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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-290107

Date: June 11, 2002

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

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

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DIGEST

1. Protest of agency's cancellation of request for proposals prior to receipt of proposals is denied where cancellation was reasonable in light of agency's need for additional review of its requirements relating to size standard and set-aside considerations.

2. Protest of agency's sole-source award to incumbent contractor, for continued operation of residential educational and training center for a 1-year period while agency completes review of its requirements and ongoing rulemaking process related to size standard and set-aside considerations, is denied where agency reasonably determined that, due to considerable transition period required for a change of contractors, only one responsible firm, the incumbent contractor, was available to meet agency's immediate need for the services during the limited time period.

DECISION

Global Solutions Network, Inc. protests the cancellation of request for proposals (RFP) No. 3-JC-212-11, issued by the Department of Labor for Job Corps program services in the Washington, D.C. area. Global also challenges the agency's sole-source award to the incumbent contractor for continuation of the services while the agency conducts additional review of its needs regarding size standard and set-aside terms, including related rulemaking efforts.

We deny the protest.

The Job Corps program provides residential occupational training, education, counseling, career transitioning and other support services at more than 120 centers nationwide to nearly 50,000 young adults from economically disadvantaged backgrounds. The RFP, issued on February 1, 2002, as a small business set-aside, contemplated the award of a cost-plus-fixed fee contract for a 2-year base period with three 1-year options, for the operation of the Potomac Job Corps Center in Washington, D.C., to provide services to approximately 500 students, including residential housing services for 425 students. The RFP was cancelled on March 7, approximately 4 weeks prior to the stated closing date for receipt of proposals. This protest followed.

As a matter of background, we note that the current protest is one of several challenges that have been filed by Global against the agency's proposed procurement of required services for the operation of the Potomac Job Corps Center. Global initially protested the evaluation terms of a previous solicitation for the services, RFP No. 3-JC-111-11, and alleged that the agency's evaluation and award under that solicitation were unreasonable and based on alleged favoritism toward the initial awardee, Phoenix Group, Inc. On January 8, 2002, Global's protest was dismissed by our Office as academic, in light of the agency's cancellation of both the solicitation and the award to Phoenix; the agency had determined that the initial solicitation failed to include pertinent evaluation terms and that, in any event, the agency's needs had changed substantially, warranting a resolicitation. While that protest was still pending, Global had also filed a size status protest against the award to Phoenix; the Small Business Administration (SBA) denied that challenge on January 15. Global then protested the propriety of the agency's cancellation of the challenged solicitation (RFP No. 3-JC-111-11). We denied that protest, finding that the cancellation was reasonable based on the agency's substantially changed requirements and elimination of restrictive terms. Global Solutions Network, Inc., B-289342.4, Mar. 26, 2002, 2002 CPD ¶ 64.

The resolicitation for the Potomac Job Corps Center requirements, RFP No. 3-JC-212-11, the subject of the current protest, was issued on February 1, as a small business set-aside for small business concerns having average annual receipts for the preceding 3 years not exceeding \$20 million. The RFP identified North American Industrial Classification System (NAICS) code 561210 (Facilities Support Services--Base Maintenance), a \$20 million size standard, as the applicable size standard for the procurement. The agency reports that the \$20 million size standard has been applied to Job Corps center set-aside operations procurements for 20 years. The same size standard was used in the previously cancelled solicitation for the Potomac Job Corps Center (RFP No. 3-JC-111-11), under which Global competed without challenging the size standard. On February 15, however, Global filed a size standard appeal with the SBA Office of Hearings and Appeals (OHA) against the resolicitation's \$20 million size standard. Global argued that the applicable size standard instead should be a significantly lower standard of \$5 million. On March 5,

the OHA granted Global's appeal and issued a ruling for the application of NAICS code 611519 (Other Technical and Trade Schools) to the RFP, with a corresponding \$5 million size standard, for the operation of the residential educational and training center.

The agency subsequently cancelled the proposed resolicitation (RFP No. 3-JC-212-11), citing a need for further review of its requirements in terms of size standard and set-aside considerations applicable to the Potomac Job Corps Center as well as numerous other Job Corps center locations for which the agency procures similar services. Shortly thereafter, the agency initiated pursuit of formal rulemaking with the SBA for review and resolution of these small business issues; that process is anticipated to take approximately 1 year. Due to the extended transition period needed for a change of contractors for the required center operations services, the agency determined that only one firm, Management and Training Corporation, the incumbent contractor, was available to meet the agency's immediate need for uninterrupted continuation of the required educational and residential services for the hundreds of students currently residing at the Potomac Job Corps Center. Consequently, the agency made a sole-source award to that firm for continuation of the required services for a 1-year period to permit resolution of its small business requirements review and rulemaking efforts.

Global protests the agency's determination to cancel RFP No. 3-JC-212-11. In a negotiated procurement, an agency has broad authority to decide whether to cancel a solicitation and to do so, the contracting officer need only have a reasonable basis. Chant Eng'g Co., Inc., B-270149.2, Feb. 14, 1996, 96-1 CPD ¶ 96 at 2. A sufficient basis to cancel exists when, for example, solicitation terms no longer reflect an agency's actual needs and resolicitation provides the potential for increased competition or cost savings. See Lucas Place, Ltd., B-235423, Aug. 30, 1989, 89-2 CPD ¶ 193 at 4-5. We see no basis to object to the cancellation of the RFP here.

