

PL-2

13577

DECISION



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

FILE: B-197752.2

DATE: April 28, 1980

MATTER OF: Mr. William T. Springfield

DIGEST:

✓ 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 except in limited circumstance of protest by bidder against cost evaluation not conforming to solicitation. Protest by Federal employee is dismissed because he was not a bidder and does not fall within exception.

PLG WEST
Mr. William T. Springfield, an employee of the Directorate of Industrial Operations (DIO), Fort Gordon, Georgia, protests the decision of the Army to contract out certain functions of DIO base operations support and certain housing services at Fort Gordon. For the reasons stated below, we dismiss the protest.

The Army made the decision to contract out for the services in question under the guidance of Office of Management and Budget (OMB) 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, a contract for the services is awarded to the lowest cost offeror. It was decided to contract out here.

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To Contract Out] 010019
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Mr. Springfield challenges the accuracy of the Army's cost evaluation and contends that it was based on fraudulent records which were falsified over a long period of time. Mr. Springfield also contends that the in-house proposal contained faulty and misleading cost data, a paraphrase of language in our decision in Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38 (Crown), in a possible effort to characterize the protest as a challenge to the propriety of the solicitation and bring it within the exception recognized in Crown to our policy of not considering protests against determinations to contract out under A-76.

The threshold question is whether we should consider this protest. For the following reasons, we decline to do so.

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 involve 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, however, although finding the protest to be untimely, we recognized an exception to this policy by indicating 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 exception is narrowly drawn, intended to protect parties that have submitted bids from the arbitrary rejection of their bids, and does not extend to nonbidders. Mr. Springfield was not a bidder and, as a result, his protest does not fall within the exception to our policy of not considering protests against agency contracting-out decisions under A-76. Locals 1857 and 987, American Federation of Government Employees, B-195733, B-196117, February 4, 1980, 80-1 CPD 89.

Therefore, the protest is dismissed.

Larry R. Van Cleave
for Milton J. Socolar
General Counsel