Arsenoff

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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: TeleLink Research, Inc.

File: B-247052

Date: April 28, 1992

Jacob B. Pompan, Esq., and Seymour Copperman, Esq., Pompan, Ruffner & Bass, for the protester.
Lori S. Chofnas, Esq., and Jonathan Kosarin, Esq., Office of the General Counsel, Department of the Navy, for the agency.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Challenge to awardee's small business size status is dismissed since it is a matter exclusively for review by the Small Business Administration.

2. Protest allegations based on information obtained in the notice of award and at a debriefing are dismissed as untimely since they were not filed within 10 working days after the debriefing; protester is not entitled to wait an additional 10 days to file its protest from the time it receives written materials which confirm matters earlier disclosed at the debriefing.

3. The awardee's failure to provide letters of commitment identifying current salary levels which were to be used for cost realism purposes did not affect the validity of the agency's cost realism analysis where the agency had an adequate basis to, and did, confirm the realism of proposed salary rates for the key personnel involved.

4. Protest alleging that awardee did not have permission of an individual to use his resume in an initial proposal is denied where the record shows that the individual had discussed employment with a proposed subcontractor and had signed a letter of acceptance as a result of that discussion.

5. Protest alleging that awardee knew or should have known that a key individual proposed in its initial and best and final offer (BAFO) became unavailable for employment prior to submission of the BAFO is denied where the record supports a conclusion that the awardee and its subcontractor reasonably believed the individual was still available on

the basis of a prior commitment to the awardee's subcontractor.

6. Argument that agency failed to consider the bankruptcy of awardee's subcontractor is dismissed since it involves an affirmative determination of responsibility and the record does not show that the determination was the product of fraud or bad faith.

DECISION

TeleLink Research, Inc. (TLR) protests the award of a cost-plus-fixed-fee contract to ACI Technologies, Inc. under request for proposals (RFP) No. N00140-91-R-BB01, issued as a set-aside for small disadvantaged businesses by the Department of the Navy for computer logistics services. TeleLink principally argues that the evaluation process was flawed because the awardee proposed key personnel that it did not intend to use in contract performance and that the agency failed to consider the bankruptcy of one of the awardee's proposed subcontractors.

We dismiss the protest in part and deny it in part.

BACKGROUND

The RFP was issued on November 1, 1990, and, as amended, required initial proposals to be submitted by February 11, 1991. Award was to be made to the offeror whose proposal was determined to be most advantageous to the government based on an evaluation of five technical factors which were, in combination, to be more important than cost. The factors listed in order of importance are as follows:

(1) Technical Approach
(2) Personnel Resources
(3) Management Approach
(4) Corporate Resources
(5) Facilities

Offerors were required to submit resumes for 11 key personnel in the following 6 labor categories under the personnel resources factor[1]:

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[1]The RFP set forth detailed experience and education requirements that personnel proposed for each category must meet in order to be considered acceptable. Each labor category was considered to be of equal importance in the evaluation of the personnel resources factor and, in categories involving multiple positions, each position was considered to be of equal importance within the category.

Position	No. of Resumes
Program Manager	1
Senior Logistics Analyst	1
Electrical Engineer I (EEI)	1
Electrical Engineer II (EEII)	1
Engineering Technician I (ETI)	2
Engineering Technician II (ETII)	5

Offerors were also to propose nonkey personnel within these categories. As with all of the factors, personnel resources was graded on the basis of highly acceptable, acceptable or unacceptable[2] and was not point scored.

The RFP did nct require employment commitments to be submitted with the technical proposals; however, cost proposals were to contain letters of commitment stating salary figures for key personnel not in the employ of the offeror, which were to be considered as part of a cost realism analysis.

Eight initial proposals were received. ACI and TLR were among four offerors determined to be within the competitive range. TLR was rated as acceptable for all the technical factors. ACI was rated as acceptable for all technical factors except personnel resources; for that factor ACI was rated unacceptable but capable of being made acceptable because five of its proposed key personnel lacked requisite experience.

Indirect and labor rate information was obtained from Defense Contract Audit Agency (DCAA) offices associated with each offeror and each of its subcontractors. Proposed labor rates were compared to the DCAA information and Department of Labor (DOL) wage rates for labor categories subject to the Service Contract Act and/or to salary information contained in the commitment letters. As a result, both ACI's and TLR's proposed costs were adjusted upward.

