



## Decision

**Matter of:** John Brown U.S. Services, Inc.

**File:** B-258158; B-258158.2; B-258158.3

**Date:** December 21, 1994

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Robert M. Roylance, Esq., and Cynthia S. Guill, Esq., Department of the Navy, for the agency.  
Kenneth B. Weckstein, Esq., Epstein, Becker & Green, P.C., for Burns and Roe Services Corporation, an interested party.  
M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. While past experience was not explicitly identified in the solicitation as an evaluation criterion, it nonetheless properly was considered in evaluating proposals where the solicitation stated that the agency would evaluate past performance, and specifically requested listing of contracts performed during the past 5 years, and information on their relevance to the instant solicitation; relevant past experience was logically encompassed by past performance criterion.
2. Evaluation properly emphasized corporate experience over individual personnel experience; solicitation's explicit request for information on corporate experience should have placed offerors on notice that this area of experience would receive primary consideration.
3. Agency was not required to conduct discussions with protester concerning its past experience where agency found protester's experience acceptable--it was merely less extensive than the awardee's--and, in any case, had no reason to believe protester had not provided all relevant

'The decision issued on December 21, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

past performance information, as required by solicitation, or that protester otherwise could improve its rating in this area.

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### DECISION

John Brown U.S. Services, Inc. protests the award of a contract to Burns and Roe Services Corporation,<sup>1</sup> under request for proposals (RFP) No. M62570-93-D-8992, issued by the Department of the Navy for family housing maintenance services of 1,200 units at the U.S. Naval Base, Guantanamo Bay, Cuba. John Brown primarily argues that the agency improperly evaluated technical proposals and failed to conduct meaningful discussions.

We deny the protest.

### BACKGROUND

The RFP contemplated award of a combination firm, fixed-price/indefinite quantity, award-fee contract with a 1-year base period and four 1-year option periods. Award was to be made to the responsible offeror whose offer, conforming to the solicitation, would be most advantageous to the government, price and other factors considered. Price was equal in weight to the three equally weighted technical factors, which were as follows: (1) past performance, (2) work accomplishment, and (3) financial condition and capability. The evaluation was conducted on an adjectival rating basis using the descriptive terms superior, acceptable, marginal, or unacceptable.

Five offerors submitted initial proposals. After evaluation, all five proposals were included in the competitive range. Burns and Roe's technical proposal was ranked first with an overall superior rating and John Brown's was ranked second with an acceptable rating. Two rounds of discussions were held. During the first round, both offerors received written discussion questions. During the second round, Burns and Roe was asked one pricing question and John Brown was advised that "all concerns ha(d) been satisfied," but was invited "to submit any additional information [the firm] desire[d]." Burns and Roe submitted a revised proposal; John Brown did not. After agency consideration of Burns and Roe's revised proposal, the technical ratings remained unchanged.

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<sup>1</sup>Burns and Roe holds the current interim contract for the services, which was awarded on the basis of limited competition after default by another contractor.

Best and final offers (BAFO) then were requested and received. No technical revisions were submitted with the BAFOs; consequently, the technical ratings remained unchanged. Burns and Roe's overall superior rating was based on the firm's superior ratings under the past performance and work accomplishment factors; the firm was rated acceptable under the financial condition and capability factor. In comparison, John Brown was rated acceptable under all technical factors and received an overall acceptable rating.

John Brown offered the lowest acceptable BAFO price of \$11,976,908 and Burns and Roe offered the next low BAFO price of \$12,253,229. The source selection board (SSB) determined that Burns and Roe's proposal was the most advantageous to the government and offered the best overall value, based on its technical superiority and the "insignificant increase in price of only two percent [\$276,321] above the proposal of John Brown over a five year period." The agency made award to Burns and Roe on August 3, 1993.

