

Office of School Board Attorney
Johnny Brown, Board Attorney

**SUBJECT: Betancourt-Castellon and Associates v. Miami-Dade County School Board and Magnum Construction Management Corporation
DOAH Case No. 04-3248-BID**

On March 30, 2004, the School Board issued a Request for Qualifications for design-build firms for the design and construction of additions to Southwest Miami Senior High School (Project No. A-0854) and to Miami Killian Senior High School (Project No. A-0855). The bid opening on these projects was held on June 15, 2004. On the following day, district staff recommended to the Board that a contract be awarded to the apparent low-bidder, Petitioner Betancourt-Castellon and Associates, Inc. ("BCA"). However, on that same day, the second lowest bidder, Magnum Construction Management Corp. ("MCM") filed a notice of protest. On June 16, 2004, the School Board approved the recommendation of the award of the contract to BCA, pending the outcome of the bid protest.

MCM's protest challenged the award to BCA based primarily upon an alleged conflict of interest due in part to BCA having as part of its design-build team, a firm that was also serving as part of the Design Criteria Professional's team on at least two other projects where BCA was under contract with the Board. A review of MCM's protest by counsel for the School Board determined that said protest had substantial merit and that a potential conflict of interest existed with BCA's bid. As a result of this determination, BCA filed a bid protest contesting the determination that BCA's bid should have been disqualified because it would inevitably lead to a conflict of interest.

After all attempts to informally resolve the protest in accordance with §120.57(3), Fla.Stat. (2004), the contract and award process was stopped pending the outcome of the protest. On September 15, 2004, this matter was transferred to the Division of Administrative Hearings for a formal hearing. On October 13, 2004, a hearing was held, and on December 14, 2004, the Administrative Law Judge issued his Recommended Order recommending that the Board issue a Final Order awarding the contract for the subject projects to BCA. A copy of the Recommended Order is being furnished to the Board under separate cover, along with a copy of the proposed Final Order.

The Office of the School Board Attorney and the Administration recommend that the Board adopt the Recommended Order as the School Board's Final Order. None of the parties involved have filed exceptions to the Recommended Order.

RECOMMENDED: That The School Board of Miami-Dade County, Florida enter a Final Order in the bid protest case known as Betancourt-Castellon and Associates v. Miami-Dade County School Board, and Magnum Construction Management Corporation, DOAH Case No. 04-3248-BID, accepting the Administrative Law Judge's Recommended Order as the School Board's Final Order, and awarding the contract on School Board Project Nos. A-0854 and A-0855 to BCA, the lowest bidder.

LMG/dlp