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DECISION

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

FILE: B-192388

DATE: March 3, 1980

MATTER OF:

Zimpro, Inc.

DLG016

DIGEST:

[Request to reinstate GAO review of grant related procurement complaint is denied. While Court has dismissed companion litigation, ostensibly without prejudice, passage of time coupled with substantial performance vitiates further GAO review of complaint raising no issue significant to Federal procurement standards applicable to grantee.]

Zimpro, Inc. complains that Onondaga County, New York, improperly awarded a contract substantially funded by a grant from the Environmental Protection Agency (EPA) under title II of the Clean Water Act, 33 U.S.C. §§ 1281 et seq. (1976). Specifically, Zimpro complains that the awardee's bid was non-responsive because, in its view, descriptive literature furnished with the bid indicated that the awardee made several technical design errors, and because the patent indemnity clause offered by it differed from the clause included in Onondaga's solicitation. Zimpro also complains that the awardee was permitted to submit explanatory information after bid opening. *DLG01673*
AGC00024

After filing an initial protest with the grantee and an unsuccessful appeal to the EPA pursuant to 40 C.F.R § 35.939 (1979), Zimpro filed its complaint before our Office in July 1978 and with the United States District Court for the District of Columbia, which sustained the Government's motion requesting that the litigation be transferred to the United States District Court for the Northern District of New York. We dismissed the complaint filed before our Office because *AGC00748*
DLG04003

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our opinion in the matter was not sought by the Court. See, e.g., The George Sollitt Construction Co., B-190743, September 25, 1978, 78-2 CPD 224. Subsequently, the Court granted Zimpro's motion for voluntary dismissal of its complaint under Rule 41(a) of the Federal Rules of Civil Procedure.

Zimpro now seeks to have its complaint before our Office reopened and decided. However, we decline to do so.

As reflected in the Public Notice published at 40 Federal Register 42406 (September 12, 1975), our review of grant related contracting practices stems from our recognition of the amount of money involved in Federally funded programs. Complaints such as Zimpro's are reviewed because we believe it is useful ordinarily to "audit by exception," using specific complaints as a vehicle through which to review contracting practices and procedures followed and compliance with requirements set out in grant instruments. Indirectly, of course, it is our hope that GAO review will foster compliance with grant terms, agency regulations, and applicable statutory requirements.

At this time, nearly one and one half years after Zimpro's challenge to the EPA protest determination, we find little, if any, useful purpose in our reopening the matter. Zimpro does not assert any error of law appearing on the face of the Regional Administrator's decision and the points of law raised involve well settled principles. At best, Zimpro invites us to review, in effect, whether the Regional Administrator's decision was adequately supported on the record in this particular instance, even though at this juncture nothing Zimpro alleges would result in a recommendation that the award be set aside.

Because we believe no purpose consistent with the objectives of our review of such complaints would be served by reopening this matter, Zimpro's request is denied.

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