

CLIENT ALERT

Lack of Security Clearance Renders Key Person Unavailable

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In *M.C. Dean, Inc.*, GAO reaffirmed that where an offeror has actual knowledge that a proposed key person has become unavailable before award, the offeror is required to notify the agency, which may result in the offeror's exclusion. Interestingly, here the awardee key person at issue was still technically available to work on the contract, but had been denied a security clearance necessary to perform their proposed role: program manager. The awardee argued that the right to appeal the security clearance denial had not yet expired, and thus the person was not unavailable. But GAO emphasized that no appeal had been filed and, even if one were, there was no indication that it would be successful in time for the person to perform as program manager. The agency also argued that the key person was not material to the agency's evaluation. GAO found that argument "irrelevant" given that the offeror had actual knowledge of the "unavailability" to serve in the proposed role and failed to notify the agency.

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