John Brown raises a number of challenges to the evaluation and discussions. Primarily, the protester alleges that the Navy (1) improperly evaluated proposals against the unstated factor, past experience, which the protester contends is distinguishable from the stated factor past performance; (2) improperly evaluated Burns and Roe's proposal as superior to its own proposal under past performance; (3) improperly evaluated Burns and Roe's proposal as superior to its own proposal under work accomplishment; (4) failed to evaluate John Brown's proposal as superior under the financial condition and capability factor; and (5) failed to conduct meaningful discussions with the firm.

We have reviewed all of John Brown's arguments and based on the record conclude that the evaluation and discussions are reasonable. We discuss John Brown's primary arguments below.

## EVALUATION

### Past Performance

Under past performance, the RFP requested that offerors provide "a single data sheet for each contract performed during the past 5 years having an annual value of \$500,000 or more which is similar in complexity to this project." Each data sheet was to include, among other things, a "description of the contract work and how it relates to this procurement." This information also was to be provided for any proposed subcontractors.

In the evaluation of past performance, the RFP provided that the "quality" of each offeror's past performance would be evaluated. This assessment of the quality of past performance was to be used to evaluate the credibility of the offeror's approach to accomplishing the work, and as one means of evaluating the relative capabilities of offerors, and would be "highly influential" in selecting the offeror whose proposal is considered most advantageous. Past performance was defined as including such elements as offerors' records of conforming to specifications and to standards of good workmanship; adherence to contract schedules, including the administrative aspects of performance; control of costs, including costs incurred for changed work; reputation for reasonable and cooperative behavior and commitment to customer satisfaction; and, generally, a business-like concern for the interests of the customer. In the actual evaluation, the agency looked to whether offerors had completed contracts in excess of \$500,000 per year within the last 5 years, including ongoing contracts, which were similar in complexity to this project and whether satisfactory performance on completed projects had been verified by the customers on those projects.

Burns and Roe's past performance was rated superior based on the firm's "extensive, related housing maintenance experience, stateside as well as overseas, including Guantanamo Bay." In comparison, while the agency evaluators noted that John Brown had experience working in isolated locations, the firm's past performance was rated acceptable based on the firm's "limited housing maintenance experience, the closest related experience being the management of three two-story bachelor quarter buildings in Ingleside, Texas."

John Brown argues that the agency was not permitted to consider relevant past experience in housing maintenance under the evaluation of past performance, because the RFP did not specifically disclose that housing maintenance experience was required or would be rated more favorably than other experience. The protester maintains that, contrary to the Navy's argument, relevant past experience is not a logical subfactor of the past performance factor. Rather, the protester contends, past performance pertains to the quality of performance, while past experience pertains to the types and amounts of work previously performed.

In reviewing an agency's evaluation of proposals, we consider whether it was in accord with the evaluation criteria listed in the solicitation and whether the actual evaluation was reasonable. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 207; Systems Research Labs., Inc., B-246242.2, Apr. 21, 1993, 92-1 CPD ¶ 375.

The evaluation of offerors' past experience was reasonable here. The RFP specifically requested offerors to provide information on contracts performed during the past 5 years which were similar in complexity to the project here, and were further requested to identify the relevance of this past experience (i.e., "description of the contract work and how it relates to this procurement"). The RFP also specifically put offerors on notice that the comparative merit (i.e., "relative capability") of offerors' past performance would be evaluated to assess the probability of successful accomplishment of the work (i.e., "credibility of the offeror's approach to work accomplishment"). Offerors thus were on notice that the similarity, or relevance, of the contracts reviewed under past performance would be considered in comparing offerors' past performance. This is precisely what the agency did; it gave greater evaluation credit to offerors which had performed contracts more similar to the current requirement. In doing so, contrary to John Brown's position, the agency was proceeding under the correct premise that there is a clear, logical nexus between past performance and experience. See American Dev. Corp., B-251876.4, July 12, 1993, 93-2 CPD ¶ 49. Thus, regardless of the distinction that can be made between past performance and past experience, the RFP read as a whole put offerors on sufficient notice that past experience would be considered.<sup>2</sup>