The agency reports that the cancellation of the solicitation was necessary in order for it to further review its needs as to the set-aside nature of the contract, including completion of size standard rulemaking efforts currently pending with the SBA. The agency argues that the significantly lower NAICS code size standard (*i.e.*, \$5 million instead of an intended \$20 million standard) identified by the March 5 OHA decision will not meet the agency's overall Job Corps program needs. The significantly lower size standard, the agency contends, will unreasonably restrict competition to much smaller firms than the small businesses it has contracted with in the past, and it will unreasonably preclude award of more than one center contract, including follow-on awards, to any one small business. In this regard, the agency explains that, since the average annual budget for a Job Corps center is \$9 million, a small business awardee of a center operations contract will quickly exceed the \$5 million standard size standard after only 3 years of performance under only one such contract, rendering the firm ineligible for award under any of its numerous other set-aside procurements

for similar services.¹ Although the protester suggests that the lower standard at present might apply only to this RFP, and not the entire Job Corps program as argued by the agency, the agency contends that, due to the similarities in the required services under its numerous Job Corps center operations contracts, the size standard arguably would apply to its centers nationwide, having a direct adverse effect on the entire Job Corps program.

The agency also explains that, historically, many center contractors have held multiple contracts, which, in turn, has provided meaningful benefits to the agency in terms of enhanced performance by contractors having gained direct center operations experience (given the learning curve associated with these contracts), cost savings to the agency from competitive pricing by contractors able to spread costs of similar supplies and services over additional contracts, and the need for less supervision of experienced contractors. The agency therefore reasons that the preclusion of multiple or follow-on awards to these successful small business contractors and the associated benefits gained from them, simply because the prior small business awardees will exceed the significantly lower size standard after the third year of performance of an initial contract for the services, fails to meet its overall needs and jeopardizes the continued success of the Job Corps program.² In this regard, the agency reports that it is currently working with the SBA in pursuit of rulemaking to establish a higher, more appropriate size standard for its Job Corps center operations contracts, which, the agency contends, is needed to better reflect the educational and training aspects of these contracts, as well as the substantial, costly, and varied residential and maintenance services provided under the

¹ The agency points out that under the \$5 million standard, the third small business firm that had competed with Global and Phoenix under the initial set-aside procurement for these services would no longer be eligible to compete, since it would exceed the standard. The agency argues that this lower size standard's restriction on competition will also adversely affect small businesses that may exceed the \$5 million standard, but are still not in a position, in terms of financial base and experience, to effectively compete with established large businesses under an unrestricted center operations procurement; such firms, the agency contends, thus would not benefit from the developmental opportunities historically available to small businesses under the higher \$20 million size standard.

² The agency reports that a group of current small business Job Corps center contractors has recently met with the SBA to challenge the lower size standard, on the basis that the lower size standard's application to other Job Corps center procurements will unreasonably restrict competition by rendering ineligible any small business set-aside contractor that has operated a Job Corps center for 3 or more years.

contracts.³ The record contains confirmation from the SBA that the agency's stated concerns warrant further review of the appropriate size standard, and that any change to the size standard would be accomplished under the SBA's rulemaking authority.

Our review of the record provides no basis for us to question the reasonableness of the agency's cancellation of RFP No. 3-JC-212-11. The agency has demonstrated that the cancellation was reasonable due to a change in circumstances, namely, the challenged size standard, creating a need for the agency to pursue additional review by the SBA of its requirements relating to size standard and set-aside considerations for the procurement of the required operations services. Contrary to Global's opinion otherwise, we agree with the agency that due to the similarity in services provided at Job Corps centers nationwide, the set-aside considerations raised here, and their resolution, could affect many other centers and, ultimately, the overall Job Corps program. Consequently, the record shows that the agency's cancellation in order to allow for the needed additional review, which also increases the potential for additional competition and cost savings upon resolicitation, is reasonably based. See Lucas Place, Ltd., *supra*.

Global also protests the agency's sole-source award to the incumbent contractor, Management and Training Corporation, which had been providing the required services at the Potomac Job Corps Center, under contract No. 3-JC-619-11, for a 5-year period, plus two short-term extension periods, the last of which was to expire on February 28. Global alleges that the official who authorized the sole-source award for continued services from March 1 through February 28, 2003, was materially misled by the contracting officer, as well as another Assistant Secretary at

