

**DECISION**

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

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**FILE:** B-211627.2, B-211627.5, **DATE:** December 19, 1983  
B-211627.6

**MATTER OF:** Canaveral Towing & Salvage, Inc.

**DIGEST:**

Protest of large business firm is dismissed because: (1) protester is not an "interested party" since issues raised (awardee's alleged lack of responsibility and improper evaluation of proposals) are extraneous to small business set-aside provision which excludes the large business firm from the competition; and (2) protester's argument regarding an improper/ambiguous provision relating to subcontracting is untimely raised.

Canaveral Towing & Salvage, Inc. (CTS), protests the Air Force's intent to award a 100-percent small business set-aside contract for marine utility and tugboat services to Petchem, Inc. (Petchem), under request for proposals (RFP) No. F08606-83-R-0010 issued by the Eastern Space & Missile Center, Patrick Air Force Base, Cape Canaveral, Florida. CTS was disqualified as a small business for purposes of this procurement by the Small Business Administration (SBA) Size Appeals Board on the basis of its affiliation with the current incumbent contractor, Port Canaveral Towing, Inc. (PCT), which is both a large business and a subsidiary of Hvide Shipping, Inc. (Hvide), another large business.

The protest is dismissed, in part, because CTS is not an "interested party" under our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1983), and, in part, because it is untimely under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983).

CTS's initial protest (B-211627.2) questioned various aspects of Petchem's responsibility and the propriety of the Air Force's evaluation of the proposals. Later we opened another file (B-211627.5) following our receipt of congressional inquiries which indicated that Hvide intended to protest this procurement. The Hvide protest never materialized. After CTS's receipt of the SBA decision it filed a second protest (B-211627.6) which, while acknowledging its large business status, challenged the propriety of an RFP

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provision which, CTS argues, allows offerors to subcontract up to 100-percent of the work to large business and did not preclude subcontracting to the large business incumbent.

We will only consider protests brought by parties having a legitimate interest in the procurement. 4 C.F.R. § 21.1(a) (1983); Aydin Vector Division, B-192431, November 2, 1978, 78-2 CPD 316. In making this determination we consider a variety of factors, including the nature of the issues raised and the benefit or relief sought by the protester. This limitation increases the likelihood of diligent protester participation in the development of the record before our Office. See Coleman Transfer and Storage, Inc., B-182420, October 17, 1975, 75-2 CPD 238.

In our view, CTS is not an interested party, for purposes of the issues raised by its initial protest (B-211627.2), within the meaning of 4 C.F.R. § 21.1(a) (1983). CTS is ineligible for the award because the procurement is exclusively set aside for small business participation, and CTS's initial protest concerns issues which are extraneous to the eligibility requirement under which CTS was excluded from the competition. Space Services, B-195493, October 22, 1979, 79-2 CPD 276.

Regarding CTS's second protest, even if CTS is considered an interested party for this issue, the protest will not be considered. Our Bid Protest Procedures require that a protest based upon alleged improprieties in an RFP be filed before the closing date for receipt of proposals. 4 C.F.R. § 21.2(b)(1) (1983). For protests filed with us, the term "filed" means receipt in our Office. Shell Computer Systems, Inc., B-203986, July 23, 1981, 81-2 CPD 58. The closing date for receipt of proposals, as extended, was August 15, 1983, but CTS's second protest (B-211627.6) was not received in our Office until November 1, 1983. Therefore, the second protest is untimely and will not be considered on the merits.

Accordingly, the protests are dismissed and our files (B-211627.2, B-211627.5 and B-211627.6) are closed.

*Harry R. Van Cleve*  
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Acting General Counsel