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Washington, DC 20548**

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# Decision

**Matter of:** Exeter Government Services, LLC

**File:** B-400977; B-400977.2

**Date:** April 9, 2009

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Thomas A. Coulter, Esq., and R. Scott Caulkins, Esq., LeClairRyan, for the protester. Erin N. Norris, Esq., Equal Employment Opportunity Commission, for the agency. Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging the evaluation of technical proposals is denied where the record established that the agency's evaluation was reasonable and consistent with the evaluation criteria.
2. Protest that agency failed to hold meaningful discussions with the protester is denied where the record does not support the protester's contentions, and even if it did, assigning the protester's proposal all remaining available points in the disputed areas would, nonetheless, leave the proposal with a lower technical rating, and a higher price, than the awardee's proposal; since the protester thus would not be in line for award, it was not prejudiced by any flaw in the discussions.

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## DECISION

Exeter Government Services, LLC of Rockville, Maryland, protests the award of a contract to Kinsail Corporation of Arlington, Virginia, under request for proposals (RFP) No. RFP0006-08, issued by the Equal Employment Opportunity Commission (EEOC) for online training registration and payment processing services. Exeter alleges that the agency improperly evaluated its proposal, as well as the awardee's proposal, and thus made an improper source selection decision.

We deny the protest.

## BACKGROUND

The RFP was posted on the Federal Business Opportunities (FedBizOps) website on July 25, 2008. It contemplated the award of a fixed-price contract for a base year and four 1-year options. The contractor is to provide services related to registering

participants and organizations for all EEOC Training Institute-sponsored training events, efficiently tracking and processing payments, and interfacing with existing EEOC financial systems. RFP at 8. Award was to be made on a “best value” basis, considering price and two non-price evaluation factors, technical capability and past performance. RFP at 41.

With respect to the technical capability evaluation factor, the RFP identified two subfactors, technical approach/transition plan, and management and staffing approach. Under the technical approach/transition plan subfactor, offerors were to demonstrate an understanding of the requirement and an ability to develop a project management plan addressing all aspects of the proposed online registration and payment system. Under the management and staffing approach subfactor, offerors were to be evaluated on their ability to effectively manage personnel, and provide experienced and highly qualified key personnel. RFP at 42.

With respect to the past performance evaluation factor, offerors were to provide references for at least three contracts awarded within the last three (3) years for the same or similar services. RFP at 42. The RFP also stated that the agency would review all past performance information submitted. RFP at 41. The RFP explained that the two non-price evaluation factors together were significantly more important than price, but to the extent that proposals were found similar in merit, price would become the determining factor. Id.

The agency received three proposals by the September 25, 2008 closing date. Exeter, the incumbent contractor, proposed a technical solution currently in use by the agency; Kinsail proposed a different approach.<sup>1</sup>

On October 7, 2008, clarification requests were sent to each offeror. Of relevance here are the clarification requests sent to Exeter. Specifically, the EEOC asked, among other things, whether Exeter’s website allowed for an “independent web portal and customizable website which is 508 compliant?”<sup>2</sup> Agency Report (AR), Tab 9, Clarification Request Question 13. Exeter was also asked to provide the agency with access to either a Section 508 compliant website developed by Exeter, or a functional test website, for review by the EEOC’s expert on Section 508 compliance. Id. In response, Exeter directed the agency to the EEOC Training Institute website, which Exeter provided during the incumbent contract. AR, Tab 10, Exeter’s Clarification Response at 11.

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<sup>1</sup> The third proposal is not at issue in this protest; we will not discuss it further.

<sup>2</sup> Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d (2000), requires agencies to procure electronic and information technology that allows individuals with disabilities the same access as persons without disabilities, unless doing so would impose an undue burden on the agency. 29 U.S.C. § 794d(a)(1)(A).

After receipt of the offerors' responses, the technical evaluation panel (TEP) evaluated the initial proposals of Exeter and Kinsail as follows:

	<b>Maximum Available Points</b>	<b>Exeter</b>	<b>Kinsail</b>
Technical Capability			
-- Technical Approach	60	30	32
-- Management/Staffing	20	15	14
Past Performance	20	8	7
<b>Total Score</b>	<b>100</b>	<b>53</b>	<b>53</b>

AR, Tabs 12 and 13, Consensus Preliminary Evaluations.

