



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Panama DOD Employees Coalition

File: B-245185

Date: August 15, 1991

Ray Bishop for the protester.
Guy R. Pietrovito, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest of an agency's decision to contract for maintenance services, rather than to continue performing them in-house with federal employees, is dismissed since the agency's decision, which was not made pursuant to a solicitation issued for cost comparison purposes under Office of Management and Budget Circular A-76, is a matter of executive branch policy that is not for resolution through the bid protest process; in any event, a federal employees association, that would not be a bidder or offeror under a solicitation for the contract services, is not an interested party.

DECISION

Panama DOD Employees Coalition, an association of federal employees, protests the decision of the Department of the Army to contract for family housing maintenance services at Fort Clayton, Panama, rather than to continue performing the services in-house with federal employees.

We dismiss the protest.

Panama DOD Employees Coalition protests that the Army did not comply with Office of Management and Budget Circular A-76 in deciding to contract for the maintenance services at Fort Clayton, Panama. Specifically, the protester argues that the agency did not perform a management or cost study or notify federal employees of an impending contract award.

Generally, an agency's determination under Circular A-76 to contract for services instead of performing the work in-house is a matter beyond the scope of our bid protest function because the provisions of the Circular are matters of

executive branch policy that do not create legal rights or responsibilities. Federal Employees Metal Trades Council, Save Our Jobs Committee, 64 Comp. Gen. 244 (1985), 85-1 CPD ¶ 151. Only where a competitive solicitation has been issued for the purposes of comparing the cost of contracting out with the cost of performing the work in-house will we consider a protest that the cost comparison is faulty or misleading. Boulder Scientific Co., B-225644, Mar. 20, 1987, 87-1 CPD ¶ 323. Since no competitive procurement was issued for cost comparison purposes, the Army's decision to contract out for the services is not a proper matter for our consideration.

In any event, the protester, an association of federal employees, is not an interested party eligible to maintain a protest. Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551(2) (1988), and our Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.0(a)), a protest may be filed only by an actual or prospective bidder or offeror, whose direct economic interests would be affected by the award or failure to award a contract. The protester is not an actual or prospective offeror within the meaning of the statute or our regulations, and therefore is not eligible to maintain a protest. National Federation of Federal Employees, B-225335.2, Feb. 5, 1987, 87-1 CPD ¶ 124.

The protest is dismissed.

Christine S. Melody
for James A. Spangenberg
Assistant General Counsel