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**DECISION**



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

*[Protest of Army Contract by Federal Employee]*

FILE: B-199564

DATE: August 6, 1980

MATTER OF: Jake O. Black

**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 employee is not bidder and does not fall within exception.

Mr. Jake O. Black, an employee of the Department of the Army at Fort Hood, has protested the bid opening for solicitation No. DAKF48-80-B-0032 for aircraft maintenance at Fort Hood. Mr. Black claims that the statement of work the Government used to prepare its bid and cost analysis differs from the one it used in deciding to contract out for the services in question. For the reasons that follow the protest is dismissed.

The Army made the decision to contract out for the services in question under the guidance of Office of Management and Budget 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 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, the Government employees

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concerned are subject to reassignment or reduction-in-force actions and a contract for the services is awarded to the lowest cost offeror.

It was decided to contract out in this case and Mr. Black is presumably an affected Government employee.

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 involved 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 Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38, however, although finding the protest to be untimely, we indicated that we would consider it detrimental to the competitive system to conduct 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. Black is not a bidder and, thus, his protest does not fall within the exception recognized in Crown. Local 1662, American Federation of Government Employees, B-197210, March 3, 1980, 80-1 CPD 169; Locals 1857 and 987, American Federation of Government Employees, B-195733, B-196117, February 4, 1980, 80-1 CPD 89.

*Milton J. Socolar*

for Milton J. Socolar  
General Counsel