The TEP decided that the proposal of Exeter was technically acceptable but concluded that Exeter's key personnel lacked the required experience, and that Exeter's website was not fully compliant with the solicitation's Section 508 requirements. AR, Tab 14, Preliminary Technical Evaluation. The TEP also decided that the proposal of Kinsail was technically acceptable, but concluded that Kinsail failed to identify certain key personnel, failed to identify its independent accounting firm subcontractor, and that its proposed registration system did not provide for a seamless interface between Kinsail and the agency's financial systems. Id.

The contracting officer established a competitive range consisting of all three offerors and written discussions were held. During discussions, the agency advised Exeter that its proposal failed to demonstrate an understanding of the requirements for timely reconciliation of daily data transfers, for monthly financial reviews, and for compliance with Section 508. AR, Tab 15, Discussions Letters. The agency advised Kinsail that its proposal failed to demonstrate an understanding of the solicitation's financial requirements, including monthly financial reviews, year-end audits, and daily data transfers. Id.

Final proposals were due November 3, 2008, and, after evaluation, only the proposals of Exeter and Kinsail were considered technically acceptable, as follows:

	<b>Exeter</b>	<b>Kinsail</b>
Technical Capability		
-- Technical Approach	30	60
-- Management/Staffing	15	14
Past Performance	8	10
<b>Total Score</b>	<b>53</b>	<b>84</b>
<b>Total Price</b>	<b>\$2,241,198</b>	<b>\$2,084,000</b>

AR, Tab 19, Consensus Final Evaluation.

In its review of final proposals, the TEP concluded that Kinsail clearly demonstrated that it could provide a system fully compliant with the Section 508 requirements, and that Kinsail's system would provide a secure and seamless on-line payment and registration system, which would interface with the agency's existing financial systems. As a result, the TEP recommended award to Kinsail. AR, Tab 19, Award Recommendation. The source selection authority (SSA) concurred and award was made to Kinsail on December 2. After receiving a debriefing, Exeter filed its protest with our Office.

## DISCUSSION

Exeter's initial protest argues that the EEOC failed to fairly and accurately evaluate Exeter's proposal, adhere to the RFP criteria, conduct meaningful discussions, and perform a proper technical/price tradeoff. In its supplemental protest, Exeter contends that the EEOC's evaluation of the Kinsail proposal was also improper.<sup>3</sup>

As a preliminary matter, a significant portion of this protest is based on an allegation that the evaluation team was not impartial because of an ongoing dispute about the adequacy of the current interface between the EEOC's financial systems and the Exeter system. Exeter maintains that the EEOC is attempting to blame Exeter to escape responsibility for its own role in causing the interface problems. In this regard, the protester contends that because one of the evaluators and the SSA are closely involved in addressing the current interface issues, these individuals could not make unbiased assessments, and likely influenced the other TEP members.<sup>4</sup>

The fact that certain evaluators have actual knowledge of ongoing issues with Exeter's proposed software solution does not mean that they could not objectively evaluate Exeter's proposal. Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Saturn Landscape Plus, Inc., B-297450.3, Apr. 18, 2006, 2006 CPD ¶ 70 at 3. Further, where a protester alleges bias, it not only must provide credible evidence clearly demonstrating a bias against the protester or for the awardee, but also must demonstrate that this bias translated into action that

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<sup>3</sup> Exeter also argues that its debriefing was inadequate and otherwise flawed. We will not consider this issue, inasmuch as the adequacy and conduct of a debriefing is a procedural matter that does not involve the validity of an award. Healthcare Tech. Solutions Int'l, B-299781, July 19, 2007, 2007 CPD ¶ 132 at 5.

<sup>4</sup> Specifically, Exeter points out that the evaluator involved in addressing these problems gave Exeter's proposal the lowest score of any of the evaluators under the technical capability evaluation factor. Exeter also argues that the SSA is biased because she is the acting director of the division charged with operation of the EEOC financial system and its interface with the Exeter system.

unfairly affected the protester's competitive position. ABIC Ltd., B-286460, Jan. 12, 2001, 2001 CPD ¶ 46 at 7-8.

