

Miller

144-192



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Building Services Unlimited, Inc.  
**File:** B-243574; B-243574.2  
**Date:** July 25, 1991

Jared H. Silbermann, Esq., and Dennis J. Riley, Esq., Elliott, Bray & Riley, for the protester.  
Vicki E. O'Keefe, Esq., Department of the Navy, for the agency.  
Behn Miller and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Protests that request for quotations was improperly issued as an emerging small business set-aside and that award was improper because of conflict of interest on the part of the contract specialist are dismissed where contracting agency is investigating protester's allegations of conflict of interest, subject to reinstatement by the protester upon receipt of the results of the investigation.

## DECISION

Building Services Unlimited, Inc. (BSUI) protests the terms of request for quotations (RFQ) No. N62467-91-M-5483, issued by the Department of the Navy for the removal and disposal of oily waste from oil/water separator No. 363, located at the Naval Coastal Systems Center in Panama City, Florida. In a supplemental protest, BSUI raises an alleged conflict of interest on the part of the contracting officer in making award under the RFQ to Patco, Inc.

We dismiss the protests.

Issued March 25, 1991, the RFQ contemplated the one-time removal and disposal of approximately 6,300 gallons of oily waste from separator No. 363's underground tank and clear water basin. The separator stores the oily waste of ships returning to port. Under the RFQ, vendors were required to submit quotes for two separate contract line items (CLIN): "1 JOB" of non-hazardous waste disposal (CLIN No. 0001) and "1 JOB" of hazardous waste disposal (CLIN No. 0002). The statement of work provided that after the contractor had

removed the oily waste from the separator's tanks, the Navy would chemically analyze the waste to determine if it was hazardous or non-hazardous. If the waste was non-hazardous, the quote for CLIN No. 0001 would apply; if it was hazardous, the quote for CLIN No. 0002 would apply. Until April 30, 1991, when its contract expired, BSUI had been the incumbent contractor for this service.

The RFQ was issued as an emerging small business (ESB) set-aside. Three vendors, including BSUI, were issued copies of the solicitation. The closing date for receipt of quotations was April 8; one firm--Patco, Inc.--submitted a quotation. On April 12, the Navy issued a purchase order to Patco, which was later modified on April 15 to include the removal of an additional 1,000 gallons of hazardous waste. All work was completed April 16.

In its initial protest, filed April 8, BSUI contends that the RFQ was improperly issued as an ESB set-aside. BSUI also challenges various terms of the RFQ, arguing that the solicitation's use of the term "job" to describe the scope of work required is ambiguous; that the RFQ improperly omits the Department of Labor (DOL) wage rate determination for a laboratory technician position; and that an incorrect size standard (\$3 million in annual receipts, representing 50 percent of the annual revenue for the applicable Standard Industrial Classification (SIC) code) was included in the RFQ.

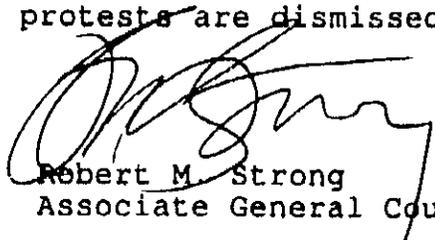
In its supplemental protest, filed June 12, BSUI contends that the contract specialist who made the award decision under the RFQ has a conflict of interest that rendered award to Patco improper; specifically, BSUI states that Patco is owned by the daughter and son-in-law of the contract specialist. BSUI alleges that the award to Patco is part of a pattern of awards by the contract specialist to firms to which she has familial ties.

In its report on the first protest, the Navy responded to each of BSUI's contentions, arguing that the procurement was properly set-aside for ESBs and that there were no defects in the terms of the RFQ which BSUI challenged. In responding to the supplemental protest regarding the conflict of interest issue, the Navy stated that it had been unaware of the relationships between the contract specialist and the firms listed by BSUI and that it had suspended the contract specialist's warrant pending the results of an investigation by the Naval Investigative Service. The Navy stated that it has three existing contracts with the companies identified by BSUI as being affected by the alleged conflict of interest (Patco and B&K Construction) and that no further delivery orders would be placed against those contracts because of the agency's concern about the appearance of a conflict of

interest. With regard to the contract at issue in this protest, since performance was completed on April 16, approximately 2 months before the supplemental protest was filed, no corrective action with regard to that contract was possible.

In view of the ongoing Navy investigation into BSUI's allegation of conflict of interest, and since the results of that investigation are central to resolving BSUI's protests, we believe the appropriate course of action at this point is to close our file on BSUI's protests pending those results. See Hazeltine Corp., B-235239, June 22, 1989, 89-1 CPD ¶ 592; Usatrex Int'l Inc., B-231815.4, Oct. 31, 1988, 88-2 CPD ¶ 413. We are requesting the Navy to complete its investigation as rapidly as possible and to notify the protester and our Office of the results promptly. Upon receipt of these results, the protester may reinstate its protests.

The protests are dismissed.



Robert M. Strong  
Associate General Counsel