

Van Schaik



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Development Alternatives, Inc.
File: B-235663
Date: September 29, 1989

DIGEST

1. Agency did not violate requirement for conducting meaningful discussions where in context of solicitation calling for innovative and creative means of assisting agency, questions addressed to offeror in negotiations were reasonably calculated to lead offeror into areas of its proposal requiring improvement or explanation without amounting to technical leveling.

2. Protest that issue raised in negotiations was beyond the requirements of the solicitation is untimely since protest was filed after the next closing date for receipt of proposals following negotiations which included allegedly improper issue.

DECISION

Development Alternatives, Inc., protests the rejection of its proposal and the award of a contract to the Futures Group, under request for proposals (RFP) No. OP/W/CO-89-004, issued by the Agency for International Development (AID) to provide assistance to AID's Bureau for Program and Policy Coordination, Office of Women in Development. Development Alternatives argues that AID failed to conduct meaningful discussions regarding the firm's proposal.

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

The solicitation indicates that the awardee is to assist AID's Office of Women in Development, agency field missions and governments of less developed countries (LDCs) in enhancing the contribution of women in LDCs to the economic production and self-sufficiency of their countries through the increased inclusion of women as participants in and beneficiaries of AID programs and projects. According to

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the RFP, the goal of the contract is to foster the institutionalization of women in development (WID) issues in all ongoing AID activities. The contractor is to furnish facilities, materials, personnel and services to assist AID in the development, refinement and implementation of technical assistance and training to increase gender issues in AID policies, programs and projects.

The RFP, which was issued on December 23, 1988, called for the award of a cost-plus-fixed-fee contract for 3 years with 2 option years. The solicitation stated that cost would not be assigned a numerical weight in the evaluation and that the selection would be based primarily on the technical criteria. It also specified that award would be made to the offeror whose overall proposal promised the greatest value to the government, technical and cost factors considered. The solicitation included the following technical evaluation criteria (and relative weights), each of which included several subcriteria: I. General quality and responsiveness of proposal and technical approach; 40 points, II. Qualifications of personnel proposed; 30 points, and III. Institutional capabilities and management approach, 30 points.

Five firms submitted initial proposals including Development Alternatives and Futures. AID's technical evaluation panel evaluated and scored the proposals. The scores and estimated base and option year costs of the five initial proposals were as follows:

	<u>Technical score</u>	
Futures	831	\$21,985,456
Development Alternatives	792	\$36,367,368
Offeror A	750	\$23,953,268
Offeror B	626	\$33,664,990
Offeror C	422	\$16,267,520

The evaluators identified seven major problem areas in the protester's proposal. In the evaluators' view, these problems included the protester's failure to recruit request and use the best personnel, the proposal's undue emphasis on a preneeds assessment, the lack of direct AID experience on the part of the proposed project director and the failure of the proposal to emphasize the relative importance of integrating gender considerations into the program.

Based on this evaluation, the agency established a competitive range including Development Alternatives as well as Futures and Offeror A. On March 22, AID sent the three

competitive range offerors a list of negotiation questions which had been prepared by the evaluation panel and required the submission of best and final offers (BAFOs) by April 3. Development Alternatives was sent seven questions regarding technical issues. In addition, the letter to each competitive range offeror included a list of omissions from the offeror's cost proposal and stated that a cost BAFO would be requested at a later date.

Based on the responses to the negotiation questions and a reevaluation of the revised proposals, contracting officials rescored the technical proposals resulting in a score of 892 for Futures, 719 for Development Alternatives and 675 for Offeror A. The agency evaluators concluded that the protester's proposal was still weak in the seven cited areas and decided that only the Futures proposal was technically acceptable at that point and that the only way to retain the other two firms in the competitive range was to hold lengthy and detailed discussions with the two firms and give those firms another opportunity to revise their technical proposals. Since their proposals were no longer considered acceptable, Development Alternatives and Offeror A were not included in the revised competitive range. After discussions with Futures concerning its cost proposal, on May 15 AID awarded the contract to that firm at a total cost including the options of \$21,985,456.

On May 25, Development Alternatives protested to this Office. Principally, the protester argues that AID failed to hold meaningful discussions because the questions addressed to it in the March 22 negotiation letter did not directly state the agency's concerns with the firm's technical proposal. According to the protester, the negotiation questions asked of it were not sufficiently specific to give the firm a fair opportunity to cure any problems that existed in its initial proposal. Development Alternatives argues that it fully responded to the issues raised during negotiations and that it was not reasonable for AID to conclude that the firm could not improve its proposal to the point where it could have been considered for award.

Agencies are required to conduct discussions with all competitive range offerors. Federal Acquisition Regulation (FAR) § 15.610. For the discussions to be meaningful, agencies must point out weaknesses or deficiencies in proposals unless doing so would result in disclosure of one offeror's approach to another--transfusion--or would result in leveling when a weakness or deficiency was inherent in the proposed approach or caused by a lack of diligence,

competitiveness or inventiveness. Advanced Technology Sys., B-221068, Mar. 17, 1986, 86-1 CPD ¶ 260.

We have reviewed the agency's evaluation of the initial proposals, the seven negotiation questions addressed to Development Alternatives, the firm's responses to those questions and AID's BAFO evaluation and we conclude that discussions with the firm were meaningful. The solicitation called for offerors to propose innovative and creative means to assist in institutionalizing WID issues within AID. In this context, we believe that while the questions addressed to Development Alternatives were not phrased in the most direct manner they were adequate to direct the firm to the areas of its proposal requiring elaboration or explanation while avoiding technical leveling by "coaching" the firm to a particular approach to the solicitation not proposed by the firm. See Loral Terracom, 66 Comp. Gen. 272 (1987), 87-1 CPD ¶ 182. It appears from the record that the answers to the questions supplied by the protester were too brief and general and simply did not convince the evaluators that the protester's approach to the project met the goals set forth in the RFP.

