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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Daniel Eke and Associates, P.C.

**File:** B-271962

**Date:** July 9, 1996

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Daniel Eke for the protester.

Mark W. Foster, Esq., and Jonathan H. Levy, Esq., Zuckerman, Spaeder, Goldstein, Taylor & Kolker, for Development Alternatives, Inc.; Joel H. Lamstein for World Education; and Marina Fanning for Management Systems International, the intervenors.

Rosemary T. Rakas, Esq., Agency for International Development, for the agency. Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest that firm should be excluded from the competition for an economic development contract in Uganda based upon its prior involvement in preparing a concept paper for the project is denied where the record shows that the concept paper did not lead directly, predictably, and without delay to the solicitation's work statement; that the concept paper is a publicly available document; and that any competitive advantage obtained by the firm by virtue of its preparation of the concept paper was not created by any improper preference or other unfair action by the agency.

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## DECISION

Daniel Eke and Associates, P.C., protests the decision of the Agency for International Development (AID) to allow certain firms to compete under request for proposals (RFP) No. UGANDA 961 to implement the Private Enterprise Support, Training and Organizational Development (PRESTO) Project in Uganda. Daniel Eke contends that these firms should be excluded from the competition based upon their prior involvement in preparing a concept paper for the Project.

We deny the protest.

## BACKGROUND

The goal of the PRESTO Project is to raise low incomes in Uganda by increasing employment and productivity in micro-, small-, and medium-sized enterprises. AID's

Uganda Mission (AID/Uganda) anticipates achieving this goal through three mutually reinforcing areas of assistance: increasing access to microfinancial services; strengthening business associations; and improving the policy and regulatory environment for business start-up and expansion.

Although it had already analyzed the development problems faced by small Ugandan businesses, the agency wanted additional study before submitting the project for final review and funding. To that end, AID/Uganda procured consulting services under the agency's Growth and Equity through Microenterprise Investments and Institutions (GEMINI) contract, as well as another AID contract, to obtain a "concept paper" analysis of microenterprise credit, and of non-financial, technical assistance and training for microenterprises.

The GEMINI Team<sup>1</sup> visited Uganda during February and March 1995. The Team met with AID staff, visited Ugandan businesses, interviewed Ugandan businesspeople, and reviewed publicly available literature on private sector development in the country. Contrary to AID/Uganda's expectation, the Team did not deliver the concept paper prior to departing Uganda in March. Instead, the agency received only rough, incomplete, and inaccurate individual Team members' drafts, and the Team leader's promise to forward a completed concept paper within weeks. The concept paper did not arrive as promised.

AID/Uganda was required to prepare and obtain internal approval of a project paper--which contains a detailed justification of the project's feasibility, an estimated budget, an implementation plan, and expected results--in order to receive funding for the PRESTO Project. In April and May, the then-Chief of AID/Uganda's General Development Office (GDO) and its current Chief wrote the project paper. Both state that they did not rely upon the concept paper because DAI had not provided it, but that, as discussed below, they did adopt certain broad and fairly generic ideas which evolved from the GEMINI Team's work in Uganda. The project paper, absent any competitively sensitive information, was made publicly available in July.

The current Chief of the GDO began writing the solicitation's statement of work (SOW) in September and completed it in late November. He states that he relied exclusively upon the project paper, and did not use the concept paper, which

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<sup>1</sup>Daniel Eke argues that seven different firms, among them, Development Alternatives, Inc. (DAI), were involved in the preparation of the concept paper. However, the record shows that the only one of these firms associated with the paper was DAI, the prime contractor under the GEMINI contract. As a result, Daniel Eke's allegations with respect to the other firms lack a valid basis, and our decision is limited to a discussion of DAI's involvement with the concept paper.

arrived in October. He explains that, by this time, there was already a working draft of the SOW, and AID had no need to refer to what he terms the "obsolete" concept paper. This concept paper is also a publicly available document.

