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GAO

United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to:

B-192388

[Litigation Involving ~~Contract~~ Zimpro Inc.]

MAY 29 1979

DLG  
01671

Jones, Day, Reavis & Pogue  
1100 Connecticut Avenue, N. W.  
Washington, D.C. 20036

Attention: Messrs. Ridgway M. Hall, Jr.  
Dale H. Oliver

Gentlemen:

We refer to your letters of May 16 and April 13, 1979, regarding the award of a contract under grant filed on behalf of Zimpro Inc. DLG 01672

As you indicate in your letters, Zimpro's complaint was filed with GAO on July 17, 1978. Concurrently, suit was filed in the United States District Court for the District of Columbia. That litigation was transferred by that court on July 21, 1978, to the District Court for the Northern District of New York. On July 24, 1978, the District Court denied your request for a temporary restraining order to protect Zimpro's status while a decision was sought at GAO.

The court, thus far, has not ruled on your motion for voluntary dismissal, filed for Zimpro on July 26, 1978. We note that the motion was opposed by the Government and the grantor, Grondaga County, which has filed a motion for summary judgment against Zimpro.

As you indicate, action on Zimpro's complaint was suspended by our Office once we learned that the matter was in litigation. In your view we should promptly issue a decision in this matter "particularly in light of the present posture of [the litigation], in which [complainant] is not seeking any [judicial] decision on the merits and does not plan to do so."



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You insist that Zimpro's complaint be decided by this Office without further delay, because Zimpro only sought relief in the Federal courts to protect its interests pending a GAO decision.

Earlier you were furnished a copy of our letter of October 18, 1978, in which we wrote the General Counsel of the Environmental Protection Agency (EPA), AGC 00024 rejecting EPA's request that Zimpro's complaint be dismissed by this Office. EPA argued that we should do so, because this matter had been filed in a court of competent jurisdiction and because that court had not requested our opinion. Our letter noted that it "is our practice to review a grant [related contract] complaint if the court desires our decision." We felt it appropriate to keep the matter open at that time because it was unclear whether the court would seek our opinion.

Although you indicate in your most recent letter that Zimpro has not asked the court for relief on the merits, we note that your amended complaint requests a permanent injunction. Moreover, it is the settled policy of this Office to refuse to consider any issues which would or could have been raised in matters pending before a court of competent jurisdiction, unless our opinion is requested by the court. The George Sollitt Construction Co., B-190743, September 25, 1978, 78-2 CPD 224.

At the time Zimpro's complaint was filed, we assumed that the initial phases of the litigation would be resolved within a short time--that the court would grant your motion to dismiss, would request our opinion, or would deny your motion without seeking our views. Inasmuch as the court, to our knowledge, has taken no action in this matter, we can assume that the court does not desire our decision. Moreover, it is unclear whether the court will grant your motion to dismiss without prejudice. If the motion is denied the matter will be for resolution by the court.

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Accordingly, at this time we are closing our file in this matter without action.

Sincerely yours,

MILTON SOCOLAR

Milton J. Socolar  
General Counsel

cc: The Hon. Douglas M. Costle  
Administrator, EPA

Robert E. Krebs, Counsel for  
Envirotech Corporation  
3000 Sand Hill Road  
Menlo Park, California 94025

The Honorable Howard G. Munson  
United States District Judge  
The United States District Court  
for the Northern District of New York  
U.S. Courthouse & Federal Building  
100 South Clinton Street  
Syracuse, New York 13202