

DECISION



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

FILE: B-219654.2

DATE: December 13, 1985

MATTER OF: The W.H. Smith Hardware Company--
Reconsideration

DIGEST:

Prior decision is affirmed on reconsideration where protester has not shown any error of fact or law which warrants reversal.

The W.H. Smith Hardware Company (Smith) requests reconsideration of our decision in The W.H. Smith Hardware Co., B-219654, Nov. 12, 1985, 85-2 C.P.D. ¶ _____. In that decision, we held that the contracting officer for the Defense Construction Supply Center (DCSC), Defense Logistics Agency, should have referred his determination that Smith, a small business, was nonresponsible under solicitation No. DLA700-85-Q-RC21 to the Small Business Administration (SBA) for consideration under the certificate of competency (COC) procedures. However, we found that Smith was not prejudiced since DCSC had referred three nonresponsibility determinations on Smith under similar procurements to SBA in the same time frame, for which SBA had declined to issue COC's. In particular, on August 30, 1985, within a month after the DCSC nonresponsibility determination at issue, SBA explicitly denied two of Smith's COC applications on the basis of Smith's historically high delinquency record, notwithstanding recent improvement. We viewed this as SBA's affirmation of DCSC's nonresponsibility finding which had been based on Smith's delinquency rate.

We affirm our decision.

In its request for reconsideration, Smith asserts that our Office is confused on the facts and that the three COC referrals referenced in our decision were not denied by SBA,

but were issued on October 11, by SBA. However, the COC's which SBA issued on October 11 related to solicitation Nos. DLA700-85-B-0785, 0783 and 0382. The three contemporaneous referrals on which we relied in our decision were under solicitation Nos. DLA700-85-B-0413, 0286 and DLA700-85-R-1414. These three COC referrals were, in fact, denied by SBA within the month following DCSC's nonresponsibility determination in issue, and provided the basis for the decision rationale. The other three referrals which Smith references, and for which SBA issued COC's approximately a month and a half later, were not discussed in the decision.

Since Smith has not shown any error of fact or law in our prior decision, it is affirmed. 4 C.F.R. § 21.12(a) (1985); Pierce Coal Sales International--Reconsideration, B-218360.2, June 17, 1985, 85-1 C.P.D. ¶ 689.

Harry R. Van Cleve

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General Counsel