In accordance with Federal Acquisition Regulation (FAR) § 9.504(a), before the solicitation was issued, the contracting officer considered whether any organizational conflict of interest (OCI) existed with regard to the GEMINI Team. He concluded that there was no OCI because, as the solicitation's transmission letter explained, the project paper which led to the SOW was prepared by AID staff. While the staff drew, in part, upon earlier analyses conducted by several U.S. and Ugandan private sector firms, the project paper was neither a sum total of the contents of those earlier analyses, nor did it represent any one firm's control over the project design. In addition, the solicitation focuses on results to be achieved and leaves considerable freedom to offerors in determining the means necessary to achieve those results. The solicitation included the project paper as an attachment.

On March 18, 1996, AID issued this solicitation requesting offers to implement the PRESTO Project under a performance-based, firm, fixed-price contract. As reflected in the project paper, the contract would consist of three components: microenterprise interventions, business associations initiative, and policy and regulatory reform. Under the microenterprise interventions component, the only component at issue here,<sup>2</sup> the contractor was to establish and operate a Center for Microenterprise Finance (CMF), under which it was to implement three activities: an Institutional Capacity Enhancement Program (ICEP) to serve as a national clearinghouse of information and expertise for microenterprise finance; a Financial Services Grant Program (FSGP) to provide operational support and loan capital to banks, nongovernmental organizations, and other viable financial intermediaries; and a Subsector Technology Innovation Grants Program (STIG) to improve technology and skills of microentrepreneurs in selected sub-sectors with strong growth potential.

After pointing out that the appended project paper laid out the project designers' approach to the Project, the RFP cautioned offerors not to treat the paper's specification of project activities and input as solicitation requirements, but to propose their own technical approach and required inputs based on their assessment of how the specified results could be best achieved with the available resources. Accordingly, the SOW's requirements are extremely general, and the milestones set forth are "illustrative only"; offerors are required to propose their own milestones to be substituted for the illustrative milestones in the eventual

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<sup>2</sup>While Daniel Eke suggests that there are similarities between certain aspects of the concept paper and the business associations component of the RFP, our review of the two documents shows no similarities save for isolated phrases.

contract, and to propose their own payment schedules and anticipated results. Award would be made to the responsible offeror whose proposal was most advantageous to the government, considering an evaluation of technical and price criteria. Shortly before the May 17 closing date for receipt of proposals, Daniel Eke filed this protest.

Daniel Eke contends that DAI has gained an unfair competitive advantage by virtue of its work on the concept paper and should be excluded from the competition. The protester primarily asserts that similarities between the concept paper and the SOW show that the concept paper led directly, predictably, and without delay to the work statement, and that DAI's work on the concept paper under the GEMINI contract garnered it "special insights" which constitute an unfair competitive advantage.

#### ANALYSIS

The FAR sets forth both general and specific instructions on organizational and consultant conflicts of interest in subpart 9.5. The FAR generally requires contracting officials to avoid, neutralize or mitigate potential significant conflicts of interest so as to prevent unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.501, 9.504, and 9.505. Specifically, the FAR requires that if a contractor: (1) "prepares, or assists in preparing, a work statement to be used in competitively acquiring a system or services," or (2) "provides material leading directly, predictably, and without delay to such a work statement," the contractor may not supply the system or services except in certain limited situations. FAR § 9.505-2(b)(1); GIC Agricultural Group, 72 Comp. Gen. 14 (1992), 92-2 CPD ¶ 263.

The FAR's restriction on permitting contractors to provide systems or services in cases where a contractor has assisted the government in defining its requirements is intended to: (1) avoid the possibility of bias in situations where a contractor will be in a position to favor its own capabilities, see FAR § 9.505(a); or (2) avoid the possibility that the contractor, by virtue of its special knowledge of the agency's future requirements, would have an unfair advantage in the competition for those requirements. FAR § 9.505(b); see also Person-System Integration, Ltd., B-243927.4, June 30, 1992, 92-1 CPD ¶ 546. With respect to unfair advantage, the FAR states that such advantage exists where a contractor possesses source selection information relevant to the contract but not available to all offerors. FAR § 9.505(b)(2).

