

13628 *Transportation*

DECISION



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

FILE: B-198554

DATE: May 2, 1980

DLG04519

MATTER OF: Local 1156, American Federation of
Government Employees

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 by union representing Federal employees.

Local 1156 of the American Federation of Government Employees protests the award of contract No. N62472-79-C-5268, issued by the Navy for certain custodial services.

The Navy made the decision to contract out for the services 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, rather than utilizing 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, the Government employees 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. Local 1156 represents the affected Government employees. Local 1156 questions the accuracy of the Navy's cost savings estimates, contends that in

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making its determination the Navy erroneously used an earlier version of A-76 rather than the version currently in effect, and argues that it was given insufficient time and information to make a meaningful response to the Navy determination.

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. Local 1162, American Federation of Government Employees, B-196009, March 24, 1980, 80-1 CPD 171; Rand Information Systems, B-192608, September 11, 1978, 78-2 CPD 189. However, in Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38, although we found the protest untimely, we indicated 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 is intended to protect parties that have submitted bids from the arbitrary rejection of their bids, and does not extend to nonbidders such as Local 1156. Locals 1857 and 987, American Federation of Government Employees, B-195733, B-196117, February 4, 1980, 80-1 CPD 89.

The protest is dismissed.

for *Harry R. Jan Case*
Milton J. Socolar
General Counsel