Technical and cost discussions were conducted; best and final offers (BAFO) were received on August 30. ACI submitted five substitute resumes: one for the program manager position and one for the EEII position, to be filled by ACI itself; one for the EEI position to be filled by CDI--a subcontractor; and one each for the ETI and ETII positions to be filled by QSOFT--another subcontractor of

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[2]Within the unacceptable rating, a factor could be rated as unacceptable but capable of being made acceptable through discussions or unacceptable and not capable of being made acceptable.

ACI. All of the substitutes were rated acceptable in the final evaluation.

The BAFOs were reviewed for cost realism and ACI's and TLR's final proposed costs plus fees were determined to be realistic. ACI offered $7,569,375 and TLR offered $7,770,854. The contracting officer concluded that the proposals of ACI and TLR were acceptable under each of the five technical evaluation factors and determined that there was no meaningful technical distinction between them. Therefore, the agency selected ACI--the firm which proposed the lowest cost--as representing the best value to the government.

By letter dated September 23, TLR was advised that ACI was being considered for award and was advised that any challenge to its small business size status had to be filed by September 27. No challenges were received and, on September 30, award was made. TLR was advised of the award on October 2; the notice of award contained ACI's final evaluated costs.

On October 7, ACI requested approval to replace three of its proposed key personnel. Its request was accompanied by resumes for each of the proposed replacements. The resumes were reviewed and, pursuant to the contract clause permitting substitution of key personnel with individuals determined by the agency to be as qualified as those who they were replacing, ACI was permitted to replace its own Senior Logistics Analyst and an ETI and ETII from CDI.

On the same day, TLR was debriefed and informed that both its proposal and ACI's had been found to be acceptable. On October 9, TLR requested additional evaluation information under the Freedom of Information Act (FOIA); that information was received on December 6. This protest followed on December 19.

SMALL BUSINESS

In its initial protest submission TLR alleged, among other things, that ACI was not a small business. The record shows that the protester was advised that ACI was being considered for award on September 23 and that challenges to the firm's small business status had to be filed by September 27. The record further shows that TLR chose not to challenge the proposed awardee's small business status at that time. We dismiss the allegation because size status challenges are for review solely by the Small Business Administration, not this Office. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(2) (1992).

TIMELINESS

The protester also alleged that a number of the key personnel proposed by the awardee and evaluated by the Navy were not performing under the contract and that this shows that ACI had proposed the individuals without intending to have them perform. TLR further alleged that the proposals were not evaluated in accordance with the criteria set forth in the RFP, that technical leveling may have occurred during discussions and that the agency's cost realism analysis was defective. These allegations are based on TLR's assertions that its proposal was technically superior to ACI's and that the slight difference in evaluated cost between the competing proposals should not have been a factor in the award decision. We find all of these issues to be untimely except those concerning the proposal of key individuals that were not intended to be used.

All of the untimely issues are conclusions drawn from TLR's knowledge of the difference between its own evaluated costs and ACI's and its belief that its proposal was technically superior to ACI's. The difference in evaluated costs was evident to TLR on October 2 when it was informed of the award to ACI; the fact that the Navy considered both proposals acceptable was conveyed to TLR in the oral debriefing held on October 7. Thus, TLR was required by our Regulations to file its protest on these issues within 10 working days of the debriefing--the time it knew or should have known the bases of these protest issues. 4 C.F.R. § 21.2 (a)(2) (1992). The protest was not filed until December 19.

We find TLR's argument that it did not know the bases for these protest issues until December 6 when it received evaluation and source selection materials requested under FOIA to be unpersuasive.[3] A protest based upon information provided to the protester at a debriefing is untimely if filed more than 10 working days after the debriefing. The 10-day filing requirement does not allow a protester 10 days from the date of its receipt of written confirmation of the

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[3]TLR rests its timeliness argument on the assertion that this information revealed to it for the first time that ACI's initial proposal had been rated as unacceptable. We fail to appreciate the significance of this argument since ACI was entitled to improve its rating through discussions and since the principal basis of the protester's untimely allegations is simply its belief that its own technical capabilities are superior to ACI's.

information furnished it through the debriefing. Empire State Med. Scientific and Educ. Found., Inc., B-238012.2, Mar. 9, 1990, 90-1 CPD ¶ 261.