Alternatively, John Brown argues that the agency unreasonably evaluated Burns and Roe's past performance as superior to its own. According to the protester, the agency ignored Burns and Roe's negative past performance, particularly on the firm's 1987-1992 base operations and family housing maintenance services contract at Guantanamo Bay. In addition, the protester contends that the agency ignored beneficial aspects of its own corporate and individual personnel experience, particularly (1) its current base maintenance services contract at Guantanamo Bay (distinct from the housing maintenance services under the RFP here), upon which it has received high award fees, (2) its contract for maintenance of 250 bachelor units at the Naval Station in Engleside, Texas, and (3) the relevant housing maintenance experience of its project manager, who

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<sup>2</sup>The protester makes the same distinction between past performance and past experience as the Office of Federal Procurement Policy (OFPP). See 59 Fed. Reg. 18,168, Apr. 15, 1994; see also OFPP Policy Letter 92-5, 58 Fed. Reg. 3,573, Jan. 11, 1993. While these terms indeed are not synonymous, a solicitation certainly can describe the evaluation of one in a manner that reasonably puts offerors on notice that the other also will be considered in an evaluation. Such, we find, was the case here.

served as project manager for Burns and Roe's base operations and family housing maintenance services contract at Guantanamo Bay from September 1989 through September 1992, and who received outstanding performance evaluations. In this latter regard, the protester contends that the agency improperly emphasized corporate experience over individual personnel experience.

The Navy acknowledges that on the Burns and Roe contract cited by the protester, the firm's performance was "questionable in the early stages of the contract and an RFP for replacement services was prepared." However, the agency states that "with the assistance of John Brown's currently proposed project manager, [Burns and Roe] corrected all deficiencies and management problems, and attained an overall 'satisfactory' performance rating on that contract." The agency maintains that it fully considered both Burns and Roe's initial performance problems and the firm's correction of those deficiencies, in accordance with Federal Acquisition Regulation section 9.104-3(c). The Navy further states that, contrary to John Brown's argument, the technical evaluation board (TEB) did evaluate the aspects of John Brown's proposal at issue, including the firm's proposed project manager. The TEB and SSB concluded, however, that "the experience of individuals would not, in this case, outweigh extensive corporate experience in the housing maintenance field," such as Burns and Roe had. According to the agency, the TEB and SSB concluded that John Brown's personnel's experience could not overcome Burns and Roe's superior rating based on its corporate experience.

We find nothing improper in this aspect of the past performance evaluation. First, contrary to John Brown's suggestion, the fact that Burns and Roe encountered initial performance problems on its prior contract did not compel the Navy to ignore the firm's ultimate overall positive performance record on that and other contracts; the agency reasonably could conclude that the overall satisfactory performance outweighed the problems initially encountered.<sup>3</sup> (The protester does not dispute that the deficiencies on the Burns and Roe contract at issue were corrected; in fact, the protester notes that its proposed project manager was given credit for the turnaround on the contract.) Moreover, the protester does not dispute other positive evaluated aspects of the awardee's past performance record. For example, the

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<sup>3</sup>While performance evaluation forms for some periods of the Burns and Roe contract are missing from the Navy's files, we agree with the agency that the fact that the options under the contract were exercised provided a reasonable basis for assuming that overall performance ratings for all periods were at least satisfactory.

firm was evaluated to have extensive relevant experience based on its current housing maintenance contract at Guantanamo Bay. Also, the firm received high award fees, all over 90 percent on three prior contracts, "as well as outstanding ratings for some performance elements under its prior contracts.<sup>4</sup> We conclude that Burns and Roe's initial performance problems on the Guantanamo Bay contract did not preclude the agency from reasonably determining that Burns and Roe warranted a superior rating under the past performance factor.<sup>5</sup>