³ Global argues that the agency's initial award to Phoenix, a new business, indicates that the agency has already demonstrated its belief that a very small business can perform the work. The agency, however, does not contend that such a small business will not be able to perform, but rather, argues that such a firm's performance is typically strengthened over time from its direct experience, and that it is unreasonable that, under the lower size standard, the agency will be precluded from considering such firm for future awards. As to Global's alternate suggestions--such as for the agency to withdraw the set-aside if proposed prices are too high, or to require small business teaming arrangements to delay any one small business from exceeding the \$5 million size standard so quickly--the agency reports that such approaches would not reasonably meet its needs. Rather, the agency explains, to promote small business interests, it is pursuing further review of the size standard and set-aside issues to avoid withdrawal of the requirements from the set-aside program; the suggested teaming arrangement is also undesirable to the agency in terms of its potential for increasing the need for agency supervision of multiple contractors, increasing costs to the agency, and impeding the agency's efforts to meet its small business prime contract goals.

the agency, who did not provide the authorizing official with certain information Global believes that official would have wanted to know. For instance, Global asserts that, even though the initial award to Phoenix had been cancelled, and Global's protest of that award was, accordingly, dismissed, the authorizing official should have been told of the contentions Global made in its protest. Global also argues that the authorizing official should have been told that, before seeking and obtaining that official's permission for the award, the contracting officer had sought to extend the incumbent's contract, allegedly without the proper authority to do so. Global does not specifically challenge the reasonableness of the agency's ultimate determinations that the center's services must continue in an uninterrupted manner, or that only one responsible firm was available on March 1 to meet the agency's immediate need for uninterrupted services. Rather, Global challenges the sufficiency of the information provided to the authorizing official.

While the overriding mandate of the Competition in Contracting Act of 1984 (CICA) is for "full and open competition" in government procurements through the use of competitive procedures, 41 U.S.C. § 253(a)(1)(A) (1994), CICA does permit noncompetitive acquisitions in specified circumstances, such as when the services needed are available from only one responsible source or when the agency's need for the services is of such an unusual and compelling urgency that the agency would be seriously injured unless permitted to limit the number of sources solicited. 41 U.S.C. §§ 253(c)(1), (c)(2). When an agency uses noncompetitive procedures under 41 U.S.C. § 253(c)(1) or (c)(2), it is required to execute a written justification and approval (J&A) document with sufficient facts and rationale to support the use of the specific authority. Our review of the agency's decision to make a sole-source award focuses on whether the J&A document sets forth a reasonable basis for it to do so. Diversified Tech. & Servs. of Va., Inc., B-282497, July 19, 1999, 99-2 CPD ¶ 16 at 3.

Our review of the record confirms that there is no basis to question the reasonableness of the J&A supporting the sole-source award. Global agrees that the agency had an immediate need for the continued services and does not argue that it or any other firm could have met that immediate need on March 1 upon expiration of the previous short-term extension to the incumbent's contract. Global contends only that the authorizing official should have been told of Global's earlier protest contentions, even though its protest of the award to Phoenix had been dismissed and its protest contentions had been rendered academic. Global does not provide a reasonable basis, however, for its apparent expectation that its protest allegations would have had any effect on the agency's review and approval of an award to a completely different entity. Global simply has not shown that the allegations materially affect the unchallenged basis cited in the J&A in support of the sole-source award to the incumbent contractor, namely, the agency's immediate need for the required services and the availability of only one firm to meet that need during the period needed for the agency's additional review.

Similarly, although Global contends that the authorizing official should have been told that the contracting officer previously had attempted to secure an extension of

the incumbent's contract without, in Global's view, the authority to do so, Global simply has not shown why—even assuming Global's conclusion about the extent of the contracting officer's authority is accurate—that information would render unreasonable the approval official's justification for the needed services, and his approval of the sole-source award for those services from March 1 to February 28, 2003 from the only available contractor; any earlier contract extension attempt, even if invalid, is not dispositive, since the ultimate J&A covers the same time period and has not been shown to be unreasonable.⁴

Given the unchallenged, immediate need of the agency for an uninterrupted continuation of services and the extended transition period required for any change of contractor, the record shows that the agency reasonably determined that there was only one available source for the required services during the limited period necessary for resolution of the agency's size standard and set-aside review and rulemaking efforts.⁵

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴In fact, the record shows that, in response to Global's recent challenge to his earlier J&A, the same authorizing official, who had been given up-to-date information as to the status and duration of the incumbent's contract, was told of the contracting officer's earlier contract extension efforts, and affirmed, on May 10, both the stated rationale of his earlier J&A and the sole-source award.

⁵ Contrary to Global's contentions, the record does not show that the need for the sole-source award was the result of lack of advance planning; in fact, the initial award had been made in a timely fashion, but the agency has since spent many months responding to Global's challenges to that award and its proposed resolicitation of the agency's immediate requirements. As to the protester's argument that the agency did not discover the defect in the initial solicitation's evaluation terms in a prompt manner, we note only that Global's contention that the agency should have reexamined those terms earlier is directly undermined by the fact that Global itself did not challenge those same terms until after an award had been made under the same challenged solicitation. Similarly, although Global generally argues that the agency failed to conduct market research prior to making the sole-source award to the incumbent contractor, the protester does not show that the agency did not know of Global's qualifications, as they were recently submitted in the firm's proposal under the earlier attempted procurement, and Global does not argue that it would have been available to perform on the March 1 date, as was required by the agency's immediate need; accordingly, the firm has shown no prejudice whatsoever from the challenged lack of market research.