While the receipt of the information requested after the debriefing may have provided TLR with an opportunity to more fully respond to the areas in which it disagreed with the agency's evaluation and the agency's conduct of the procurement, such a detailed response was not required in order to file the protest. Our Regulations provide ample opportunity for the protester to respond to the agency's position; however, as an initial matter it was important for the protester to timely file a protest once it knew the bases for the its protest issues. Empire State Med. Scientific and Educ. Found., Inc., supra. Since TLR waited until December to file, the issues are dismissed as untimely.

PROTEST AND ANALYSIS

The protest issues that we consider to be timely--which are also the only issues developed in TLR's submissions following its receipt of the agency report--involve two principal allegations: (1) ACI proposed key personnel that it did not intend to use; and, (2) the Navy failed to consider the bankruptcy of QSOFT, subcontractor to ACI, in its evaluation of the awardee's proposal--an issue which was first made apparent to TLR upon its receipt of the agency report.

Personnel

In connection with ACI's proposed personnel the protester principally alleges that: (a) in its initial proposal the awardee failed to supply adequate commitment letters for the three employees to be supplied by QSOFT and that no letters of commitment were supplied for the five key personnel who were first proposed in ACI's BAFO; (b) two of the four personnel proposed directly by ACI are not performing under the contract; and (c) through QSOFT, the awardee proposed to supply a technician (ETII) without the individual's permission. It is TLR's contention that these alleged actions compromised the results of the technical and cost evaluations.

Letters of Commitment

TLR argues that the technical and cost evaluations were compromised by the fact that none of the QSOFT employees in ACI's initial proposal had firm letters of commitment which specifically referenced the contract and contained salary rates and that none of the five substitute personnel

proposed in ACI's BAFO--including two from QSOFT--had letters of commitment.

The Navy acknowledges these defects but argues that letters of commitment were required to be included with the cost rather than the technical proposals and that they were to be used only for the realism analysis. In this regard, the agency notes that they therefore could have no impact on the evaluation of technical proposals and that other information the agency had access to made them unnecessary for the cost realism analysis.

Our review of the solicitation confirms that the commitment letters were not to be part of the technical evaluation. Therefore, we focus our attention on the effect the defective or missing letters may have had on the cost realism evaluation. In the case of ACI's substitute program manager, he was in fact proposed at the same DCAA-confirmed rate as his predecessor in the initial ACI proposal and, in any event, under the RFP as clarified by amendment No. 0004, as an employee of ACI, he required no letter. The same is true of an EEII substitute from ACI who has yet to be used on the contract. Thus, as far as these individuals are concerned, there was no requirement that they have commitment letters and their salary rates already had been the subject of a realism analysis conducted on the initial proposal; both of the original individuals proposed for these positions did submit commitment letters including their salary rates.

With regard to the proposed employees from CDI--a subcontractor--the record shows that only one individual, who was proposed as a substitute in the BAFO to fill the EEI position, lacked a letter of commitment. The BAFO did, however, include a salary rate for the individual and that rate was found to be realistic because it was identical to the rate that had earlier been determined to be realistic in the initial proposal for another CDI employee proposed for the same position.

With respect to two of the proposed employees from QSOFT--another subcontractor--for positions in the ETI and ETII labor categories, the record shows that they were proposed as substitutes in the BAFO without letters of commitment. The BAFO did, however, include salary rates for the individuals and each rate was found to be realistic because it conformed to or exceeded applicable DOL wage determinations and the recommendations obtained from the DCAA office which audits the subcontractor.

Also, with respect to a proposed QSOFT employee whose name was submitted in the initial proposal for one of the ETII positions and whose commitment letter did not specify a

salary rate, the record shows that the rate proposed by QSOFT for the entire ETII labor category was determined to be realistic because it, too, exceeded the applicable DOL wage determination and the recommended rate furnished by DCAA.

Thus, as far as the proposed subcontractor employees are concerned, while they lacked commitment letters identifying their salary rates, the information was otherwise contained either in the initial proposal or the BAFO and the rates were found to, in each case, conform to or exceed DOL wage determinations and DCAA recommendations regarding realistic rates. With the exception of one employee, all are working under the contract and, when considered as a group, they are being paid at a burdened rate that is slightly less than what the Navy initially considered to be realistic. In view of these circumstances, there is no basis to conclude that the lack of appropriate commitment letters compromised the cost realism analysis as alleged by TLR.

