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

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## **Decision**

**Matter of:** OCR Services, Inc.

**File:** B-290946

**Date:** October 21, 2002

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Charles M. Tobin, Esq., Jeffrey S. Newman, Esq., Rachael C. Danish, Esq., and Kristin G. Hughes, Esq., Foley & Lardner, for the protester.

Mike Colvin, Department of Health & Human Services, for the agency.

Charles W. Morrow, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest challenging agency's evaluation of protester's technical proposal and selection of awardee's higher-rated proposal for award is denied, where protester has not shown the agency's evaluation and source selection decision to be unreasonable.

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### **DECISION**

OCR Services, Inc. protests the award of a contract to Brogan & Partners Convergence Marketing under request for proposals (RFP) No. 273-02-P-0004, issued by the National Institute of Environmental Health Sciences (NIEHS), for services supporting the NIEHS Health Information Services Project. OCR, the incumbent contractor, challenges the agency's technical evaluation and source selection decision.

We deny the protest.

NIEHS and the National Toxicology Program (NTP) publish a number of documents, including the Environmental Health Perspectives (EHP) journal, the Reports on Carcinogens, and the NTP's Technical Report Series (consisting of toxicology, carcinogenesis, and toxicity reports). RFP Statement of Work (SOW) at 1. These publications are available to subscribers in hard-copy and electronically on-line from a comprehensive on-line environmental health information service maintained by NIEHS. The agency anticipates that "the revenue generated from orders for the subscriptions to the EHP journals and other NIEHS documents will offset the cost of

the Information Services Project.”<sup>1</sup> Agency Report, Tab 3, Negotiation Memorandum (June 25, 2002), at 4.

The RFP, issued as a total small business set-aside on March 26, 2002, provided for the award of a contract for services supporting the NIEHS Health Information Services Project for a base year with four 1-year options. The contractor will be responsible for “preparing and printing the materials, preparing and maintaining the Internet versions . . . , marketing the environmental health information service, and managing the collection of subscription fees and records.” RFP SOW at 2. The contractor would also be responsible “for proposing (subject to Government approval) fees (subscription rates, advertisement rates, reprint charges, etc.) suitable for the development and continuation of a commercially successful Environmental Health Perspectives On-line.” *Id.* at 4. Offerors were informed that, in addition to the fixed price, offerors would receive a base fee of 6 percent of the fixed price for contract tasks; in addition, the RFP offered firms the opportunity to request additional incentive fees for exceeding specified revenue levels. RFP § B.

The RFP provided that the basis for award would be a cost/technical tradeoff and that “paramount consideration shall be given to the evaluation of technical proposals rather than price.” RFP § M.3.b. The following technical evaluation factors and their respective weights were identified in the solicitation:

1. Technical experience, technical qualifications, and past performance (30 points)
2. Technical approach and methodology (20 points)
3. Marketing (20 points)
4. Understanding stated objectives (20 points)
5. Fiscal solvency (10 points)

NIEHS received 3 proposals, including OCR’s and Brogan’s.<sup>2</sup> Proposals were evaluated by the agency’s technical evaluation committee, and only OCR’s and Brogan’s proposals were included in the competitive range. Discussions were

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<sup>1</sup> “The contract mechanism provided for a revenue enhancement cost offset feature which allows the Government to share in the profit generated by this contract in order to offset the contract’s cost to the Government.” RFP § B.

<sup>2</sup> Brogan was OCR’s marketing consultant on the prior contract, under which Brogan developed marketing materials, and was proposed as OCR’s subcontractor under this RFP.

conducted with each firm. Revised proposals were received and evaluated, as follows:

	Brogan	OCR
Technical Score (100 max. pts.)	93	64
Price/Cost	\$18,125,905	\$17,388,645

Brogan’s superior technical score reflected the evaluators’ judgment that Brogan had presented a proposal with many evaluated strengths and few weaknesses. Among the proposal strengths underlying Brogan’s superior technical score was that the evaluators found that Brogan had offered an executive staff with impressive credentials in priority setting and goal satisfaction and had proposed employing OCR’s current on-site support staff that, the evaluators found, had “demonstrated the ability to handle contract needs in an exceptional manner.” Also noted by the evaluators was that Brogan had multiple government and non-government contracts demonstrating Brogan’s performance skills and that Brogan had an impressive record of success in producing printed public health publications. The evaluators found that Brogan had “presented an impressive plan and novel ideas for sales, service, distribution, graphics, Internet use, and Web site design.” Agency Report, Vol. 2, Tab 4, Source Selection Decision (June 10, 2002), at 4.

