protest is sustained.¹¹

Anthony H. Gamboa
General Counsel

¹⁰ Contrary to Magnum's request, we find that it is not entitled to recover the costs associated with filing and pursuing its original protest that resulted in the agency taking corrective action prior to the filing of the administrative report because, generally, if an agency takes corrective action in response to a protest by the due date for its administrative report in response to that protest, we consider such action to be prompt and we will not recommend reimbursement of protest costs. The Sandi-Sterling Consortium--Costs, B-296246.2, Sept. 20, 2005, 2005 CPD ¶ 173 at 2-3. Moreover, to the extent that Magnum requests reimbursement of its costs associated with pursuing the COC at the SBA, we point out that our Office lacks statutory authority to recommend reimbursement of costs incurred in connection with a matter brought in a different forum since these costs were not incurred in pursuit of a protest filed with our Office. Career Quest, a div. of Syllan Careers, Inc.--Costs, B-293435.5, Apr. 13, 2005, 2005 CPD ¶ 79 at 2; Rice Servs., Ltd.--Costs, B-284997.2, May 18, 2001, 2001 CPD ¶ 88 at 3; Test Sys. Assocs., Inc.--Costs, B-256813.6, Oct. 29, 1996, 96-2 CPD ¶ 161 at 4.

¹¹ In light of this decision sustaining the protest, we need not address the other issues raised by Magnum.