The record shows that all three evaluators expressed concerns about Exeter's technical solution for interfacing with the EEOC's financial systems, and that each of them awarded Exeter's proposal 30 points or less for technical capability, before agreeing upon a consensus score of 30 points. The SSA reviewed the consensus evaluation results and selected Kinsail on the basis of its higher technical score and lower price. We see no credible evidence that the evaluators were biased against Exeter--only that they were concerned about Exeter's approach. As discussed in greater detail below, our review of the record shows that the source selection decision was unobjectionable.

### Exeter's Evaluation

In challenging the adequacy of its evaluation, Exeter raises two arguments related to assessments under the technical approach subfactor. First, Exeter contends that the agency erred in its conclusion that Exeter's proposal did not satisfy the solicitation's Section 508 requirements. Second, Exeter complains that its overall score under this evaluation factor was unreasonably low. In this regard, the protester contends that the evaluators identified only three weaknesses--as opposed to deficiencies--yet irrationally deducted half of the available points under this subfactor. Exeter also argues that it was unreasonably downgraded under the management and staffing subfactor, despite proposing the incumbent project manager. Lastly, Exeter argues that its rating under the past performance evaluation factor was unreasonable because the agency did not consider all of Exeter's past performance references, as the solicitation advised it would.

Our Office reviews challenges to an agency's evaluation of proposals only to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Marine Animal Prods. Int'l Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3.

With respect to whether the agency reached a reasonable conclusion about Exeter's proposed compliance with Section 508 requirements, Exeter notes that it was offering the same software that it is providing currently. In addition, Exeter complains that this software has been certified as Section 508 compliant by several government agencies, including the EEOC. In particular, Exeter points out that the EEOC has used this software for the last 5 years without any claim or notice that the software is not Section 508 compliant.

The EEOC, in its report, advises that it is not the Exeter software that was found to raise Section 508 compliance issues, but rather the website that Exeter submitted to the agency as a sample of its ability to comply with the requirements of Section 508. As explained above, the agency asked Exeter to provide a website for testing by the EEOC's Section 508 compliance expert, and Exeter suggested the agency review the EEOC Training Institute website, which Exeter provides currently. However, upon review of the website, the compliance expert found several examples of images missing alternative text tags. AR, Tab 11, Section 508 Compliance Evaluation. The compliance expert advised that while Exeter seems to have a good knowledge of compliance issues, the presence of errors related to basic requirements led her to recommend that the company provide additional detail about how it would meet the solicitation's compliance requirements, and provide detailed Voluntary Product Accessibility Templates on the proposed product. Id. at 2.

Although Exeter's final proposal indicated that it would repeat certain system testing to demonstrate its compliance with Section 508 requirements, and provided the Voluntary Product Accessibility Template requested during discussions, the evaluators continued to express concerns about Exeter's understanding of the requirements. In this regard, the agency--then and now--recognized that the Section 508 compliance issues raised by the tested website were easily correctible, yet contends that these issues should have been discovered by Exeter and corrected prior to review of the website. As a result, the evaluators questioned Exeter's ability to identify and correct Section 508 compliance issues, and deducted 5 points from Exeter's score under the technical approach evaluation subfactor.

In our view, given that the agency has reasonably identified concerns about Exeter's apparent ability to anticipate and correct issues surrounding Section 508 compliance, and given that the number of points deducted from Exeter's score for this reason were minimal, we have no basis to question the agency's evaluation in this area. In short, Exeter provided a website that did not fully comply with the compliance requirements, and, as a result, did not receive full credit for satisfying this requirement. An offeror has the responsibility to submit a complete proposal, which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5.

With respect to Exeter's arguments about the total number of points it received under the technical approach subfactor, Exeter argues that the evaluation was unreasonable because the agency only identified weaknesses--as opposed to deficiencies. In this regard, the protester contends the agency could not reasonably deduct half of the points available under this subfactor.