With respect to OCR’s proposal, the evaluators’ found that OCR, as the incumbent, had specific experience in meeting the agency’s needs and that its “staff has strong qualifications to conduct the work.” Agency Report, Vol. 2, Tab 4, Source Selection Decision (June 10, 2002), at 3. Nevertheless, the evaluators noted concerns with OCR’s proposal under each of the technical evaluation factors. For example, under the technical experience, qualifications and past performance, the evaluators were concerned that OCR had not demonstrated satisfactory technical experience and qualifications at the “corporate level” of its organization. Contracting Officer Statement at 3. The evaluators noted that OCR’s proposed project director had no prior experience in managing the production of technical journals.<sup>3</sup> The evaluators also noted OCR’s failure to timely pay its primary printing subcontractor, which caused delays in the issuance and delivery of journals. This was a concern that persisted throughout the final year of OCR’s contract performance. Contracting Officer’s Statement at 3-4.

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<sup>3</sup> OCR initially challenged the agency’s evaluation of its project director, noting that he had been performing this position under the prior contract since 1999, but did not substantively address this issue in its comments. The proposed project director’s resume does not specifically indicate journal production experience but rather shows substantial experience in the information technology field.

Under the technical approach and methodology factor, the evaluators expressed concern that OCR had not committed to performing the required publication schedule, but only committed to performing [DELETED] “[DELETED].” Also, the evaluators noted that OCR’s plans for production of a Chinese edition of the journals (“one of the products of major interest to the government”) was vague and that although OCR indicated that it would [DELETED], little detail was provided to show how this [DELETED] would work. Contracting Officer’s Statement at 4-5.

Under the marketing factor, which requested that the offeror demonstrate its ability to market information nationally and internationally to produce income, OCR provided only minimal explanation of its marketing approach and instead indicated that [DELETED]. The failure to understand the importance of a detailed marketing plan demonstrated to the evaluators that OCR did not fully understand the marketing objective of the contract, which was a concern under the understanding stated objectives factor. Contracting Officer’s Statement at 5.

Under the fiscal solvency factor, the evaluators found that OCR had not demonstrated that the firm had adequate resources to satisfactorily perform the contract. In this regard, the agency noted that OCR had not indicated any financial commitment for a line of credit or other lending commitment. Although OCR indicated in its proposal that it would [DELETED], the evaluators noted that OCR had similarly promised to maintain [DELETED] under the prior contract and that this was never fully executed. Contracting Officer’s Statement at 6.

The evaluation results were provided to the contracting officer, who determined that Brogan’s proposal reflected the best value to the government based on technical and price considerations. Agency Report, Vol. 2, Tab 4, Source Selection Determination (June 10, 2002) at 6. The contracting officer concluded that Brogan’s superior technical score, based upon the evaluators’ conclusion that Brogan had demonstrated strong experience, corporate infrastructure, and financial strength, outweighed OCR’s 4 percent price advantage. Also, the contracting officer noted that accepting Brogan’s proposal offered other financial benefits to the government. Specifically, the contracting officer stated that:

only Brogan & Partner[s] agreed with the suggested incentive fee arrangement without revision. OCR Services indicated their concurrence; however, it was based on [DELETED]. An incentive fee structure based on this arrangement would offer greater profit to the contractor and less benefit to the Government. Brogan & Partners main business is a fiscally strong marketing firm that has a successful track record in marketing a diverse line of products including publications. It is the Government’s opinion that based on their proposal, Brogan & Partners can be very successful in reducing the cost of the contract to the Government by increasing the number of

subscribers and increasing the number of display advertisements in the EHP publications and presents overall best buy to the Government.

Id.

Award was made to Brogan, and this protest followed a written debriefing.<sup>4</sup>

OCR broadly challenges every aspect of the agency's evaluation of its technical proposal but specifically objects to the evaluation of its "fiscal solvency." In addition, OCR complains that both it and Brogan offered to provide the same on-site staff but that Brogan's proposal received a higher overall technical score than OCR's proposal. OCR also complains that Brogan's higher technical score is the result of the agency double counting Brogan's evaluated strengths by taking them into account under more than one evaluation factor.

