

DECISION

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

FILE: B-215387

DATE: June 27, 1984

MATTER OF: Nevins Carpet Services

DIGEST:

1. Since the Small Business Administration (SBA) is empowered to determine conclusively the responsibility of a small business, GAO will not review a contracting officer's determination that a small business is nonresponsible where SBA has affirmed that determination by refusing to issue a certificate of competency.
2. GAO will not review the Small Business Administration's (SBA) refusal to issue a certificate of competency in the absence of a showing that SBA acted fraudulently or in bad faith.

Nevins Carpet Services protests an award to any bidder other than itself for any of 37 service areas under invitation for bids (IFB) No. AT/TC 19542, issued by the General Services Administration (GSA). The solicitation is for carpet installation, cleaning, and repair services. Nevins complains that although it is the lowest responsive and responsible bidder with respect to 37 of the solicitation's 39 service areas, GSA intends to award contracts for these areas to others.

We dismiss the protest.

The agency has informed us that it determined that Nevins is not a responsible prospective contractor for this procurement because of Nevins' unsatisfactory record of performance under prior contracts. See Federal Procurement Regulations (FPR), 41 C.F.R. § 1-1.1203-1(c) (1983). The contracting officer referred the matter to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC). See FPR, § 1-1.708-2. SBA reviewed Nevins' application for a COC, but declined to issue one.

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SBA has authority to determine conclusively the responsibility of a small business by issuing or refusing to issue a certificate of competency. 15 U.S.C. § 637(b) (7) (1982); Georgetown Industries, R-214224, Feb. 22, 1984, 84-1 CPD ¶ 225. Consequently, this Office will not undertake an independent review of a contracting officer's nonresponsibility determination where SBA has refused to issue a COC, since such review essentially would substitute our judgment for that of SBA. Consolidated Building & Maintenance Corporation, R-213584, March 13, 1984, 84-1 CPD ¶ 300. In addition, we will not question SBA's refusal to issue a COC in the absence of a showing that SBA acted fraudulently or in bad faith. Salon Tropical Restaurant, Tropical Sundries of Miami, Inc., R-212899, Dec. 14, 1983, 83-2 CPD ¶ 685. No such showing has been made here.

Since the agency's nonresponsibility determination renders the protester ineligible for award, and the record presents no basis for us to question that determination, we dismiss the protest.

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Acting General Counsel