The responsibility for identifying and resolving conflicts of interest is that of the contracting officer, who, in doing so, is admonished to exercise "common sense, good judgment and sound discretion." FAR §§ 9.504, 9.505. We will not disturb a

contracting officer's determination regarding a conflict of interest unless it is shown to be unreasonable. Abt Assocs., Inc., B-253220.2, Oct. 6, 1993, 93-2 CPD ¶ 269.

After reviewing the record, we find reasonable AID's determination that DAI did not have an OCI or unfair competitive advantage here. The record shows that the concept paper did not lead directly, predictably, and without delay to the solicitation's work statement. As discussed above, AID personnel attest that they wrote the SOW relying exclusively on the project paper. They also attest that they completed the project paper long before they received the concept paper, which, again, concerned only one of the three components of the PRESTO Project. AID personnel state that, in writing the project paper, they did adopt certain broad and generic ideas which evolved from the GEMINI Team's work in Uganda. Specifically, the idea that the Project would issue grants to private voluntary organizations and provide technical assistance to micro-finance institutions was developed during this period. However, AID asserts, and the protester does not dispute, that such generalized notions as grants and technical assistance are not unique to microfinance development projects.

While both the concept paper and the SOW require the implementation of the CMF, ICEP, and FSG, AID personnel state that they coined two of these three program names during the GEMINI Team's stay in Uganda, and that, in any case, the names are not exclusive and are attached to basic building block interventions widely accepted and used in the microfinance sector. Our review of both documents shows that the few similarities between the two are those inherent in any economic development project of this nature, and that the two documents' approaches to the programs are quite different. For example, the SOW's requirements for the ICEP are limited to the provision of expertise and information via an interactive computer link and a literature library, and the offeror is to determine further details on how best to provide these services. While the concept paper's notion of the ICEP also includes on-line access to information and a literature library, elements to be expected in any program to disseminate information, it emphasizes an in-person approach to the program, such as having resident technical advisors, meeting space, training seminars, educational and social events, exchange programs, and site visits. In addition, the SOW's provisions for the FSGP merely require the contractor to choose grant selection criteria acceptable to AID, in contrast with the concept paper's mandate that grants be evaluated under specifically defined criteria. Finally, while the protester makes much of the fact that some of the milestones in the RFP are listed as suggested services in the concept paper, again, the RFP's milestones are illustrative only and are to be replaced with each offeror's milestones. In any event, to the extent that any information in the concept paper would have provided DAI with an unfair competitive advantage, such advantage was eliminated by the fact that the paper is a publicly available document. See GIC Agricultural Group, supra (where contracting officer could have reduced OCI by providing a copy of the project paper to the other offerors).

In a related argument, Daniel Eke asserts that DAI obtained "special insights" into the Project by virtue of its presence during interviews with various businesspeople, nongovernmental organization personnel, and government agencies in Uganda during the development of the concept paper under the GEMINI contract. The protester asserts that these "special insights" will help DAI formulate its technical approach to the Project and, thus, amount to an unfair competitive advantage. We disagree. There is no evidence that these "special insights" were garnered by virtue of exposure to proprietary or source selection information, see FAR §§ 3.104-4(j), (k); 9.505(b), but to factual information concerning the economic and business situation in Uganda. Moreover, the mere existence of a prior or current contractual relationship between a contracting agency and firm does not create an OCI, see Optimum Technology, Inc., B-266339.2, Apr. 16, 1996, 96-1 CPD ¶ 188, and an agency is not required to compensate for every competitive advantage inherently gleaned by a potential offeror's prior performance of a particular requirement. Versar, Inc., B-254464.3, Feb. 16, 1994, 94-1 CPD ¶ 230. To the extent that DAI's "special insights" would provide it any advantage here, there would be no basis to exclude it from the competition unless that advantage were created by an improper preference or other unfair action by the agency, a situation not present here. Id.; Delta Oaktree Prods., B-248903, Oct. 7, 1992, 92-2 CPD ¶ 230.

The protest is denied.

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