



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Julian Freeman, M.D.--Reconsideration

File: B-242494.2

Date: February 26, 1991

Julian Freeman, M.D., for the protester.
Paula A. Williams, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Continued pursuit of a protest at the procuring agency after that agency has taken initial adverse action following an agency-level protest does not toll General Accounting Office's timeliness requirements.

DECISION

Julian Freeman, M.D., requests reconsideration of our January 3, 1991, dismissal of his protest against the award of contracts for medical consultant services to other sources by the Social Security Administration, Department of Health and Human Services (HHS). We dismissed the protest as untimely because it was filed more than 10 working days after the protester was made aware of adverse agency action on his initial agency-level protest. We affirm the dismissal.

Dr. Freeman filed an agency-level protest on October 19, 1990, raising the same issues which he subsequently protested to our Office, primarily concerning allegedly improper evaluations with regard to the acquisition of medical services from other sources. By letter dated October 31, received by Dr. Freeman on November 5, the contracting officer informed the protester that "[D]ue to the limited number of contract openings available and changing workload requirements" contracts were not awarded to "all interested parties." HHS' letter of October 31, constituted adverse agency action on Dr. Freeman's agency-level protest by affirming the agency's determination not to award him a contract, and indicating that the evaluation and award process had been completed. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1990), Dr. Freeman had 10 working days from receipt of the October 31 letter to protest the rejection of his application and the award to

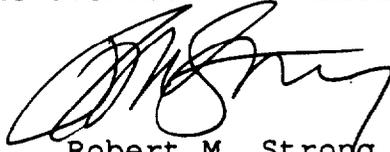
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other sources. Since Dr. Freeman did not file his protest in our Office until December 31, we dismissed the protest as untimely.

Dr. Freeman argues that the timeliness of his protest should not be determined by reference to the October 31 letter from HHS because he sought immediate "clarification" upon receipt, in order to "determine if this [letter] was a response to the protest." The contracting agency reiterated its position in a letter dated November 15, and in subsequent letters, and on December 23 also denied a protest by Dr. Freeman under a different solicitation which raised similar issues. However, the continued correspondence between the parties did not relieve Dr. Freeman of his responsibility to protest to our Office within 10 working days following receipt of the agency's initial adverse action--which was the October 31 letter confirming the decision not to award a contract to Dr. Freeman. The fact that Dr. Freeman continued to pursue the matter with HHS after Dr. Freeman filed his agency-level protest and HHS affirmed its intention not to disturb the other awards, rather than file a protest with our Office, does not toll our timeliness requirements. Crouse-Hinds Joy Molded Prods.--Recon., B-242237.2; B-242238.2, Jan. 30, 1991, 91-1 CPD ¶ _____; Beckman Instruments, Inc.--Recon., B-239293.2, June 22, 1990, 90-1 CPD ¶ 585.

Finally, to the extent Dr. Freeman alleges that he was misled by agency officials concerning when and where to file a protest, the protester is charged with constructive notice of the rules concerning the proper time for filing a protest since our Bid Protest Regulations are published in the Federal Register. Transportation Operations Research Inst., B-242175, Jan. 3, 1991, 91-1 CPD ¶ _____.

The dismissal is affirmed.



Robert M. Strong
Associate General Counsel