Nonperformance

TLR also argues that since two of four ACI's personnel have yet to perform--an EEII and an ETII--it is evident that ACI lacks technical expertise and never intended to supply the technicians. The Navy, however, has provided data to show that no requirements have yet arisen for an EEII under the contract. The agency further explains that, since the ETII category contains a total of seven positions (five key personnel and two non-key personnel) and since no need has arisen for more than four ETIIs to date, ACI's allegedly insufficient performance reflects nothing more than the fact that the firm's own ETII has not yet been needed. We find the Navy's explanation to be reasonable.

Lack of Consent to Use Resume

TLR argues that ACI used the resume of Mr. David Dannelley without his permission as a subcontractor employee of QSOFT in its initial proposal for one of the five key positions in the ETII category.[4] TLR also argues that ACI did not amend its BAFO to reflect Mr. Dannelley's unavailability when it knew that he would not work for QSOFT at the salary rate proposed to him shortly after the submission of initial proposals.

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[4]Mr. Dannelley is not performing as an ETII under the contract; however, as indicated above, need has arisen for only four out of seven ETII positions within the labor category.

Several matters need to be noted prior to our analysis to place this issue in a proper perspective. The employment position represented by Mr. Dannelley's resume is only one of five key personnel in the ETII labor category and only one of 11 key personnel. The RFP also provided for two nonkey personnel under the ETII category. To date only four out of the seven ETIIs have had to perform. The educational requirements for the category are among the least demanding of any of the key labor categories described in the RFP.

Further, neither QSOFT nor ACI's other subcontractor--CDI--had any problems obtaining replacement ETIIs when needed for the BAFO and at the start of contract performance. Resumes for all 11 key positions in both the awardee's proposal and the protester's proposal were rated as acceptable with one exception: in its initial proposal and its BAFO, ACI offered the resume of an individual for one of the ETII positions through its other subcontractor--CDI--who was rated highly acceptable[5]. No point scoring occurred.

Proposing to employ specific personnel that the offeror does not expect to actually use during the contract performance has an adverse effect on the integrity of the competitive procurement system and generally provides a basis for proposal "rejection." Informatics, Inc., 57 Comp. Gen. 217, (1976), 78-1 CPD ¶ 53. This does not mean that an offeror must use the personnel it proposed or risk losing the contract for which it is competing in every case. For example, where the offeror provides firm letters of commitment and the names are submitted in good faith with the consent of the respective individuals--a matter which the protester disputes here--the fact that the offeror, after award, provides substitute personnel does not itself make the award improper. Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ 577.

Conversely, however, an offeror may not be awarded a contract where it does not have the individuals' permission to use their names for key positions for which they are proposed and cannot provide a satisfactory explanation for use of the names. Ultra Tech. Corp., B-230309.6, Jan. 18, 1989, 89-1 CPD ¶ 42. Similarly, where an offeror knows prior to the submission of its BAFO that proposed key employees are no longer available, the offeror should withdraw the individuals and, in its BAFO, propose substitutes who will be available. Omni Analysis, 60 Comp. Gen. 300 (1989), 89-1 CPD ¶ 239. To do otherwise is, in effect to misrepresent the availability of proposed

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[5]The individual rated as highly acceptable is performing under the contract.

personnel which, in turn, compromises the validity of the technical evaluation, regardless of whether post-award substitutions of key personnel may later be made and approved by the agency pursuant to a clause in the awardee's contract. Ultra Tech. Corp., supra.

We believe that an offeror has a responsibility to propose persons who it may reasonably expect will be available for contract performance without the RFP having to provide that the offeror must do so. CBIS Fed. Inc., B-245844.2, Mar. 27, 1992, 92-1 CPD ¶ ___. Otherwise, there is no assurance to the government that it will receive what it was offered. Id.

TLP has submitted two affidavits from Mr. Dannelley and the Navy has submitted affidavits from two QSOFT officials--Ms. Cheryl Wiehl and Mr. Arvid Forsman. We have examined these statements in conjunction with the rest of the record and, for the reasons stated below, we think that the record reasonably supports the conclusion both that QSOFT had a reasonable basis upon which to conclude that it had an initial employment commitment from Mr. Dannelley and that at the time of BAFO submission the individual still would be available.