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<sup>4</sup>John Brown correctly notes that the performance survey form the agency received for Burns and Roe's Guantanamo Bay housing maintenance contract in connection with the evaluation here appears to mischaracterize the firm's "overall performance rating for each contract period" as "excellent," while the contemporaneous performance evaluation form contained in the evaluation record (*i.e.*, for overall contract performance on the second option period of October 1, 1993 through March 31, 1994), indicates satisfactory performance, with only some areas rated outstanding (on a rating scale of outstanding, satisfactory, and unsatisfactory). However, we do not think this was sufficient to invalidate the past performance evaluation, since this was only one aspect the agency considered. Other aspects--including the firm's extensive housing maintenance experience and high award fees for three prior contracts--provided reasonable support for Burns and Roe's superior rating. Further, we note that subsequent to the filing of the protests here, the agency submitted a performance evaluation for Burns and Roe's Guantanamo Bay housing maintenance contract for the third option period of April 1 through September 1994 where the firm's overall performance was rated outstanding.

<sup>5</sup>John Brown further argues that the Navy improperly failed to consult an agency computerized data base containing past performance evaluations. The agency states that the data base was not consulted during the evaluation here because the offerors were known to the agency and the references provided by the firms could be checked. (We also note that the evaluation record here includes copies of performance evaluations for work completed by Burns and Roe and John Brown on their respective Guantanamo Bay contracts and copies of performance evaluations on other work completed by Burns and Roe.) Nevertheless, during the course of the protests here, the Navy searched its computer data base for evaluations on Burns and Roe. The data base consists primarily of evaluations, dated May 23 and 24, 1988, for 8 elements of the firm's 1987-1992 Guantanamo Bay base

(continued...)

Further, there is no indication that the Navy ignored or underrated John Brown's experience. Rather, the agency merely determined that corporate experience was more important than individual personnel experience. This was consistent with the RFP's emphasis under past performance on the offeror's own record rather than on the performance of individual personnel, and the explicit request for information concerning corporate experience, i.e., the data sheets for contracts performed by offerors and subcontractors during the past 5 years. Accordingly, we have no basis for questioning the reasonableness of rating John Brown lower under past performance than Burns and Roe based on the protester's limited corporate experience in family housing maintenance.

#### Work Accomplishment

Under the work accomplishment factor, the RFP instructed offerors to provide (1) an organizational chart, (2) staffing details, and (3) a plan for accomplishment of the contract requirements. Under the plan for accomplishment, the RFP instructed offerors that "[t]he narrative should demonstrate the offeror's understanding of the work and identify those innovations and extras that the offeror believes make his proposal the best value for the government."

Burns and Roe's proposal was rated superior based on its proposal to provide two computers, at no cost to the government, which will be tied to the firm's automated maintenance management system. In a post-protest declaration, the TEB chairperson states that the TEB considered this aspect of Burns and Roe's proposal a major benefit because the computers would allow the government to interconnect to the contractor's automated maintenance

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<sup>5</sup>(...continued) .  
 operations and housing maintenance contract; all of these elements were rated satisfactory, except for the garbage/trash and painting elements, which were rated unsatisfactory. However, these unsatisfactory ratings on only two elements during one contract period are in contrast to the the overall satisfactory rating for contract completion for the same contract contained in the performance evaluation form, which was included in the evaluation record here. The data base also includes an evaluation for the firm's facilities services contract at the Naval Ordnance Station, Louisville, Kentucky, dated October 31, 1988, with an overall satisfactory rating. These limited evaluations in the data base provide us with no basis to question the agency's evaluation of Burns and Roe's past performance here.



management system data bases, a capability not previously available to the government. According to the TEB chairperson, this interconnection would allow for enhanced assigning, scheduling, and tracking of service calls, preventive maintenance, and indefinite quantity delivery orders, as well as provide an automatic update of the government's facility maintenance history files. While both firms proposed computerized maintenance management systems, the agency determined that the furnishing of the two computers made Burns and Roe's proposal a significantly better value than John Brown's. In comparison, John Brown's proposal was rated acceptable in this area based on its reiteration of elements from the performance work statement.

