



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Council of Independent Laboratories, Inc.
File: B-223820
Date: August 7, 1986

DIGEST

1. GAO will not consider a protest alleging that an agency should not procure equipment which would permit the agency to perform testing services in-house, because, as a general rule, whether a contracting agency should perform work in-house or contract out for services is an executive branch policy matter which GAO will not review.
2. A trade association representing independent testing laboratories is not an interested party under GAO's Bid Protest Regulations eligible to bring a protest against the award of a contract for the supply of laboratory testing equipment in the absence of any indication that the association is an actual or prospective bidder or offeror.

DECISION

The American Council of Independent Laboratories Inc. (ACIL), protests any award of a contract under request for quotations (RFQ) No. LX-86-002 issued by the General Services Administration (GSA), San Francisco, California, for 59 items of laboratory test equipment to be delivered to the GSA Testing Laboratory in San Francisco. ACIL does not object to the procedures used for this procurement. Rather, ACIL objects to the very existence of this procurement of laboratory test equipment on the grounds that possession of this equipment would permit GSA to perform certain testing in-house, thus allegedly violating the intent of Office of Management and Budget (OMB) Circular A-76 in that GSA should be reducing its in-house laboratory operations and increasing the extent to which it contracts out to commercial laboratories the testing services it requires. We dismiss the protest.

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

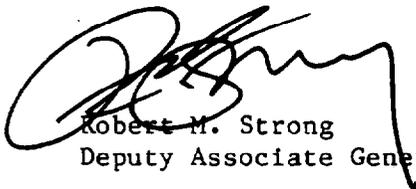
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Because we consider it detrimental to the competitive system for the government to decide to award or not award a contract based on an OMB Circular A-76 cost comparison analysis that did not conform to the terms of the solicitation under which the bids were submitted, Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 C.P.D ¶ 38, we do entertain protests which allege that there were faulty or misleading cost comparisons of in-house estimates with bids received. See Serv-Air, Inc.; AVCO, 60 Comp. Gen. 44 (1980), 80-2 C.P.D ¶ 317. Even in those cases, however, our review is intended only to protect the parties that competed from the arbitrary rejection of their bids; our review does not extend to protests by non-bidders such as federal employees. Hawaii Federal Lodge No. 1998, International Association of Machinists and Aerospace Workers, B-214104, Jan. 23, 1984, 84-1 C.P.D. ¶ 109.

Here, ACIL is not alleging that GSA performed a faulty or misleading cost comparison on a procurement in which it bid, but is merely questioning GSA's determination to purchase equipment which enables that agency to perform certain testing services in-house. Therefore, ACIL's protest concerns a policy matter to be resolved within the executive branch, not by our Office. See Island Equipment Co., B-209854, Dec. 16, 1982, 82-2 C.P.D. ¶ 542.

In addition, we note that ACIL is a trade association whose members provide testing services. Since ACIL itself (and also probably not its members) would not be a potential offeror on this procurement for the supply of test equipment, it is not an interested party under our Bid Protest Regulations to protest the award. 4 C.F.R. § 21.0(a) (1986); American Maritime Officers Service; District 2 Marine Engineers Beneficial Association--Associated Maritime officers, AFL-CIO, B-224480, July 22, 1986, 86-2 C.P.D. ¶ ____.

The protest is dismissed.



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