The record shows that with respect to the technical approach subfactor, Exeter was given the opportunity to explain its approach during discussions. In the final assessment, however, the evaluators found that Exeter failed to demonstrate that its

technical solution had the ability to interface with the current EEOC financial systems. As a result, the evaluators deducted 25 points from Exeter's score under the technical approach subfactor.

The EEOC explains that Exeter's decision to propose the same technical solution currently in use—with full knowledge of the interface problems the EEOC was experiencing with that solution—was a matter of great concern. In addition, the EEOC explains that it did not think Exeter adequately explained how it would resolve these problems. Notwithstanding the agency's designation of this concern as a weakness, rather than a deficiency, the record shows that these matters were of significant concern for all three of the evaluators and, in their view, Exeter never provided the agency with an acceptable solution.

In our view, it appears that Exeter is merely disagreeing with the agency's conclusions about both the Section 508 compliance of its solution, and its interface with the EEOC's current financial systems. We see nothing in this record that leads us to conclude that the evaluator's concerns—or the low score given the proposal under the technical approach subfactor—were unreasonable.<sup>5</sup>

Exeter next argues that the EEOC's evaluation of its proposed project manager as lacking in experience was flawed given that the individual proposed was approved by the EEOC to be the current project manager.

Under the management and staffing evaluation subfactor, the RFP stated that offerors would be evaluated on their ability to effectively manage the personnel requirements to include the offeror's ability to respond rapidly and effectively to staffing requirements, to provide and retain experienced and highly qualified key personnel, and to manage the services required. RFP at 42. Offerors were to provide resumes for the key personnel demonstrating their experience. Id.

Exeter correctly notes that it proposed to continue with the individual currently serving as project manager for Exeter's EEOC contract. That said, the evaluators reviewed the resume of Exeter's project manager and concluded that because this individual had only been in the position since March 2008, and because the majority of her experience appeared to be in meeting planning, she lacked the necessary experience for the position. Consequently, the evaluators deducted 5 points from

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<sup>5</sup> Exeter also contends that the agency relied on undisclosed evaluation factors when it assessed offerors' compliance with requirements for daily reconciliation, data security, and Section 508 compliance. The agency states that these factors are essential components of the work to be performed. We agree. We also note that these issues were specifically raised with Exeter during discussions and Exeter did not indicate in any way its belief that these issues were not legitimate concerns under the solicitation.

Exeter's score under the management and staffing subfactor. Given the concerns expressed by the evaluators about the proposed project manager's lack of experience, we cannot conclude that deducting 5 points from the total of 20 points available was unreasonable. Moreover, even if Exeter was awarded the full 20 points for this evaluation factor, its total score would remain lower than the higher-rated, lower-priced Kinsail proposal.

Finally, with respect to its past performance evaluation, Exeter argues that the agency's approach deviated from the guidance in the RFP because the agency did not contact all six of the references submitted by Exeter in its proposal.

The RFP here required offerors to provide at least three relevant past performance references. RFP at 42. Nonetheless, the solicitation stated that the government would review all of the past performance information submitted by the offerors. RFP at 41.

Exeter provided a total of six references--three references related to its own performance, including the current EEOC contract, and three references related to the performance of two of its subcontractors. The agency admits that it only contacted the three references for the contracts held by Exeter, and that only two of the three references provided a response. Exeter received an excellent rating for its performance of a contract determined not to be relevant to the effort here, and a fair rating for its current performance of the EEOC contract.

While the agency acknowledges that its failure to contact all of Exeter's references may not have been in accordance with the RFP, the agency argues that Exeter was not prejudiced here because even if Exeter was awarded all the past performance points, Exeter's point score would still be lower than Kinsail's lower-priced proposal. We agree.

We think the record here shows no possibility that not contacting all of Exeter's past performance references affected the overall outcome of this competition. In fact, even if Exeter received all of the available points for past performance--i.e., an additional 12 points--and even if Exeter received the additional 5 available points under the above-discussed management/staffing subfactor (under the technical capability evaluation factor), Exeter's overall rating would still be significantly lower than Kinsail's higher-rated, lower-priced proposal (i.e., Exeter's score would increase from 53 to 70 points, compared to 84 points for Kinsail). In this regard, our Office will not sustain a protest absent a showing of competitive prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.



