

DECISION

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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-197210

DATE: March 3, 1980

MATTER OF: Local 1662, American Federation of
Government EmployeesDIGEST: [Protest INVOLVING Agency DETERMINATION
TO CONTRACT OUT] DLG-04002

Determination under Office of Management and Budget Circular A-76 to contract out for services is matter of executive policy not reviewable as bid protest by union representing Federal employees. Protest is dismissed.

Local 1662 of the American Federation of Government Employees protests the decision of the Department of the Army to contract out for avionics maintenance under solicitation No. DAEAL8-79-B-0097. For the reasons stated below, we dismiss this protest.

The Army made the decision to contract out for the services in question under the guidance of Office of Management and Budget Circular No. A-76 (A-76) which reflects the policy of the Federal Government to rely on private enterprise for its needs unless the national interest requires otherwise. As implemented by A-76, the decision whether to contract with the private sector for services or products, in lieu of performance by Government employees, depends largely on a comparison of the costs of these two options. The cost of contracting out is determined by the responses of potential contractors to a solicitation for the services in question; the cost of Government performance is estimated based on criteria set by the department concerned. Essentially, if the evaluation shows the cost of contractor performance to be lower than the cost of continued in-house performance, the Government employees concerned are subject to reassignment or reduction-in-force actions and a contract for the services is awarded to the lowest cost offeror.

It was decided to contract out in this case. The local represents the affected Government employees.

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We have consistently declined to consider protests concerning the propriety of an agency's decision under A-76 to contract out in lieu of performing work in-house on the basis that these actions involved matters of executive policy not within the protest decision function of our Office. See, e.g., Local F76, International Association of Firefighters, B-194084, March 28, 1979, 79-1 CPD 209; Rand Information Systems, B-192608, September 11, 1978, 78-2 CPD 189. In Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38, however, although finding the protest to be untimely, we indicated that we would consider detrimental to the competitive system the conduct of a cost comparison which did not conform to the terms of the solicitation where the Government has stated the circumstances under which it will (or will not) award a contract and induced the submission of bids. This is intended to protect parties that have submitted bids from the arbitrary rejection of their bids, and does not extend to non-bidders such as Local 1662. Locals 1857 and 987, American Federation of Government Employees, B-195733, B-196117, February 4, 1980, 80-1 CPD ____.

The protest is dismissed.

for *Harry R. Jan Clave*
Milton J. Socolar
General Counsel