Initial Proposal

Mr. Dannelley acknowledges that in November 1990, he met with a QSOFT representative, whose name he does not remember, and that he was offered contingent employment at $14.35 per hour. Mr. Forsman states that he met with Mr. Dannelley on November 19, to interview him specifically for a job with QSOFT under a prime contract with ACI if the firm was successful in the competition under the RFP in issue. Mr. Forsman states that he briefed Mr. Dannelley on the RFP, the requirements for an ETII position, and a prospective salary and asked permission to use his resume. Mr. Dannelley states that Mr. Forsman had his resume but does not know how he got it; Mr. Dannelley also states that he was not asked permission to use his resume and he would not have given it if asked.

Mr. Forsman states he contacted QSOFT headquarters on November 19, and sought permission to pay Mr. Dannelley what he was currently making; he also states that approval was granted. Mr. Forsman says that on November 21, Mr. Dannelley accepted and signed a contingent offer.[6]

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[6]The document which is signed by Mr. Dannelley and dated November 21, 1991, in his handwriting states: "I hereby accept the offer extended to me by QSOFT, Inc. dated

(continued...)

On February 11, 1991, ACI's initial proposal offered Mr. Dannelley's resume and the signed commitment letter with QSOFT dated November 21. TLR argues that the letter is insufficient because it does not specifically refer to the RFP, implying that it is not evidence of a commitment to the contract. We disagree given Mr. Dannelley's acknowledgment that he was offered a job by QSOFT in November 1990, and his failure to deny Mr. Forsman's account of the meeting insofar as whether the RFP in issue was discussed. Moreover, we question Mr. Dannelley's denial that he ever gave QSOFT permission to use his "resume" in connection with the proposal. The record shows that he knew the firm had the resume, he met with the firm to discuss employment under the RFP and he signed a commitment letter on the basis of that meeting. Under these circumstances, we believe the record supports a conclusion that QSOFT and ACI reasonably believed that Mr. Dannelley had agreed to the use of his name and his resume in the initial proposal and we, therefore, deny this aspect of the protest. Cf. Ultra Tech. Corp., supra.

BAFO

Mr. Dannelley's affidavit shows that he agreed to work for QSOFT at $14.35 per hour. He was proposed by QSOFT as part of an overall hourly rate of $13.43 for the ETII category. Mr. Dannelley states that he was, in February 1991,[7] made a "new offer" at $12.55 per hour and that he "rejected that offer." Unlike the previous offer which was accepted, there is no written evidence of the February transaction. Ms. Cheryl Wiehl of QSOFT states that she contacted Mr. Dannelley in October 1991 and asked "if he was still interested in the position for which he had received a contingent offer from QSOFT" and that he replied "he was no longer interested" in the offer of employment due to the fact he was currently being paid more than "we were offering." Mr. Dannelley states that he was contacted in October 1991, and "again offered $12.55 per hour" and that, as a result, he "repeated" his "rejection of QSOFT's employment offer."

TLR asserts that these events establish that ACI knew at the time of its BAFO that Mr. Dannelley would not work for QSOFT but that it deliberately failed to offer a substitute so as to continue to get evaluation credit for Mr. Dannelley.

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[6](...continued)
November 21, 1990." The instructions on its face refer to it as an "acceptance letter."

[7]TLR asserts that this occurred after initial proposals.

The record is unclear concerning the effect that the reported February transaction had on the offer of employment, contingent upon ACI getting the award, which had been negotiated between Mr. Danneley at a higher rate the preceding November. Mr. Dannelly's first affidavit, filed in support of TLR's contention that the November 21, 1990 letter of acceptance did not represent a commitment to work under the disputed contract, makes no mention of any later rejection. His second affidavit, filed after receiving QSOFT's detailed account of the initial offer and acceptance in November 1990, describes the February transaction for the first time and treats it as the rejection of a separate offer from QSOFT, a rejection he states he "repeated" in his conversation with Mrs. Wiehl of QSOFT shortly after award in October 1991. Nonetheless, Mr. Dannelley's second affidavit does not address what he thought the effect of the February rejection, repeated in October 1991, was on the original offer.

