

**Matter of:** ADC Ltd.  
**File:** B-254495  
**Date:** December 23, 1993

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Arthur D. Cordova, Jr., for the protester.  
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Department of Energy, for the agency.  
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participated in the preparation of the protest.

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#### **DIGEST**

1. Bidder's failure to submit, with bid, documentation demonstrating compliance with solicitation security clearance requirement does not render bid nonresponsive because the requirement relates to the bidder's responsibility and the information can be furnished any time before award of the contract.
2. Protest that awardee's bid should have been rejected as nonresponsive for failure to include a management plan called for by the solicitation is denied where the requirement could only relate to bidder responsibility.
3. Allegation that the awardee has not been performing the contract in compliance with the solicitation pertains to a matter of contract administration which is not for consideration by the General Accounting Office.

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#### **DECISION**

ADC Ltd. protests the award of a contract for personnel security support services to Lee Associates under invitation for bids (IFB) No. DE-SB03-93SF19685, issued by the Department of Energy (DOE). The protester contends that Lee's bid should have been rejected as nonresponsive for failure to comply with the security clearance requirements under the solicitation.

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

The solicitation, issued on May 14, 1993, sought bids to provide personnel security support services to the Safeguards and Security Division of the San Francisco Operations Office of DOE, which provides field management for implementation of DOE security policies for California DOE installations. The awardee was to furnish qualified personnel, services, and materials such as transcription services for personnel security interviews, furnishing hearing officers, and overseeing visitor control. The amended solicitation provided that, at the time of contract award, the contractor shall ensure that at least one person "in each labor category," performing work under the contract, plus the project manager, possess a DOE "Q" security clearance. The remaining personnel were required to obtain a "Q" clearance within 6 months of the contract award date. The IFB also stated that failure of a bidder to provide written documentation with its bid showing compliance with these security clearance requirements would render the bid nonresponsive.

The agency received four bids by the July 22 bid opening date. The agency initially rejected Lee's low bid as nonresponsive for failure to include written documentation demonstrating compliance with the security clearance requirements. Lee protested to the agency, as a result of which the agency determined that Lee's bid was responsive because compliance with the security requirement related to responsibility and could be demonstrated up to the time of award. On August 5, as requested by the agency, Lee provided written documentation establishing Lee's compliance with the security clearance requirements, whereupon the agency determined that Lee had satisfied the solicitation requirements. On August 11, Lee was awarded the contract as the low responsive, responsible bidder. ADC then protested to our Office contending that Lee's bid was nonresponsive, and challenging the propriety of the agency's allowing Lee to furnish personnel information after bid opening.

An IFB requirement that a bidder have necessary security clearances or the ability to obtain them in a timely fashion involves the bidder's ability to perform the contract and therefore is a matter of bidder responsibility, not bid responsiveness. First Fed. Data Servs. Co., B-224183.2, Feb. 18, 1987, 87-1 CPD ¶ 179. Responsibility is determined at the time of award, not at bid opening. Therefore, a bidder's failure to include sufficient security clearance documentation with its bid is not a basis for rejection of the bid, id.; Ktech Corp.; Physical Research, Inc., B-241808; B-241808.2, Mar. 1, 1991, 91-1 CPD ¶ 237, notwithstanding the IFB indication that failure to submit sufficient documentation with the bid would render the bid

nonresponsive. A matter relating to responsibility is not converted to one of responsiveness merely because of a statement to that effect in the solicitation. Southwest Mobile Sys. Corp., B-223940, Aug. 21, 1986, 86-2 CPD ¶ 213. Accordingly, the agency properly considered the resumes and letters of intent furnished by Lee after bid opening which demonstrated that its personnel possessed DOE "Q" clearances.

ADC also contends that, at the time of award, Lee had not proposed cleared personnel in each labor category required for contract performance. The IFB did not specifically identify labor categories; rather, it contained a Department of Labor wage determination listing seven categories of personnel and a key personnel list identifying five labor categories. According to the agency, neither of these lists was intended to specify the number or exact categories of personnel. In fact, the solicitation specified various tasks to be performed by a court reporter, hearing officer, and psychiatrist, and left it to the discretion of the bidders to fashion other labor categories that would meet the solicitation requirements, requiring only that at least one person in each labor category necessary to perform the contract, including the project manager, possess a "Q" clearance at the time of award. Prior to award of the contract, Lee furnished resumes and letters of intent for nine employees with appropriate clearances in the seven labor categories which Lee established, including the project manager, vault custodian, transcriber, word processor, word processing clerk, psychiatrist, and hearing officer. Nothing more was required.

ADC further contends that Lee's bid was nonresponsive because it did not include a management plan required by a "Reporting Requirements Checklist" which was included with the IFB. The Checklist sets forth when required plans and reports are due, and identifies a management plan as due with the bid. ADC, the only bidder of the four which submitted a management plan with its bid, argues that in order to be responsive, a bid had to include the plan. We disagree.

The agency explains that originally this was to be a negotiated procurement and that when the solicitation was changed to a sealed bid procurement, the Checklist from the request for proposals (RFP) mistakenly was left unchanged in the IFB. While, under an RFP, a management plan could have been used to evaluate an offeror's managerial approach, under an IFB only price and price-related factors may be evaluated, FAR § 14.101(e), so that if the agency actually had a requirement for submission for management plan in this procurement the plan would have no relevance to bid evaluation; it could be used only in connection with an

assessment of the bidder's responsibility. As indicated above a bidder's failure to submit with its bid information relating to responsibility may result in rejection of the bid as nonresponsive.

Finally, we will not consider ADC's arguments that Lee has not been performing the contract in accordance with the solicitation requirements. For example, ADC argues that Lee began performance on this contract without a delivery van required by the solicitation. ADC also argues that Lee did not have certain required computer hardware and software and that the agency provided it for Lee. While we note that the record supports the agency's statement that it has only furnished equipment in accordance with the IFB's provisions, the question of whether a contractor in fact performs in accordance with solicitation requirements is a matter of contract administration that is the responsibility of the contracting agency, and is not for consideration by our Office. See 4 C.F.R. § 21.3(m)(1); Alpha Technical Servs., Inc., B-250878; B-250878.2, Feb. 4, 1993, 93-1 CPD ¶ 104.

The protest is denied in part and dismissed in part.

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<sup>1</sup>Likewise, we will not consider ADC's additional arguments that the solicitation should not have been issued as a sealed bid and that the solicitation was deficient because it failed to adequately define the labor categories. These arguments are untimely. Our Bid Protest Regulations require protests based upon alleged improprieties in an IFB, which are apparent prior to the bid opening date, to be filed prior to that date. 4 C.F.R. § 21.2(a)(1).