

**DECISION**



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

**FILE:** B-217045

**DATE:** November 27, 1984

**MATTER OF:** Sidney R. Jenkins

**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 federal employee.

Mr. Sidney R. Jenkins, foreman of the water and sewage plant at Fort Detrick, Maryland, protests the decision by the Department of Army to contract for the operation of Fort Detrick's water plant instead of retaining the function in-house. We will not consider the matter.

The protest involves a decision made in accordance with Office of Management and Budget Circular No. A-76 (A-76). Our Office has consistently declined to consider protests concerning the propriety of an agency's decision to contract for services instead of performing the work internally. The provisions of A-76, which in general, encourage agencies to contract, only set forth executive policy; they do not establish legal rights and responsibilities. Gerald L. Fehlman, B-197714, Feb. 19, 1980, 80-1 C.P.D. ¶ 142. Consequently, but for one limited exception, we do not view compliance with A-76 to be a matter within the protest decision function of our Office. Jake O. Black, B-199564, Aug. 6, 1980, 80-2 C.P.D. ¶ 95.

We do consider A-76 protests which allege faulty or misleading cost comparisons of in-house estimates with bids received. Hawaii Federal Lodge No. 1998, International Association of Machinists and Aerospace Workers, B-214104, Jan. 23, 1984, 84-1 C.P.D. ¶ 109. This protects the competitive system by assuring that a cost comparison analysis conforms to the terms of the solicitation under which bids were submitted. Id. This exception is narrowly drawn, intended to protect parties that have submitted bids from the arbitrary rejection of their bids, and does not

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extend to nonbidders. Mr. William T. Springfield,  
B-197752.2, Apr. 28, 1980, 80-1 C.P.D. ¶ 301. Mr. Jenkins  
is not a bidder and, therefore, his protest does not come  
within the exception to our policy of not considering  
protests of decisions made under A-76.

The protest is dismissed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel