

25059 17

**DECISION**



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

**FILE:** B-211537

**DATE:** May 6, 1983

**MATTER OF:** Tar Heel Canvas Products, Inc.

**DIGEST:**

1. GAO will not undertake an independent review of a contracting officer's nonresponsibility determination of a small business concern because the Small Business Administration has statutory authority to determine conclusively a small business concern's responsibility.
2. GAO will not review the Small Business Administration's decision not to issue a certificate of competency where the protester fails to make a prima facie showing of fraud or willful disregard of the facts.

Tar Heel Canvas Products, Inc., a small business concern, protests the contracting officer's negative determination of its responsibility and the Small Business Administration's (SBA) refusal to issue it a certificate of competency (COC) under Defense Logistics Agency solicitation Nos. DLA100-83-B-0207 and -0351. The crux of the protest is that the negative responsibility determinations allegedly unfairly resulted from the recent unsatisfactory performance of another firm for which the current president of Tar Heel Canvas Products had served as president when the contracts were unsatisfactorily performed.

We dismiss the protest.

The SBA, not this Office, has statutory authority to review a contracting officer's negative determination and to determine conclusively a small business concern's responsibility by issuing or refusing to issue a COC. 15 U.S.C. § 637(b)(7) (Supp. IV 1980). Consequently, we will not undertake an independent review of a contracting officer's nonresponsibility determination, since such

025 500

~~025 500~~

B-211537

review would be tantamount to a substitution of our judgment for that of the SBA. Coast Canvas Products II Co., Inc., B-210703, February 22, 1983, 83-1 CPD 181.

Moreover, in light of the SBA's statutory authority, and where there is no suggestion that the contracting agency failed to forward all relevant information to the SBA in connection with a COC, this Office will not review the SBA decision or recommend the reopening of a case where a COC has been denied unless the protester makes a prima facie showing of fraud or willful disregard of the facts. Coast Canvas Products II Co., Inc., supra. The protester has not alleged that SBA lacked, or refused to consider, pertinent information available at the time that agency made its determinations, or shown that SBA officials otherwise harbored a specific intent to injure the protester. Instead, the protester basically disagrees with the SBA's judgment. The firm thus has not made the showing necessary to warrant our review.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel