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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Global Solutions Network, Inc.

File: B-289342.4

Date: March 26, 2002

Jacob B. Pompan, Esq., and Gerald H. Werfel, Esq., Pompan, Murray & Werfel, for the protester.

Francis E. Purcell, Jr., Esq., and Barbara S. Kinosky, Esq., Williams, Mullen, Clark & Dobbins, for Phoenix Group, Inc., an intervenor.

Stephen R. Jones, Esq., Department of Labor, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Cancellation of solicitation in negotiated procurement is not objectionable where agency's changed requirements, including changed evaluation scheme, provided a reasonable basis for the cancellation.

DECISION

Global Solutions Network, Inc. protests the cancellation of request for proposals (RFP) No. 3-JC-111-11, issued by the Department of Labor for Job Corps program services in the Washington, D.C. area. The protester contends that the cancellation lacks a reasonable basis; Global contends that the contracting officer instead should have amended the solicitation and requested revised proposals.

We deny the protest.

The Job Corps provides residential occupational training, education, counseling, career transitioning and other support services to young adults from economically disadvantaged backgrounds. The RFP, a small business set-aside, contemplated the award of a contract for a 2-year base period with three 1-year options, for the operation of the Potomac Job Corps Center. The RFP also included a requirement for the development and operation of a National Development Center (NDC), a separate model center providing, among other things, Job Corps staff development training and internships, testing of new policy initiatives, development opportunities for potential small business center operators, and an informational visitors center.

RFP at B-1, F-1, and G-6. The solicitation, as amended, included a restriction providing that the awardee under the RFP could not operate (or subcontract at) other centers until 1 year after the conclusion of the contract; operators/subcontractors at other centers also could not compete for the operations contract/subcontracts at the Potomac Job Corps Center. RFP at C-19; amend. 1.

Section M of the RFP, as amended, provided the evaluation scheme for award. The technical proposal was to be evaluated under eight identified subfactors and was worth 62 of the total available 150 evaluation points; the NDC requirement was worth 50 points (i.e., one-third of the total available points); and past performance (25 points), staff qualifications (5 points), and cost justification (8 points) were other factors for consideration. Offerors were advised to prepare their proposals in line with these point values which, the RFP explained, indicated the importance of the various portions of the proposals. Technical factors were to be more important than cost. RFP at M-2, M-11. Three offers were received in response to the RFP. An award was made to Phoenix Group, Inc., the firm determined to have submitted the proposal most advantageous to the government.

Global filed a protest with our Office challenging, among other things, the agency's failure to inform offerors of the basis upon which their NDC proposals would be evaluated. Global specifically questioned the agency's actions in increasing the point value of the NDC evaluation factor to equal one-third of the available evaluation points without providing any explanation or justification for the increased value.¹ Global also challenged the evaluation of the past performance and cost proposals, the adequacy of discussions held with the firm, and the agency's alleged failure to perform a technical/cost tradeoff, and raised alleged conflicts of interest between agency personnel and the awardee.

The agency reports that, while reviewing the procurement in response to the protest, it found merit in Global's protest of the RFP's evaluation terms regarding the NDC component of the RFP's requirements. The agency states that it concluded that it had failed to develop a clear idea of what it expected from the NDC and, as a result, decided that it would postpone creation of the NDC until a workable model was formulated. Accordingly, the agency concluded that amendment of the solicitation to include additional criteria related to the NDC was not a viable option. Rather, the agency decided to remove the NDC requirement from the Potomac Job Corps Center procurement and to resolicit later on the basis of its changed requirements.² The

¹ The RFP initially assigned 20 of 120 total points to the NDC component. The agency subsequently amended the RFP to assign 50 points to the NDC component and to increase the total points available to 150. RFP amend. 2.

² The agency also notes that resolicitation, rather than amendment, allows the agency to more clearly incorporate the latest version of its Policy and Requirements Handbook (PRH), which, according to the agency, changed the requirements and
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agency terminated the Phoenix contract, cancelled the RFP, and issued a new solicitation, RFP No. 3-JC-212-11, for the operation of the Potomac Job Corps Center which eliminated any requirement for the NDC. In light of the agency's action, on January 8, 2002, we dismissed Global's protests of the award to Phoenix as academic.