In reviewing protests of allegedly improper evaluations and source selection decisions, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and procurement statutes and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 3-4. A protester's mere disagreement with an agency's judgment does not render it unreasonable. Brunswick Def., B-255764, Mar. 30, 1994, 94-1 CPD ¶ 225 at 9. Here, we find no basis from our review of the record to conclude that the agency's judgment was unreasonable.

It is true that both OCR and Brogan proposed the same on-site staff to perform the contract. The agency recognized this in its evaluation, citing the strong qualifications of the proposed staff as an evaluated strength for each firm. See Agency Report, Vol. 2, Tab 7, Initial Proposal Evaluation (May 9, 2002), at 2, 5. OCR's low technical score reflected the evaluators' concerns with numerous other aspects of OCR's proposal. For example, the evaluators noted OCR's past [DELETED]. We therefore find unsupported OCR's allegation that the two firms' proposing the same on-site staff meant that it was unreasonable for the agency to assign them different ratings.

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<sup>4</sup> Based upon the agency's determination that contract performance would be in the best interest of the government, the agency did not stay performance of Brogan's contract. Although OCR objects to the agency's determination to allow performance, we do not review the adequacy of an agency's determination to override the statutory stay and proceed with performance of a contract. Warvel Prods., Inc., B-281051.5, July 7, 1999, 99-2 CPD ¶ 13 at 14-15.

OCR argues that the agency's evaluation of its fiscal solvency was unreasonable, asserting that, although its proposal was downgraded under this factor for failing to demonstrate the adequacy of its financial resources, this concern could have been addressed by making [DELETED] a "condition of the award." Protest at 7. It is an offeror's responsibility, however, to provide an adequately written proposal for the agency to evaluate. Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 9. Moreover, OCR does not rebut the agency's statement that OCR had promised under the prior contract to provide [DELETED] and failed to fulfill this promise. We find no basis to question the agency's evaluation of OCR's proposal under the fiscal solvency factor.

OCR argues, however, that Brogan's proposal should have been similarly downgraded under the fiscal solvency factor. Specifically, OCR complains that a Dunn & Bradstreet (D&B) report on Brogan's "credit worthiness" would have shown that "Brogan does not pay its bills on time," and that this should have affected the agency's evaluation of Brogan's proposal under the fiscal solvency factor. Comments at 2-3. The agency responds that the evaluation panel did not have access to or review Brogan's D&B report. Contracting Officer's Statement at 6.

It is unclear from the record what impact, if any, the D&B report should have had on the agency's evaluation of Brogan's proposal under the financial solvency factor. Although it is true that Brogan's D&B report states that Brogan's credit rating was reduced due to "slowness in meeting trade obligations," we cannot say that this report alone should have significantly affected the agency's evaluation of Brogan's proposal under this factor. Moreover, assuming, arguendo, that Brogan's proposal should have received the same evaluation score that OCR's proposal received under this factor (that is, 2 of 10 available points), this would have resulted in a reduction of only 8 points in Brogan's technical evaluation score. Given Brogan's many other assessed strengths and OCR's evaluated weaknesses, we have no basis to conclude that the evaluators' failure to consider Brogan's D&B report, even if it is assume to be improper, had any measurable impact on the agency's evaluation or source selection decision.

OCR also complains that the agency double counted Brogan's evaluated strengths by crediting them under more than one evaluation factor, in effect, inflating Brogan's overall technical evaluation score. Specifically, OCR objects that the agency's initial evaluation report mentions Brogan's marketing experience as a strength under both the technical approach/methodology and marketing factors. See Agency Report, Vol. 2, Tab 7, Initial Proposal Technical Evaluation (May 9, 2002), at 3-4. In OCR's view, Brogan's marketing experience should only have been referenced under the marketing technical factor. Although it is true that the initial proposal evaluation record references Brogan's marketing skills under the technical approach/methodology factor, the record does not demonstrate that this reference reflected double counting. Rather, it appears that this "shorthand" comment was meant to credit Brogan for its detailed description in its proposal of its approach and

methodology for increasing advertising sales. In any event, the source selection decision accurately reflects Brogan's evaluated strengths without inflation.

In sum, we find that OCR has not shown the agency's evaluation, or source selection based upon that evaluation, to be unreasonable. Accordingly, the protest is denied.

Anthony H. Gamboa  
General Counsel