

DECISION

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

60283

FILE: B-182192

DATE: December 9, 1975

MATTER OF: Chemical Technology, Inc.

97613

DIGEST:

Request that GAO overrule prior decision that we would not question small business set-aside award to concern issued COC by SBA is denied since subsequent SBA determination that contractor was other than small business was not applicable to questioned contract and contract has expired and new contract awarded.

Chemical Technology, Inc. (CTI), has requested that a contract awarded Best Services, Inc. (Best), pursuant to invitation for bids DABT51-75-B-0014, a small business set-aside, for janitorial services at Fort Bliss, Texas, be canceled because Best was not a small business as of the bid opening date.

CTI previously protested against this contract award to Best on the grounds that the Small Business Administration (SBA) had erroneously issued Best a certificate of competency (COC) (which had the effect of determining Best to be a small business) because Best was not a small business concern under the applicable SBA standard. In part, we concluded that a protest on this basis was not for consideration by our Office because a size determination by SBA is, by statute, conclusive and may not be ignored by our Office. Chemical Technology, Inc., B-182192, March 12, 1975, 75-1 CPD 149.

Thereafter, Best requested that we reopen our file on the matter of Best's size to intervene in a size appeal then pending before the SBA Size Appeals Board. By letter dated June 3, 1975, we responded to this request by stating that our role is limited to reconsidering our prior decision, if requested, in the event that the SBA Size Appeals Board finds that the award was made to other than a small business.

CTI notes that on July 14, 1975, the SBA Size Appeals Board ruled that Best was other than small business at the time of the procurement. CTI requested by letter dated July 28, 1975, and received by GAO on August 12, 1975, that we recommend cancellation of the contract because of the SBA ruling and because of the statement in our June 3, 1975, letter. Finally, CTI urges that the matter be reviewed for possible criminal violations and appropriate steps be taken.

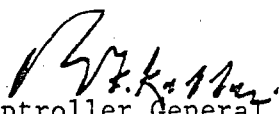
B-182192

Best was determined on July 14, 1975, by the SBA Size Appeals Board to be other than small business due to its use of employees and facilities of another firm. However, since the size appeal was late under 13 C.F.R. § 121.3-6(b)(3) (1974), the SBA size determination was not applicable to the contract awarded Best, but was prospective in effect only. After consideration of changes in Best's ownership and affiliation with the other firm, the SBA Regional Office recertified Best as small business on August 4, 1975. By letter dated September 29, 1975, SBA states that all of its regulations have been followed in the proceeding and recommends that no action be taken with respect to Best's contract.

The Department of the Army informs us that the protested contract expired on November 30, 1975. We understand that a new contract was awarded on November 26, 1975, effective December 1, 1975, to Harris Systems Pest Control, dba Limbio Industries. Both CTI and Best submitted bids.

In view of the representations of the Army that the contract has expired, coupled with the fact that SBA's determination was not applicable to the contract in question, we do not believe that further action by our Office is required. With respect to CTI's charge concerning the possibility of criminal action, any information CTI possesses may be referred by it to the Department of Justice for whatever action the Department deems appropriate.

Accordingly, the decision of March 12, 1975, is affirmed.


Deputy Comptroller General
of the United States