

01323

**DECISION**



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

FILE: R-186840

DATE: November 22, 1976

MATTER OF: Drexel Industries, Inc.

**DIGEST:**

1. Where small business concern is found to be nonresponsible bidder by procuring activity, subsequent denial of certificate of competency (COC) by SBA must be viewed as affirmation of nonresponsibility determination, and GAO has no authority to review COC determination, to require SBA to issue COC, or to reopen case when COC has been denied.
2. No evidence presented to show that contracting officer or SBA acted arbitrarily in ruling on issue of bidder's responsibility prior to resolution of bidder's request for relief under Public Law 85-804 involving prior contract.

Drexel Industries, Inc. (Drexel), protests against the award of a contract by the Defense Supply Agency (DSA), Defense Construction Supply Center, Columbus, Ohio, to any other bidder under solicitation No. DSA 700-76-R-1097.

Drexel's low bid was rejected by the contracting officer on the basis that Drexel was not a responsible bidder after review of the information currently available to him. Since Drexel was a small business concern, the contracting officer referred the question of Drexel's capacity and/or credit to the Small Business Administration (SBA) in accordance with Armed Services Procurement Regulation (ASPR) § 1-705.4(c) (1975 ed.). On July 16, 1976, the SBA declined to issue Drexel a certificate of competency (COC). Award was made to another bidder on August 26, 1976.

Counsel for Drexel protested to our Office stating that the SBA implicitly recognized in its denial of a COC that favorable action on the Public Law 85-804 request under a prior contract would have materially altered SBA's view of Drexel Industries' financial situation. Accordingly, Drexel believes that the SBA and DSA acted arbitrarily by ruling on the issue of Drexel's responsibility prior to the resolution by DSA of Drexel's request for relief pursuant to Public Law 85-804.

Our Office will not question the contracting officer's determination of nonresponsibility of a small business concern where it has been affirmed by the SBA by the denial of a COC. See

B-186840

Medley Tool & Model Co. B-186465, July 21, 1976, 76-2 CPD 63. Additionally, under 15 U.S.C. § 637(b)(7) (1970), the SBA has the authority to issue or deny a COC and our Office has no authority to review an SBA determination, to require issuance of a COC, or to reopen a case when a COC has been denied, and there is no indication that evidence materially affecting the denial was not taken into consideration. Medley Tool & Model Co., supra; Zinger Construction Company, Inc., B-185390, December 16, 1975, 75-2 CPD 397, and cases cited therein.

We do not agree with Drexel's contention that DSA and SBA acted arbitrarily in ruling on the issue of Drexel's responsibility prior to resolution of Drexel's request for relief under Public Law 85-804. DSA and SBA were required to decide the question of Drexel's responsibility on the basis of information currently available to them which did not include any decision on Drexel's request under Public Law 85-804. Contrary to counsel's contention, there is no evidence presented to show that a decision on Drexel's request for relief under Public Law 85-804 for a prior contract was imminent. DSA's letter to our Office dated October 7, 1976, indicates that Drexel's request for relief is still pending and there is no indication in that letter that a decision is imminent. In the absence of any evidence to show that the contracting office or SBA failed to consider all relevant information currently available to them at the time of their decision regarding Drexel's responsibility, there is no basis to conclude that DSA or SBA acted arbitrarily.

Accordingly, the protest is denied.

*Milton Bostan*  
for Paul G. Dembling  
General Counsel