



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Triad Mechanical, Inc.

**File:** B-258129

**Date:** December 6, 1994

Steve Zwierzynski, Esq., Seifer, Yeats & Mills, for the protester.  
Justin P. Patterson, Esq., and James L. Weiner, Esq.,  
Department of the Interior, for the agency.  
Andrew T. Pogany, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

1. The General Accounting Office will not question a nonresponsibility determination absent a showing of bad faith by the contracting agency or the lack of any reasonable basis for the determination, since the determination is essentially a matter of business judgment.

2. In reviewing a nonresponsibility determination based on prior performance, the General Accounting Office will consider whether the determination was reasonably based on the information available to the contracting officer; further, the contracting officer's evaluation to the extent in which a bidder's prior experience is "similar" to the required solicitation work is a judgmental matter within the discretion of the contracting officer.

### DECISION

Triad Mechanical, Inc. protests the rejection of its bid under invitation for bids (IFB) No. 1425-4-SI-10-06630, issued by the Bureau of Reclamation, Department of the Interior, for a dam modification project. Triad's bid was rejected after the agency determined that the firm was nonresponsible; award was made to another firm. Triad contends that the agency's determination lacked a reasonable basis.

We deny the protest.

The requirement was for construction work at Bumping Lake Dam, Washington. The dam, an earthen embankment constructed in 1909 and 1910, is unstable. The agency states that the consequences of failure of the dam could be "catastrophic."

In addition to the probable loss of human lives, extensive property damage and environmental damage could occur. The work required by the solicitation consists of excavating the downstream portion of the dam and its foundation, and rebuilding the dam with properly engineered materials that will prevent internal erosion from continuing.

The agency's independent government estimate for the work was \$3,077,275. At bid opening on June 16, 1994, Triad was the low bidder with a bid of \$2,369,147. The contracting officer requested information from Triad about its "experience in performing similar or comparable work." The contracting officer also made his own inquiries. Specifically, the contracting officer relied upon information from the United States Army Corps of Engineers Construction Contractor Appraisal Support System (CCASS), which is a computerized listing of previous contracts held by a firm with the Corps. The contracting officer also sought the opinion and recommendation of the agency's Project Construction Engineer, Umatilla-Yakima Construction Office, who provided information concerning two projects that Triad had performed for that office; the contracting officer also attended a meeting with the Cascade Water District, which reported on a Triad contract performed with that District. Finally, the contracting officer also had available information which Triad itself submitted on July 14, consisting of a listing of five job references, with the name of the project and the amount of the contract.<sup>1</sup>

Based on this available information, the contracting officer determined that the previous contracts performed by Triad--with one exception--were "of minor dollar value and complexity." He further found that "significant deficient performance trends were evident (in these previous contracts) in timeliness of performance and effectiveness of management." He made specific findings of unsatisfactory performance by Triad in certain performance elements for various previous contracts, including a finding that Triad was unable "to perform as a general contractor on major construction projects." Based on his findings, he

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<sup>1</sup>In this same letter, Triad provided a list of "open jobs" which the contracting officer disregarded because it failed to address approximate contract amounts, completion dates, or the name and address of the owners. We have no basis to disagree with the contracting officer, who found this information of "no value."

determined Triad to be a nonresponsible bidder on August 2.<sup>2</sup> This protest followed.

Triad generally argues that it has a satisfactory record of performance and integrity, adequate financial resources, necessary organization, experience, and technical skills to perform the project. In its responses to the agency report, Triad argues that the agency relied on outdated information, and vigorously disputes the various performance deficiencies found by the contracting officer in its previous contracts. In short, Triad essentially argues that a fair review of each of the projects would show that "Triad was not at fault for the difficulties encountered," and "Triad timely completed each project."

We will not question a nonresponsibility determination absent a showing of bad faith by the contracting agency or the lack of any reasonable basis for the determination since the determination is essentially a matter of business judgment and encompasses a wide degree of discretion. Martin Widerker, Eng'r, B-219872 et al., Nov. 20, 1985, 85-2 CPD ¶ 571; S.A.F.E. Export Corp., B-208744, Apr. 22, 1983, 83-1 CPD ¶ 437, aff'd, B-208744.2, July 14, 1983, 83-2 CPD ¶ 90. In reviewing a nonresponsibility determination based on prior performance, we will consider only whether the determination was reasonably based on the information available to the contracting officer. See MCI Constructors, Inc., B-240655, Nov. 27, 1990, 90-2 CPD ¶ 431. Further, the evaluation by the contracting officer of the extent to which a bidder's prior experience is "similar" to the required solicitation work is a judgmental matter that must be left to the sound discretion and subjective judgment of the contracting officer. See McNally Pittsburg Mfg. Corp., B-191221, June 13, 1978, 78-1 CPD ¶ 432.

The question of whether Triad's alleged past deficiencies were the fault of Triad or the government, or whether Triad in fact ever performed in a deficient manner under its past contracts, is disputed by the parties. However, we do not need to resolve this issue. Here, the contracting officer reasonably investigated whether the low bidder had sufficient similar experience comparable to this project. The contracting officer, in making his nonresponsibility determination, had information available concerning the

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<sup>2</sup>Before his nonresponsibility determination, the contracting officer had referred this matter to the Small Business Administration (SBA) for a certificate of competency (COC) because Triad had certified itself as a small business. The SBA declined to rule on the matter because it found that Triad was a large business. The contracting officer then proceeded to make his nonresponsibility determination.

dollar volume of 15 previous contracts that Triad had performed, including 9 contracts from the CCASS; 2 contracts from the Project Construction Engineer; and 4 contracts from Triad itself. We think the dollar volume of these contracts rationally indicated, on a general level, the size, complexity, and magnitude of the previous projects that Triad had completed. The median value of Triad's prior contracts was \$164,577; the average was \$474,691; and the government estimate for this project was \$3 million. Given the project's critical nature and its size and complexity, we think the contracting officer could reasonably conclude that Triad's overall previous experience was not sufficiently similar in scope and magnitude to justify awarding the contract to the firm. See Martech USA, Inc., B-244714, Nov. 12, 1991, 91-2 CPD ¶ 447. We therefore have no basis to question the reasonableness of the contracting officer's decision here.

The protest is denied.

*Robert P. Murphy*

*for* Robert P. Murphy  
General Counsel

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<sup>3</sup>DACA67-91-C-0098; \$38,912; DACW57-89-C-0093; \$103,815; DACW57-89-C-0090; \$64,500; DACW57-89-C-0111; \$625,665; DACW57-90-C-0019; \$164,577; DACW58-91-C-0043; \$108,875; DACW67-88-C-0071; \$128,797; DACW67-89-C-0034; \$92,770; and DACW68-89-C-0008; \$2,525,080.

<sup>4</sup>1425-7-CC-10-03770; \$414,627; 1425-2-CC-10-06040; \$382,321.

<sup>5</sup>Sullivan Lake Dam Rehabilitation, \$688,836; Speelyai Hatchery, \$214,578; Soleduck Salmon Hatchery, \$133,130; Anerobic Digester Addition, \$1,433,884. The fifth contract reference that Triad provided to the contracting officer was a contract already listed on the CCASS.