

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

27132

FILE: B-212735.2

DATE: 12-29-83

MATTER OF: National Association of Government
Employees, Local R5-87**DIGEST:**

Determination under Office of Management and Budget Circular No. A-76 to contract for services rather than have them performed in-house is a matter of executive branch policy not reviewable pursuant to a bid protest filed by a union local representing federal employees.

The National Association of Government Employees Local R5-87 (NAGE) protests the award of a contract to Rodent Guard Pest Control under invitation for bids No. N62467-83-B-7510 issued by the Naval Facilities Engineering Command. The Command issued the solicitation in accordance with Office of Management and Budget Circular No. A-76 to determine whether it would be more advantageous to contract for pest control services for the Naval Support Activity in New Orleans, Louisiana than to continue to perform the service in-house. Since the bid price offered by Rodent Guard is substantially lower than the government's estimate for in-house performance, the Command has decided to award a contract to Rodent Control.

NAGE contends that the award would be improper because the Command accorded Rodent Guard special treatment in that it permitted Rodent Guard to correct its bid after bid opening but denied other firms the opportunity to correct. NAGE requests that we investigate the matter.

Our Office has repeatedly declined to render decisions concerning the propriety of an agency's determination under A-76 to contract out instead of performing work in-house. These determinations are regarded as beyond the scope of our bid protest decision function because the provisions of A-76 are matters of executive branch policy which do not create legal rights or responsibilities. See Local F76, International Association of Firefighters, B-194084, March 28, 1979, 79-1 CPD 209.

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In Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38, we indicated that we would consider it detrimental to the competitive system for the government to decide to award or not award a contract based on a cost comparison analysis that did not conform to the terms of the solicitation under which bids were submitted. For that reason we do entertain protests which allege a faulty or misleading cost comparison of the in-house estimate with the bids received. See Serv-Air, Inc.; AVCO, 60 Comp. Gen. 44 (1980), 80-2 CPD 317. In those cases, however, our review is intended to protect parties that competed from the arbitrary rejection of their bids; our review does not extend to nonbidders such as federal employees or union locals that represent federal employees. Taxpayers generally and Federal employees of Fort Eustis, Virginia, B-210188, January 17, 1983, 83-1 CPD 52; Locals 1857 and 987, American Federation of Government Employees, B-195733, B-196117, February 4, 1980, 80-1 CPD 89.

Accordingly, the protest and request for investigation are dismissed.

Harry R. Van Cleve
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Acting General Counsel