

Mr. McCloudy



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Productivity & Quality Center

File: B-242703

Date: January 18, 1991

James F. Moriarty, Esq., Fulbright & Jaworski, for the
protester.

DIGEST

Where, after being advised by contracting agency that it was ineligible for award, protester discussed matter with agency instead of protesting immediately, and then filed agency-level protest more than 10 working days after notice of ineligibility, agency protest was untimely under Bid Protest Regulations; consequently, subsequent protest filed with General Accounting Office also is untimely, and will not be considered.

DECISION

American Productivity & Quality Center protests the determination that it is ineligible for award under Department of Commerce solicitation No. 52SBNB1C6504, for services concerning administration of the Malcolm Baldrige National Quality Award program.

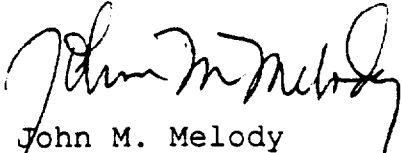
We dismiss the protest as untimely filed.

The relevant facts are as follows. American was advised by letter of November 8, 1990, that it had been determined ineligible for award because applicable statutes and the solicitation both require the contractor to be a nonprofit entity. American thereafter began "discussions" with the agency to demonstrate that it was in fact a nonprofit entity. Following these discussions, which included the submission of documentation from the Internal Revenue Service, the agency, by letter dated November 29, advised American that it was considered ineligible for award based on applicable statutory language requiring the contractor to be a nonprofit entity (the reason previously given), and the additional reason that American's association with a profit affiliate creates an inherent appearance of an organizational conflict of interest. American "promptly protested" this decision to the agency by letter of November 30.

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Under our Bid Protest Regulations, protests must be filed with our Office or the contracting agency no later than 10 working days after the basis for protest was or should have been known. 4 C.F.R. §§ 21.2(a)(2) and (3) (1990). The agency's November 8 letter clearly put American on notice that it would not be considered for award and the reason for this determination. If American disagreed with this determination, it was required to protest to the agency or our Office within 10 working days of this notice, that is, by November 26 (including 2 federal holidays). American did not file its protest until November 30, having opted to discuss the matter with the agency instead of protesting immediately, which resulted in the agency restating the original ground for ineligibility and adding a second. It is well-established that such attempts to persuade the agency to change its position as to the acceptability of an offer do not toll our timeliness requirements. Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206. As American's agency-level protest therefore was untimely filed, the firm's subsequent protest to our Office also is untimely and will not be considered.

The protest is dismissed.



John M. Melody
Assistant General Counsel