John Brown argues that the agency improperly rated Burns and Roe's proposal superior here because it is not clear that the government will obtain any extra value for the offered computers. As support for its position, the protester cites Burns and Roe's response to the following clarification question, "[p]lease be advised that the government cannot maintain equipment that is the property of the contractor; [i]n addition, please advise if [Burns and Roe] plans to provide the telephone lines necessary for communication links." Burns and Roe responded that it would maintain the computers, but went on to state that "[i]f for any reason the system or interconnection should fail, [Burns and Roe's] reporting responsibilities may be fulfilled by providing the required reports in formats as specified by the solicitation without penalty to [Burns and Roe]." In addition, Burns and Roe responded that it "plan[ned] to install a modem in the [Burns and Roe] provided computers to enable communications between the government and [Burns and Roe]" and that "[d]edicated or special communications lines are not needed for a satisfactory link. . . ." According to the protester, Burns and Roe's response indicates that the two computers "very likely could prove to be both nonworkable and illusory," and that it thus is not clear that the two computers will in fact provide any extra value to the government.

The agency's evaluation in this area was reasonable. While Burns and Roe's responses to the agency's questions set forth limitations on the extent of the firm's obligations with regard to the computers, no information available to the evaluators, and nothing in the protest record, shows that Burns and Roe's computer proposal in fact was not technically feasible or otherwise was only an illusory benefit. In our view, the agency was not required to ignore the proposal of a likely benefit merely because there was some percentage risk that the benefit ultimately might not be technically feasible, in which case Burns and Roe would

be left to prepare its reports to the agency in the manner described in the RFP.<sup>6</sup>

#### Financial Condition and Capability

The RFP required offerors to submit financial statements, Defense Contract Audit Agency audit reports, monthly cash flow analyses for the first year of performance under the contemplated contract, and financing plans and lines of credit letters. Both Burns and Roe and John Brown were rated acceptable under this factor based on the Navy's finding that they had adequate financial capability to handle the project.

John Brown argues that the Navy improperly evaluated its and Burns and Roe's proposals under this factor as equivalent, notwithstanding John Brown's superior financial condition. John Brown believes it should have been rated higher than Burns and Roe in light of such factors as its [deleted] higher revenues [deleted] and [deleted] current asset to debt ratio [deleted].

The Navy responds that the evaluators recognized that John Brown had, for example, higher revenues than Burns and Roe. However, the agency determined that both firms were acceptable under this factor because both "were in good financial condition and had more than adequate resources to perform the contract." The Navy did not rate John Brown superior because, it explains, "it is hard to envision, let alone quantify, any added benefit to the agency resulting from massive revenues; [o]nce the financial condition and capability of an offeror is deemed to be sufficient to support performance of the contract, a rating of 'acceptable' is entirely appropriate."

The evaluation under this factor was unobjectionable. While John Brown's overall financial position would, for many purposes, be deemed superior to Burns and Roe's, the Navy properly reviewed the firms' financial condition strictly in

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<sup>6</sup>Under the work accomplishment factor, John Brown further argues that the Navy improperly evaluated the firm's own proposal by failing to consider its proposed innovations. The Navy, in its report to our Office on the protest responded to the protester's allegation arguing that it was without merit. In commenting on the agency report, the protester did not address the agency's response to this issue. Accordingly, we consider this protest issue to have been abandoned by the protester and will not consider it. VR Envtl. Servs. 71 Comp. Gen. 354 (1992), 92-1 CPD ¶ 370; Communication Network Sys., Inc., B-255158.2, Feb. 8, 1994, 94-1 CPD ¶ 88.

