

DOCUMENT RESUME

02362 - [A1432414]

[Premature Protest Involving On-Going Procurement Activity].  
B-188297. May 12, 1977. 2 pp.

Decision re: Imperial Products Co., Inc.; by Milton Socolar (for  
Paul G. Dembling, General Counsel).

Issue Area: Federal Procurement of Goods and Services (1960).  
Contact: Office of the General Counsel: Procurement Law II.  
Budget Function: National Defense: Department of Defense -  
Procurement & Contracts (058).  
Organization Concerned: Department of the Navy.  
Authority: A.S.P.R. 3-805.4(b).

The protester alleged that: the Navy used incorrect bidding procedures; it was wrongfully denied the results of a cancelled solicitation; and it had not been awarded the contract for arbitrary and capricious reasons. The protest was premature where the record did not show that the procuring activity used improper procedures, or wrongfully withheld information concerning other offerors and quoted prices, or arbitrarily and capriciously withheld award of the contract, or took any other action adverse to the protester, and where the protest involved on-going procurement. (Author/SC)

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Richard Kleman  
Proc. II

**DECISION**



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

FILE: B-188297

DATE: May 12, 1977

MATTER OF: Imperial Products Company, Incorporated

**DIGEST:**

Protest is premature where record does not show that procuring activity used improper procedures, wrongfully withheld information concerning other offerors and quoted prices, arbitrarily and capriciously withheld award of contract, took any other action adverse to protester, and protest involves on-going procurement.

On February 9, 1976, the Department of the Navy (Navy) issued request for proposals (RFP) N00102-76-R-4311 for nickel-copper seamless pipe for nuclear plant application. March 6, 1976, was established as the closing date. However, because of amendments to the RFP changing the technical specifications and the quantity and type of pipe required, and because of requests of offerors, the date set for receipt of initial proposals was extended.

After a subsequent amendment to the RFP, which included a change to the basic specification, the Navy concluded that the change was substantial enough to warrant cancellation and resolicitation in accordance with Armed Services Procurement Regulation § 3-805.4(b) (1976 ed.). Accordingly, all offerors were notified that the RFP would be canceled and a new solicitation issued. However, upon further consideration of the technical effects of the amendment, the Navy decided to continue negotiations under the RFP rather than cancel it. All offerors were notified of the Navy's decision.

After being notified of the cancellation, Imperial Products Company, Incorporated (Imperial), asked the Navy for the names of all other offerors and the prices quoted. The Navy declined to provide Imperial with the requested information.

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Imperial has alleged that (1) the "bidding" procedures used by the Navy were incorrect; (2) it is wrongfully being denied the results of a canceled solicitation; and (3) it has not been awarded the contract for arbitrary and capricious reasons.

In its submission to our Office, the Navy denies that its procurement procedures are incorrect. Moreover, we find nothing in the record to indicate that the procedures employed by the Navy are improper.

With respect to the alleged cancellation of the solicitation, the Navy states that the RFP has not been canceled and there is an on-going procurement with further discussions contemplated. Consequently, Imperial is not being denied the results of a canceled solicitation because the solicitation has not been canceled.

The Navy also states that it is not arbitrarily and capriciously refusing to award the contract to Imperial. According to the Navy, Imperial's proposed supplier has not in the past met Government specifications for identical and similar items involved in the instant protest. Accordingly, the Navy advised Imperial that the products offered by the proposed supplier are not acceptable. However, as noted above, negotiations have not been closed.

Based on the foregoing, we cannot find that the Navy has acted in violation of law or regulation. Moreover, the Navy has taken no action adverse to Imperial. We view Imperial's protest, then, as premature. Accordingly, we are closing our file on this matter without further action.

*Paul G. Dembling*  
Paul G. Dembling  
General Counsel