



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hellenic Technodomiki S.A.

File: B-265930

Date: January 3, 1996

D. Kallitsantsis for the protester.

Christopher M. Bellomy, Esq., Cynthia S. Guill, Esq., and Rita M. Liotta, Esq.,
Department of the Navy, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award to a higher-rated, slightly higher-priced offeror is reasonable in a best value procurement where quality, including timely performance, is more important than price and the awardee's proposal posed a low performance risk with regard to timely performance, whereas the protester's proposal posed a moderate to high performance risk.

DECISION

Hellenic Technodomiki S. A. protests an award to Contracting, Ltd. under request for proposals (RFP) No. N33191-95-R-4361, issued by the Department of the Navy, Engineering Field Activity Mediterranean, for the construction of shower and locker rooms, a weight room, and a racquetball court, and the renovation of a gymnasium at the U.S. Naval Support Activity, Souda Bay, Crete, Greece.

We deny the protest.

The Navy issued the RFP on May 9, 1995, as a reprocurement of a previously defaulted contract. The RFP contemplated the award of a fixed-price contract on a best value basis. The quality evaluation factors were slightly more important than price. The two quality evaluation factors, and their respective subfactors, were¹

¹The RFP did not state the relative weights of the quality evaluation factors. In the absence of a statement of the relative weights of the evaluation factors, they are considered to be of equal importance to each other. See Lingtec, Inc., B-208777, Aug. 30, 1983, 83-2 CPD ¶ 279.

A. Technical Excellence

- (1) Design/Construction Plan
- (2) Timely Completion

B. Management Capabilities

- (1) Prime Contractor Project Management Team
- (2) Subcontracting Plan
- (3) Corporate Past Performance & Financial Resources
- (4) Safety Plan for Prime and Subcontracted Work.

The RFP provided a detailed description of the criteria that would be evaluated under each evaluation factor and subfactor. Under the corporate past performance subfactor, the RFP instructed offerors to demonstrate that they manage their projects so they are completed on time and requested a full explanation of reasons for the late completion of any project.

The Navy sent the RFP only to Hellenic and Contracting, Ltd., who were performing contracts on-site and were believed to have the capability to successfully perform this work. Both firms submitted proposals. The Navy conducted discussions with both firms, including requests for explanations on how the offerors planned “to deal with ‘long-lead-time’ materials that may potentially delay” project completion, with an example of such material.

The Navy rated both proposals “acceptable” on all but the following criteria:²

Offeror	Timely Completion	Past Performance
Contracting, Ltd.	Acceptable	Superior
Hellenic	Marginal	Marginal

The Navy rated Contracting, Ltd. superior under past performance because it had completed two other projects for the agency at Souda Bay in a timely fashion and its work on these projects was rated as “outstanding.” Its plan to timely complete the work was "acceptable," and the Navy rated Contracting, Ltd.’s proposal “acceptable” overall.

²The RFP stated that proposals would be evaluated on an adjectival rating scale of superior, acceptable, marginal, and unacceptable.

The Navy rated Hellenic "marginal" for timely completion because its proposal did not explain how it would complete the project in a timely manner and did not demonstrate that its proposed construction plan was well thought out and realistic so as to ensure completion of the project within the time specified. The Navy also rated Hellenic's proposal "marginal" on past performance because it was behind schedule on all nine projects which it was currently performing for the agency at Souda Bay. The Navy's overall rating for Hellenic's proposal was "lower-level acceptable."

The BAFO prices for Hellenic and Contracting, Ltd. were 120,800,000 Greek drachmas (Dra.) and 124,169,178 Dra., respectively.³ The Navy determined that Hellenic's "lower-level acceptable" BAFO posed a moderate to high risk of exceeding the proposed construction time, whereas Contracting, Ltd.'s acceptable BAFO posed a low risk. The agency determined that the lower risk associated with Contracting, Ltd.'s BAFO outweighed the small price difference between the two BAFOs and therefore to represent the best value. Award was therefore made to Contracting, Ltd. and this protest followed.

Hellenic alleges that the agency's evaluation of its proposal was unreasonable and does not support the award to the higher-priced offeror. Hellenic alleges that its proposed construction schedule was detailed and should not have been downgraded, and that the late performance on other projects for the agency were not Hellenic's fault.

In a negotiated procurement, there is no requirement that award be made on the basis of lowest price/cost; a cost/technical tradeoff may be made, and the extent to which one may be sacrificed for the other is governed by the tests of rationality and consistency with the established evaluation factors. Central Texas College, 71 Comp. Gen. 164 (1992), 92-1 CPD ¶ 121. We will uphold award to offerors with higher technical ratings and higher costs, so long as the results are consistent with the evaluation criteria and the contracting agency reasonably determines that the cost premium involved is justified considering the technical superiority of the selected offeror's proposal. Id.; Hawk Servs., Inc.; A-Bear's Janitorial Serv., Inc., B-257299.4; B-257299.5, Aug. 31, 1995, 95-2 CPD ¶ 91; A & W Maintenance Servs., Inc., B-255711, Mar. 25, 1994, 94-1 CPD ¶ 214.

Here, the evaluated difference between the two proposals was that Hellenic's proposal presented a risk that it would not complete construction on schedule, a risk not found in Contracting, Ltd.'s proposal. Timely performance was important to the Navy because the default of the prior contractor had already placed this

³The Navy calculated the BAFO prices in U.S. dollars as \$989,587 for Hellenic and \$1,045,631 for Contracting, Ltd.

project behind schedule. Although Hellenic's proposal included a detailed proposed construction schedule that met the time constraints of the RFP, its proposal did not fully demonstrate that it could comply with this schedule. For example, even though the Navy, during discussions, asked Hellenic for information on the lead times of significant materials, Hellenic's response addressed only the example cited in the agency's request and did not show that its proposed schedule accounted for lead times in the acquisition of any other materials. In contrast, Contracting, Ltd. in its proposal and discussion response specifically accounted for the lead times of all significant materials.

In regard to past performance on Navy projects, the protester submitted copies of letters which it had sent to the agency alleging that the delays in performance were due to circumstances beyond Hellenic's control. However, these conclusory letters provide no proof as to whether the referenced delays either were or were not attributable to Hellenic, but only confirm that these projects were indeed behind schedule. Therefore, the record affords us no basis to find the agency's evaluation of Hellenic's past performance on these projects unreasonable.

Since Contracting, Ltd. supported its proposed construction schedule by discussing lead times of significant materials and had previously performed in a timely manner on projects for the agency, and since Hellenic had not similarly supported its proposed construction schedule and had a record of late performance on previous projects for the agency, the Navy's determination that Contracting, Ltd. had a lower performance risk associated with its proposal than did Hellenic was reasonable. Given that the quality factor was more important than price, we also consider the agency's decision to award to Contracting, Ltd. despite its slightly higher price to be consistent with the evaluation criteria.⁴

The protest is denied.

Comptroller General
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⁴While Hellenic asserts that it should not have even been solicited if the agency had such a negative view of its performance, the record shows that Hellenic was not selected because its modest price advantage was offset by Contracting, Ltd.'s technical superiority with regard to the timely completion of the project.