

The Incumbent Contractor

Written by Nick Sanders
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Debates swirl regarding whether the incumbent contractor is in the best position in a recompetes situation. Certainly, the incumbent knows the current situation better than any other competitor, and it knows exactly what it will take to perform on the new contract. The incumbent has built relationships with the government program office, and with the Contracting Officer's Representative (COR). The incumbent has recent experience and, if the CPARS are good, that experience is going to look good to evaluators. So, yes. The incumbent contractor has a lot of advantages—assuming it's done a good job on the current contract.

On the other hand, the incumbent contractor is locked-in to what it knows to be true. It has a workforce and it is pretty much locked-in to paying the wages it currently pays, and offering the benefits it currently offers. Competing contractors have freedom to propose lower wages and to offer lower benefits (if they can convince source selection folks that doing so won't pose too much risk). Competing contractors have freedom to offer innovative—perhaps lower-cost—solutions, and that often works to their advantage.

We saw this effect most clearly when Stewart & Stevenson (which was then a subsidiary of BAE Systems located in Sealy, Texas) lost the \$3 billion recompetes for the Army's FMTV trucks to Oshkosh in 2009. The BAE Systems subsidiary had participated in the original designs, and had been making those trucks for nearly a decade when the recompetes happened. The workforce was well-trained. The supply chain was mature. Presumably, they were the world's experts in those trucks. Yet they lost and the plant was shuttered, resulting in hundreds (if not thousands) of lay-offs.

Of course, the selection of Oshkosh was protested. We reviewed the protest in [this article](#). (Sorry for the format problems. It was early days.) Of note was the “unrealistic” Oshkosh pricing—at least in the words of BAE Systems officials at the time. In fact, they called it “unbelievable.” And perhaps it was; there is no prohibition on offering prices that create a loss (see FAR 3.501). One

[source](#)

asserted that Oshkosh's pricing was 30% below BAE Systems' pricing, and relied on “financial aid from state and local governments” in order to make a profit. In addition, while BAE Systems had the necessary tooling to build the trucks, that tooling was actually owned by the Army and could be provided to Oshkosh. Consequently, the tooling issue was not as much of an impediment as it might seem at first.

Oshkosh's low-ball pricing overcame perceived risks and the protests were not sustained. In

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fact, Oshkosh is still making FMTV trucks nearly a decade later.

Thus, sometimes the incumbent is at a disadvantage. It knows too much. Innovative approaches are discarded in favor of “the way it’s always been done.” Supplier prices are firm; workforce costs are firm. None of which apply to the competing contractors, who have a blank slate to propose anything—and any pricing—that they think will be attractive to evaluators.

And sometimes DCAA knows too much about the incumbent contractor.

The Defense Threat Reduction Agency (DTRA) issued an RFP to award a cost-type contract for support to the agency’s “Balanced Survivability Assessment” (BSA) teams. The RFP told bidders the evaluators would conduct a “best-value tradeoff” to select the winning bidder. Six proposals were received and CENTRA Technology was declared to be the winner. ENSCO, Inc., the incumbent contractor, protested, claiming that the agency “conducted an unreasonable cost realism evaluation.”

The GAO [opinion](#) reported –

Cost was not to be rated or scored, but each offeror’s cost proposal was to be evaluated for realism, reasonableness, and completeness. Realism was to assess whether proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror’s technical approach. Reasonableness was to be evaluated using one or more of the cost/price analysis techniques defined in Federal Acquisition Regulation (FAR) section 15.404. According to the RFP, “[i]n evaluating reasonableness, the Government will determine if the Offeror’s proposed costs and fee, in nature and amount, do not exceed those which would be incurred by a prudent company in the conduct of competitive business.’ The solicitation notified offerors that the agency will determine the most probable cost (MPC) by adjusting the offeror’s proposed cost and fee, when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis. The MPC was to be used to determine best value to the government, and was to represent the agency’s ‘best estimate of the cost of any contract that is most likely to result from the Offeror’s proposal.’

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(Internal footnotes omitted.)

Readers will note that, when a cost-type contract is to be awarded, the proposed costs are not dispositive because actual allowable costs will be incurred and invoiced. Thus, the FAR requires a cost realism analysis and, if necessary, adjustment of proposed costs to reflect expected costs.

CENTRA's adjusted costs were found to be \$61.85 million, less than \$100,000 higher than its proposed costs. ENSCO's adjusted costs were found to \$79.9 million, about \$850,000 higher than its proposed costs. ENSO argued that the cost realism analysis was flawed. You'd think that any flaws wouldn't add up to \$18 million, but the GAO didn't see it that way. The protest was sustained because the agency evaluators only adjusted costs (specifically labor costs) for which the DCAA provided audit findings. If DCAA didn't provide any findings with respect to labor (or other costs), then they were not adjusted. In GAO's view, that was not much of a cost realism analysis.

Further, which contractor do you think DCAA had the most information on? On which contractor's audit report did DCAA have the most findings? If you said "the incumbent contractor" then you should step up and accept your prize.

The GAO decision stated—

The error, in our view, is the agency's exclusive use of DCAA-verified rates, without any meaningful analysis of the direct labor rates that were not verified by DCAA. Since ENSCO was the incumbent contractor, many of its rates were adjusted to conform to the rates paid under its incumbent contract, which negated the firm's proposed cost reduction. In contrast, only two of CENTRA's proposed rates were adjusted, while the remainder of the firm's proposed direct labor rates were apparently not scrutinized. The record does not reflect any analysis of non-DCAA verified rates, even though the agency had available to it rates proposed by other offerors, including the incumbent, for comparison. The agency also had available an IGCE, which provided the government's own estimates of the cost for each position required under the solicitation. In this regard, a review of the IGCE shows that the government's own estimates of direct labor costs were generally much higher than those proposed by CENTRA, yet the agency conducted no comparison, and made no MPC adjustments, even though the agency will bear the cost of these employees during performance of this cost reimbursement contract. Consequently, we cannot conclude that the agency's exclusive use of DCAA-verified rates,

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without further explanation--and generally only for ENSCO--was reasonable. We also agree with ENSCO that the impact of the agency's evaluation methodology resulted in disparate treatment of these offerors. Therefore, we sustain the protest on this basis.

(Internal footnotes omitted.)

In addition, GAO took issue with the evaluation of CENTRA's labor rates. Apparently, CENTRA had bid labor rates 30 percent below ENSCO's incumbent workforce rates—even though CENTRA's proposal assumed that several of its key personnel would be recruited from ENSCO. "... the record shows that in evaluating CENTRA's proposal, the agency attributed greater confidence to CENTRA's proposal for its approach to attempt to recruit additional incumbent employees [DELETED] without analyzing the impact of CENTRA's significantly lower direct rates on its ability to recruit incumbent personnel. ... Without such an analysis, we cannot conclude that the agency's finding was reasonable."

In summary, the agency evaluators relied on DCAA audit findings rather than making a thorough cost realism analysis, as the RFP had promised. Because DCAA was more familiar with ENSCO, the incumbent contractor, it received more audit findings than did CENTRA. Those audit findings resulted in more adjustments to its proposed labor rates. Further, because the evaluators relied on DCAA audit findings, they missed a significant risk in CENTRA's proposal. Its proposal relied on recruiting incumbent personnel at rates significantly lower than they were currently being paid.

Thus our conclusion: sometimes the incumbent is in the best position; other times not so much.