While we have considered each of the questions in the context of the protester's arguments, we do not believe that any useful purpose would be served by setting forth our detailed analysis of all seven questions. Our analysis of representative examples follows.

Question No. 3:

"Please explain in more detail the rationale for the significant percentage of technical assistance tasks assigned to AED.^{1/} Additionally, please explain the rationale for the assignment of considerable training tasks in years two and three to AED."

We believe that the third negotiation question should have reasonably alerted Development Alternatives to the concern of the evaluation panel with the distribution of work among the firm's subcontractors and the resulting failure of Development Alternatives to, in the evaluators' view, use the best possible personnel. The protester argues, however, that the primary concern addressed in the agency's BAFO evaluation report with respect to the third question was that two subcontractors proposed by the firm, ICRW and TRG, would not give sufficient attention to the contract.

^{1/} AED is a Development Alternatives' subcontractor.

Development Alternatives argues that since the evaluation panel was concerned that insufficient work had been assigned to the subcontractors it viewed as more capable, this issue should have been directly addressed, and the failure to do so resulted in a lack of meaningful negotiations.

We do not agree. Although the third question could have been more direct, Development Alternatives' response to the question--to explain the distribution of work among the various subcontractors proposed, including ICRW and TRG--indicated that the firm understood the thrust of the question. Moreover, Development Alternatives' response to the question explained that the firm underutilized ICRW and TRG because those subcontractors did not have the capacity to commit themselves to a greater level of effort. Based on that response, the evaluation panel reasonably concluded that the firm's more qualified subcontractors could not do the amount of work the evaluators believed was necessary.

Question No. 4:

"Please clarify your position regarding the necessity for a preneeds assessment procedure for technical assistance."

We think that this negotiation question did adequately raise the concerns of the evaluators. The BAFO evaluation report indicates that by the fourth question--which essentially asked Development Alternatives to explain why a preneeds assessment was necessary--the evaluators expressed their concern that the firm did not grasp that needs assessments had already been conducted and that a formalized needs assessment process is not necessary. In our view, the fourth question was sufficiently direct to place the firm on notice that a preneeds assessment as proposed by the firm may not be necessary and should be reexamined. The protester's response to the question just did not convince the evaluators that this potentially unnecessary portion of the firm's approach was justified.

Question No. 6:

"Please explain your decision to assign the Project Director position to someone who is currently a non-DAI employee who has minimal direct A.I.D. experience."

The sixth negotiation question raised the concern of the evaluation panel, as set out in the BAFO evaluation report, that the project director proposed by Development Alternatives lacked sufficient direct AID experience. The

protester, however, argues that the solicitation only required that the key staff proposed have direct AID experience, that it did not require the project director individually to have such experience and that the sixth negotiation question also did not reasonably indicate that the lack of such experience in the project director was a weakness.

By asking in the sixth question why the firm chose as a project director an individual with "minimal direct AID experience," we think AID reasonably placed Development Alternatives on notice that its project director's level of direct AID experience was viewed as a proposal weakness. To the extent that the protester argues that the requirement of direct AID experience in the project director is beyond the requirements of the solicitation, this issue is untimely. Since the sixth negotiation question raised this matter, Development Alternatives was required to protest before the next closing date for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1989); Hollingsead International, B-227853, Oct. 19, 1987, 87-2 CPD ¶ 372.

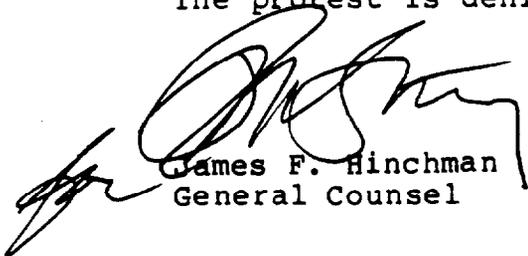
Question No. 7:

"Please explain the relative importance of expanding awareness and building commitment, and integrating gender considerations into A.I.D. program and project activities."

It is our view that the seventh negotiation question reasonably directed Development Alternatives into an area of its proposal requiring explanation. The agency asked the firm to discuss the relative importance of expanding awareness and building commitment and integrating gender considerations into AID programs and projects. Development Alternatives' response did not discuss the relative importance of the factors; instead the firm merely indicated that the listed factors are all important. According to the evaluation panel, Development Alternatives' response also did not give sufficient attention to program and project activities, which the evaluators considered to be at the heart of any effort to institutionalize WID issues into AID. In our view, given the goal of the contract as set out in the RFP--to institutionalize WID issues into AID policies, programs and activities--it should have been clear in the seventh question that the evaluators were concerned that Development Alternatives' proposal had not given sufficient attention to how and what importance would be given to the integration of gender consideration into AID programs and activities.

Development Alternatives also argues that AID's decision to exclude it from the revised competitive range without requesting and evaluating a cost BAFO was improper. As noted earlier, the protester's initial proposed cost was over \$36 million compared to the other competitive range offerors, at approximately \$22 and \$24 million and Development Alternatives does not suggest that it could have significantly lowered its proposed cost. Under the circumstances, we think the decision to reject Development Alternatives' proposal without requesting a cost BAFO was reasonable.

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel