



Comptroller General  
of the United States

Washington, D.C. 20548

144552

## Decision

**Matter of:** Building Services Unlimited, Inc.

**File:** B-244135

**Date:** August 5, 1991

Jared H. Silberman, Esq., and Dennis J. Riley, Esq., Elliott, Bray & Riley, for the protester.  
Paul M. Fisher, Esq., Department of the Navy, for the agency.  
Susan K. McAuliffe, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that agency wrongfully steered competition from protester by failing to solicit firm for interim contract award is dismissed as academic where agency took corrective action and granted the relief requested, and the protester will be given an opportunity to compete upon resolicitation.

### DECISION

Building Services Unlimited, Inc. (BSUI) protests the agency's failure to solicit it for the award of a 3-month interim contract (No. N62467-91-B806) for the collection and transportation of oily waste at the Naval Coastal Systems Center, Panama City, Florida. BSUI, which seeks resolicitation of the procurement and an opportunity to compete, contends that the agency has consciously attempted to "steer" solicitations from the protester.

We dismiss the protest.

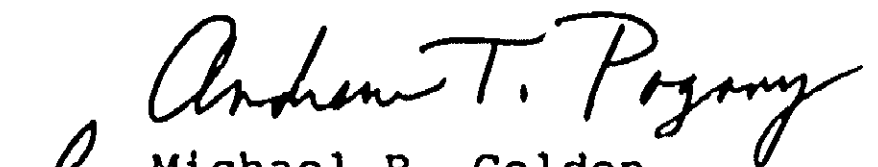
The solicitation for this interim requirement, issued on May 1, 1991, was set aside for emerging small business concerns with annual average gross revenue for the last 3 fiscal years that did not exceed \$3,000,000. Two quotations were received in response to the solicitation. On May 6, one of these firms, PATCO, was awarded the 3-month interim contract for \$6,900. On May 20, BSUI filed this protest. On June 21, after learning of a potential conflict of interest relating to the award of the contract, the contracting officer and PATCO agreed to a bilateral deductive modification closing out the contract. (The principals of PATCO were alleged to have familial ties with the contract specialist who handled

the procurement.) The agency plans to include the balance of the contract requirements in a multi-function contract which it has not yet advertised. We have been informed that the contract specialist's warrant has been suspended pending the results of an investigation by the Naval Investigative Service of the possibility of a conflict of interest.

The agency contends that the protest should be dismissed as academic since in closing out the contract by bilateral deductive modification, due to its concerns of an appearance of a conflict of interest, the agency has taken actions which essentially grant the protester the relief requested--resolicitation and an opportunity to compete in the future.

Protests of agency action become academic when contracting agencies grant the relief requested. Steel Circle Bldg. Co., B-233055; B-233056, Feb. 10, 1989, 89-1 CPD ¶ 139. Since the protester will have the opportunity to compete upon resolicitation, as requested, we consider the protest to be academic. Since it is not our practice to consider academic questions, the protest is dismissed. See East West Research, Inc.--Recon., B-233623.2, Apr. 14, 1989, 89-1 CPD ¶ 379.

Finally, in its July 11 comments on the agency's report submitted in response to the protest, BSUI made a request under our revised Bid Protest Regulations, 54 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.6(e)), for its protest costs, including attorneys' fees. We are treating this request as a separate claim for costs, and we will be requesting the Navy to file its response on the merits of the claim within 10 working days.

  
for Michael R. Golden  
Assistant General Counsel