## Meaningful Discussions

Exeter argues that the agency failed to engage in meaningful discussions regarding the Section 508 issue in that it merely stated that Exeter had a weakness in demonstrating its understanding of the Section 508 compliance requirements without identifying the particular issues that led the agency to this conclusion. Exeter also argues that the agency raised no concerns about its proposed key personnel during discussions.

Discussions, when conducted, must be meaningful; that is, discussions may not mislead offerors and must identify deficiencies and significant weaknesses in each offeror's proposal that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8. Agencies are not required to "spoon-feed" an offeror during discussions; agencies need only lead offerors into the areas of their proposals that require amplification. LaBarge Elecs., B-266210, Feb. 9, 1996, 96-1 CPD ¶ 58 at 6.

Here, as noted above, the agency specifically questioned Exeter with regard to Section 508 compliance. While the record shows that Exeter responded to the agency's question involving Section 508 compliance, Exeter's response did not alleviate the agency's concerns. Even if the agency had more specifically described its Section 508 concerns to Exeter, the fact remains that what was significant to the evaluators is that Exeter identified for agency review a website without detecting and correcting Section 508 compliance issues.

With respect to the agency's failure to raise the lack of experience of the project manager with Exeter during discussions, the agency states that the experience of the project manager was a concern but not one that would have jeopardized Exeter's chances for award. Here, there is no reasonable possibility that Exeter was prejudiced by the agency's failure to raise this issue during discussions. As explained above, the agency deducted 5 points from the management and staffing evaluation factor and even if Exeter had been informed of the agency's concerns it could only have improved its score by 5 points for this factor. Given the evaluators other concerns with Exeter's technical capability, there is no basis in the record to conclude that the contracting officer would have selected Exeter's proposal over the lower-priced, higher-rated Kinsail proposal.<sup>6</sup>

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<sup>6</sup> Exeter also complains that discussions were unequal because it was never given the opportunity to revise its price. However, the record shows that both offerors were given the same opportunity to revise their proposal as to both technical matters and price during discussions. AR, Tab 15, Request for Final Proposal Revision. In short, there is simply no support in the record for this contention.

## Kinsail Evaluation

Exeter challenges the evaluation of the Kinsail proposal primarily by asserting that Kinsail has not previously performed this work, and therefore, should not have received a perfect score for technical capability.

The record here shows that Kinsail proposed several options for interfacing with the agency's current financial systems. The evaluators found that Kinsail exhibited a full understanding of EEOC's requirements and completely addressed those requirements in its proposal. Based on the thoroughness of the Kinsail solution, the evaluators awarded the proposal all 60 of the available points under the technical capability evaluation factor. Among other things, the evaluators reached their conclusion after deciding that Kinsail's approach would interface seamlessly with the EEOC's current systems, without requiring modification of the EEOC's systems. The evaluators also noted that Kinsail proposed numerous alternatives for secure data transfer, and anticipated issues that might arise under different approaches. Finally, the evaluators concluded that Kinsail's approach maximized the effective and efficient use of automation and minimized human intervention. Agency Supplemental Report, Attach. A, Declaration of Program Analyst.

In response we think Exeter simply disagrees with the agency's determination as to the merit of these technical solutions. While the protester argues that Kinsail's approach could not possibly merit a perfect technical score because Kinsail has not previously performed this work, from this record, we cannot say the agency evaluation was unreasonable.

## Best Value Determination

Finally, Exeter asserts that the best value determination was flawed because of the numerous defects in the agency's evaluation of proposals.

This argument is without merit. Despite Exeter's extensive challenges, the record shows that the proposal selected for award was both higher-rated and lower-priced than Exeter's proposal, and, as a result, a price/technical tradeoff was not required. Alliance Technical Services, Inc., B-311329, B-311329.2, May 30, 2008 CPD ¶ 108 at 3.

The protest is denied.

Gary L. Kepplinger  
General Counsel