Global now protests the agency's cancellation of the original Potomac Job Corps Center/NDC solicitation as lacking any reasonable basis. The protester contends that the contracting officer instead should have amended the solicitation because the agency's asserted changes to its requirements are, according to Global, only "superficial" and fail to justify the cancellation.

In a negotiated procurement, an agency has broad authority to decide whether to cancel a solicitation. As long as an agency has a reasonable basis for doing so, it may cancel a solicitation regardless of when the information precipitating the cancellation first surfaces or should have been known—even if the solicitation is not canceled until after proposals have been submitted and evaluated, after a contract has been awarded or, as here, after the filing of a GAO protest against the award. See Lackland 21st Century Servs. Consolidated, B-285938.7, B-285938.8, Dec. 4, 2001, 2001 CPD ¶ 197 at 5. A reasonable basis for cancellation exists when, for example, a solicitation is ambiguous or overstates the agency's minimum needs, such that the cancellation of the solicitation and the issuance of a revised solicitation would present the potential for increased competition. See A-Tek, Inc., B-286967, Mar. 22, 2001, 2001 CPD ¶ 57 at 2-3; Chant Eng'g Co., Inc., B-270149.2, Feb. 14, 1996, 96-1 CPD ¶ 96 at 2.

As discussed below, our review of the record confirms the reasonableness of the agency's cancellation of the RFP. The agency's needs and thus, its procurement terms, have changed substantially. Elimination of the NDC requirements alone affects several significant areas of the original solicitation. Although the total number of students to be served (500) may remain the same, the composition of the student population to be served and the courses offered have changed—for example, 75 student slots previously allotted for advance training at the NDC have been eliminated, allowing for more students to attend the Potomac Job Corps Center, and allowing additional vocational training classes (e.g., plastering, cement masonry, and plumbing) that were to be phased out under the original solicitation. The agency points out that deletion of the NDC component also eliminates the need for the restriction barring participation by certain contractors, thereby increasing the potential for additional competition, since those contractors currently operating or

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structure of the Job Corps program. While the PRH was referenced in an amendment to the RFP, the RFP also contained specific references to the older version of the PRH which are now obsolete.

interested in operating other centers may now participate in the competition for operation of the Potomac Job Corps Center.

Most importantly, our review of the record shows that, without the NDC component, the overall evaluation scheme necessarily must change materially from that which offerors were instructed to follow in preparing their proposals, and upon which those proposals were to be evaluated for award. For instance, since one-third of the available evaluation points under the original solicitation had been assigned to the NDC factor, offerors may have emphasized that section of their proposals in order to obtain those available points, perhaps placing less emphasis on other aspects of their proposals which may now become the paramount factors for consideration for award.

In short, we see no basis in the record for Global's argument that the cited changes in agency requirements are only "superficial" and thus insufficient to support the cancellation determination.³ Rather, we conclude that the changes cited by the agency are substantial not only in terms of the scope of the contract, but also in terms of their potential effects on proposal preparation, evaluation of proposals for award, and the pool of prospective competitors. Accordingly, we see no reason to question the reasonableness of the contracting officer's cancellation of the solicitation.⁴

The protest is denied.

Anthony H. Gamboa
General Counsel

³ Global's mere speculation that the agency canceled the RFP to escape review of the protester's earlier conflict of interest challenges does not provide a sufficient basis to question the agency's conduct. See Chant Eng'g Co., Inc., *supra*, at 3.

⁴The protester has advised our Office that the agency has recently cancelled solicitation No. 3-JC-212-11, which had been issued to meet the agency's Potomac Job Corps Center requirements. Global, which recently filed a separate protest against this action, argues that this recent cancellation undermines the agency's cited bases for cancellation of the original solicitation. We do not agree. Regardless of the recent cancellation of the attempted resolicitation, the agency has adequately shown that its needs have changed substantially from those included in its original solicitation and that the cancellation of that solicitation was appropriate.