Mrs. Wiehl's account of the October 1991 conversation with Mr. Dannelley indicates that QSOFT still believed that it had a valid contingent arrangement with Mr. Dannelley as she states she was "inquiring to see if he was still interested in the position for which he had received a contingent offer from QSOFT." Also, her account of Mr. Dannelley's response to the inquiry states that he informed her "that he was no longer interested" in employment with QSOFT--a response which indicates that he continued to consider working for QSOFT through that time.

This record, while confusing in some respects, does not warrant a conclusion that QSOFT's continuing belief that it still had a validly accepted contingent offer was unreasonable, especially in view of Mr. Dannelley's description of his February 1991 rejection of a job offer from QSOFT as a matter distinct from the contingent offer which he had accepted in writing the previous November--an offer which never appears to have been rejected.

Moreover, we question the impact that the submission of Mr. Dannelley's name as one of the five ETII's had as only 1 out of 11 key positions listed in the RFP. As indicated above, the comparative importance of the labor category was not particularly significant in terms of educational requirements or the need for a full complement of technicians. Mr. Dannelley was rated acceptable as were almost all the other individuals proposed by TCI and ACI in their BAFOs. Of the two competitors, only ACI proposed an employee who was rated highly acceptable--an ETII with another subcontractor.

This stands in contrast to other cases where we have sustained protests on the basis that awardees have

materially affected the selection process by intentionally misrepresenting the availability of personnel. In Ultra Tech. Corp., supra, for example, one of only three key personnel slated to head a regional activity was at issue. In Omni Analysis, supra, two key personnel, one of whom was specifically highly rated by the evaluators, were at issue. Recently, in CBIS Fed., Inc., supra, two out of four personnel--a project manager and a unit supervisor--were misrepresented. Also, in each of these cases, the record clearly supported a finding that the awardee knew or should have known that the personnel it proposed were unavailable. Here, the record does not establish what the effect of Mr. Dannelley's February rejection of another offer from QSOFT was on the one he had accepted and does not warrant a conclusion that QSOFT acted unreasonably in believing that Mr. Dannelley would still work for the firm at the time BAFOs were submitted.

In view of the foregoing analysis, we deny this aspect of the protest.

QSOFT Bankruptcy

The record shows that QSOFT voluntarily filed for bankruptcy under chapter XI of the United States Bankruptcy Code between the submission of ACI's initial proposal and the submission of BAFOs. The record further shows that the contracting officer was aware of this fact prior to finding ACI to be responsible and prior to making his final award decision, although the matter is not mentioned in ACI's BAFO and specific reference to it is not contained in the evaluation or source selection documents. Nonetheless, the Navy reports that the contracting officer did consider the potential impact of the bankruptcy on QSOFT's ability to perform and concluded that the firm was responsible since it had been performing solidly on other contracts after it filed for bankruptcy.

TLR questions why ACI did not disclose the bankruptcy to the Navy and alleges that a reasonable technical evaluation and assessment of the firm's responsibility should have contained documented consideration of the impact the bankruptcy might have on contract performance. Since the record contains no narrative discussion of the matter, TLR submits that the selection decision was impermissibly flawed.

QSOFT's financial position is a matter related to the firm's resporsibility, not the technical evaluation as suggested by TLR. C. Martin Co., Inc., B-228552, Jan. 20, 1988, 88-1 CPD ¶ 56 (also holding that bankruptcy does not compel a finding of nonresponsibility). Because a contracting officer's determination that a firm is capable of performing is a

subjective judgment which is generally not susceptible to reasoned review, an affirmative determination of responsibility will not be reviewed absent a showing that it was the product of fraud or bad faith on the part of procurement officials or that definitive responsibility criteria in the solicitation were not met. Security Am. Servs., Inc., B-225469, Jan. 29, 1987, 87-1 CPD ¶ 97; 4 C.F.R. § 21.3(m)(5) (1992).

The record contains nothing more than TLR's assertion that ACI deliberately withheld the fact of QSOFT's bankruptcy from the agency. This does not constitute a showing of fraud. Also, the record does not show that the contracting officer, who was aware of the matter and did consider it together with QSOFT's successful performance despite the bankruptcy, acted in bad faith and there is no suggestion in the record that definitive responsibility criteria have not been met. Accordingly, we dismiss this basis of protest. Security Am. Servs., Inc., supra.

In view of the foregoing analysis, the protest is dismissed in part and denied in part.

James F. Hinchman
General Counsel