

DECISION



12015 *Zuckerman*
Trans
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-196643

DATE: November 14, 1979

MATTER OF: Federal Data Corporation

DIGEST:

[Protest Alleging Awardee Was Not Responsible]

1. Protest which questions contractor's responsibility because of purported arrangement under Chapter XI of Bankruptcy Act is dismissed as GAO does not review affirmative determinations of responsibility except under circumstances not applicable to case. Mere fact of Chapter XI proceeding does not require finding of nonresponsibility.
2. Request for release of agency records under Freedom of Information Act must be made to agency, not GAO.

Federal Data Corporation (FDC) protests the award of contract DAHC26-79-C-0019 by the Department of the Army on the basis that the selected contractor is not responsible. FDC contends the contractor is not responsible because it is "in Bankruptcy under Chapter 11." In this connection FDC asserts that the contractor has lost large sums of money in the first three quarters of its fiscal year, and is substantially indebted to its suppliers. FDC thus questions the contractor's ability to obtain the necessary financing to perform the contract or to provide the "required maintenance over the systems life." Finally, pursuant to the Freedom of Information Act (FOIA), FDC requests the agency to report "on the viability" of the contractor to perform the contract.

This Office does not review affirmative determinations of responsibility unless fraud is alleged

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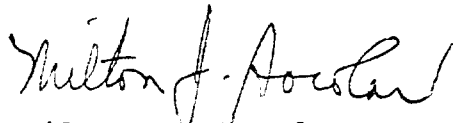
*Contract award
protests
Contractor's
responsibility
Bankruptcy*

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on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. General Electric Company, B-196383, October 26, 1979, 79-2 CPD _____. Neither exception is applicable to this case. We point out, however, that the mere fact that the contractor is undergoing an arrangement in accordance with Chapter XI of the Bankruptcy Act does not require a finding of nonresponsibility regardless of other facts. Hunter Outdoor Products, Incorporated, B-179922, October 16, 1974, 74-2 CPD 207. ✓

With respect to the FOIA request presented in the protest, it is our position that where an FOIA request concerns agency records, our Office is without authority under the FOIA to determine what records must be released by other Government agencies and therefore the request must be made to the agency. Eglen Hovercraft, Incorporated--Reconsideration, B-193050, March 14, 1979, 79-1 CPD 179.

The protest is dismissed.


Milton J. Socolar
General Counsel