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**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Linn Timber, Inc.--Reconsideration

**File:** B-225430.2

**Date:** November 18, 1986

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### DIGEST

Protest filed more than 10 working days after protester learned of initial adverse agency action--contracting officer's determination that auction officer in timber sale properly reopened bidding--in response to protest filed with agency is untimely. Protester's continued pursuit of protest with contracting agency does not alter this result.

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### DECISION

Linn Timber, Inc. requests reconsideration of our notice of October 27, 1986, which dismissed its protest that the Forest Service auction officer improperly reopened bidding during a timber sale (Minni Green Resale) at Williamette National Forest, Oregon.

We dismissed the protest as untimely because it was not filed with our Office within 10 working days following initial adverse agency action on a protest filed with the Forest Service. Our action was in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1986), which provide that when a protest has first been filed with the contracting agency, any subsequent protest to this Office must be filed within 10 working days after the protester knew or should have known of initial adverse agency action on its protest to the agency.

We affirm the dismissal.

The record shows that by letter dated September 25, 1986, to the contracting officer, Linn Timber initially protested the allegedly improper reopening of bidding by the auction officer after the auction had been closed. The contracting officer responded to the protest by letter of October 6, 1986. The letter stated that the contracting officer's

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"decision is that the conduct of the auction . . . was appropriate and award of the sale should proceed." The contracting officer also advised Linn Timber that it may file a "formal protest" with the General Accounting Office. Thereafter, counsel for the protester, on October 8, 1986, filed with the agency what he characterized as a "supplemental protest or an official protest" of the auction procedure; the protest grounds were the same. On October 10, the contracting officer responded by advising the protester's counsel that any protest should be filed with the General Accounting Office. Linn Timber then filed its protest with our Office on October 27, 1986.

We considered the contracting officer's letter of October 6, 1986, to constitute initial adverse agency action on Linn Timber's September 25, 1986, protest. Since Linn Timber's subsequent protest to our Office was not filed until October 27, 1986, more than 10 working days after this initial adverse action, we dismissed the latter protest as untimely.

In its request for reconsideration, Linn Timber essentially disputes our characterization of the October 6, 1986, agency letter as adverse agency action on its protest because the letter allegedly did not "treat the protest as something over which the Forest Service had jurisdiction." Rather, the contracting officer allegedly implied that only the General Accounting Office had such jurisdiction. Further, Linn Timber states that it spoke with an attorney in our Office who confirmed that protests may be initially filed with the contracting agency, and subsequently with our Office.

We remain of the view that the protest to the General Accounting Office was untimely filed. Adverse agency action is any action or inaction which is prejudicial to the position taken in a protest filed with an agency. Weitzul Construction, Inc., B-216036, Feb. 12, 1985, 85-1 CPD 184. Among other things, the contracting officer's October 6, 1986, letter advised the protester that it was the contracting officer's "decision" that the auction was appropriate and the sale should proceed. We think this was clearly a decision on the merits of the protest by the contracting officer, and as such, was the initial adverse agency action on Linn Timber's September 25, 1986, protest letter. Linn Timber instead decided to refile an "official protest" with the contracting agency with the intent of pursuing the matter at that level. However, the fact that a firm decides to pursue

the matter with an agency after becoming aware of initial adverse action does not extend the time for protesting to our Office. BHT Thinning, B-217105, Jan. 16, 1985, 85-1 CPD ¶ 44.

Finally, the advice given the protester by an attorney in our Office that a protest may initially be filed with the contracting agency is correct. However, the attorney apparently did not know that Linn Timber had already filed an agency-level protest and had received a substantive answer to it.

We affirm the dismissal.

*for Seymour Efron*  
Harry R. Van Cleve  
General Counsel