terms of its impact on the performance of this contract. Viewing the financial information in this light, the agency reasonably concluded that while John Brown's [deleted] revenue advantage and stronger current asset to debt ratio, in a general sense, are signs of a stronger financial standing, this standing does not provide any significant benefits to the government relative to Burns and Roe's financial standing. In this regard, Burns and Roe's numbers do not reveal the existence of any financial problems that would lead to the conclusion that the firm could have difficulty performing a contract of this size (as indicated above, the contract is priced at \$11 ~~to~~ \$12 million for a 5-year period), and John Brown does not dispute that Burns and Roe's financial resources are adequate for this contract. We therefore think the Navy reasonably could view the two firms' financial condition as indicating that either could perform without financial difficulties, and that the two therefore were equivalent for purposes of predicting the likelihood of successful performance, the focus of the evaluation.<sup>7</sup>

#### DISCUSSIONS

John Brown argues that the Navy improperly failed to discuss the firm's alleged lack of past experience in providing housing maintenance services. As a result, the protester contends, it was denied the opportunity to provide the Navy with additional information regarding its past experience, to obtain a subcontractor or other personnel with the desired experience, or to withdraw from the procurement.

Where a proposal is considered to be acceptable and in the competitive range, the agency is not obligated to discuss every aspect of the proposal that receives less than the maximum possible rating. Specialized Technical Servs., Inc., B-247489.2, June 11, 1992, 92-1 CPD ¶ 510.

John Brown's proposal was rated acceptable overall and in the area of experience; the agency simply found, as a relative matter, that John Brown's experience was not as good as Burns and Roe's. The TEB consensus report considered as strong points that John Brown's past performance surveys were "very good," and that the firm held the current base maintenance services contract at Guantanamo Bay, served as the subcontractor on a contract which included management of three two-story bachelor quarters

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<sup>7</sup>John Brown correctly points out that it is not apparent how a proposal could be assigned a superior rating under this factor. However, this is irrelevant for purposes of the protest, since John Brown would gain no evaluation advantage over Burns and Roe under this factor in any case.

buildings, and had overseas logistical experience in remote locations. These strong points notwithstanding, however, the TEB BAFO evaluation report states that John Brown's proposal ultimately was ranked below Burns and Roe's because "John Brown did not demonstrate any expertise in the family housing arena, their expertise as it relates to this procurement is in the area of bachelor quarters maintenance."<sup>8</sup> The same report further states that the awardee's proposal was rated superior overall based on the firm's "extensive, related housing maintenance experience which includes housing maintenance services at Guantanamo, Cuba." As John Brown's proposal was rated weak in experience only relative to Burns and Roe's, the Navy was not required to raise this matter during discussions. Specialized Technical Servs., Inc., supra.

In any case, prior experience of an offeror is an aspect of a proposal that is generally not subject to improvement (although sometimes experience may be appropriately supplemented through additional personnel, subcontracting, or detail about experience described in a proposal). Consequently, agencies are not always obligated to discuss weaknesses identified in past experience. See AWD Technologies, Inc., B-250081.2 et al., Feb. 1, 1993, 93-1 CPD ¶ 83. We believe that was the case here. While John Brown asserts generally that, had experience been discussed, it could have provided the Navy with additional favorable information in that area, or obtained a subcontractor with the desired experience, it has provided neither information showing housing maintenance experience besides the bachelor quarters experience,<sup>9</sup> nor the names of specific potential subcontractors (or evidence that adding a subcontractor would not eliminate its relatively small price advantage). Finally, given the RFP requirement for information on offerors' and their proposed subcontractors' relevant past performance, the agency had no reason to

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<sup>8</sup>We note--in response to an argument by John Brown that the Navy failed to consider that its bachelor quarters experience was in fact "maintenance" experience--that this reference to "maintenance" shows that the agency in fact considered John Brown's bachelor quarters maintenance experience.

<sup>9</sup>While the protester contends that its bachelor quarters maintenance contract involved complex maintenance services, we have no basis to question the Navy's conclusion that Burns and Roe's experience with a large number of family housing units (1,200) was more directly related to the work requested here than John Brown's experience on a limited number of the bachelor quarters units.

believe that the protester had not presented its most relevant past experience in its proposal.

The protest is denied.

Robert P. Murphy  
General Counsel