

DECISION



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

FILE: B-192654

DATE: November 9, 1978

MATTER OF: Frontier Science Associates, Inc. 8319

DIGEST:

District court's denial of motion for injunctive relief and granting summary judgment to defendants constitutes adjudication on the merits. Appeal of district court's decision indicates that protester is seeking final adjudication of merits by courts which precludes GAO's consideration of protest.

The Department of Health, Education, and Welfare issued request for proposals NCI-CM-87193-22 for the procurement of statistical support for cooperative groups engaged in intensive studies and investigation on cancer patients.

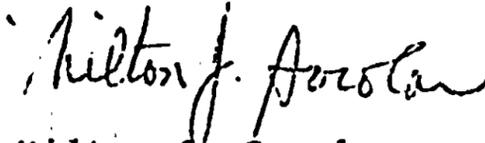
Frontier Science Associates, Inc. (FSA), an offeror, filed a protest with the procuring activity. The procuring activity denied the protest and awarded the contract to another offeror. FSA subsequently filed a timely protest with our Office. In addition, FSA sought both a temporary and permanent injunction in the Federal District Court for the Western District of New York, Civil Action No. 78-512. FSA stated that the same documentation which it submitted to GAO in support of its protest was also submitted to the district court. Accordingly, it appears that the same issues which are before GAO were also presented to the court.

The district court denied FSA's motion for injunctive relief and granted defendants' motion for summary judgment. FSA has appealed the district court's decision to the Federal Court of Appeals in New York City.

We have held that the denial of injunctive relief and the granting of summary judgment to the defendants operates as a final adjudication on the merits and, consequently, we will not consider protests where the

material issues have been the subject of a judicial decision. Juno Construction Corporation; M.G. Slivka, Inc.; Joseph Morton Company, Inc.; Argonaut Insurance Company, B-191344, September 18, 1978, 78-2 CPD 204. We have also held that a protester's appeal of a district court's decision indicates that the protester is looking to the courts for a final adjudication of the merits. Therefore, the protest will not be considered by GAO. Computer Machining Technology Corporation, B-181440, B-182152, B-184335, March 15, 1976, 76-1 CPD 176.

Based on the foregoing, the protest is dismissed.



Milton J. Socolar  
General Counsel