Lessons from lost rebids

Lessons for incumbents from GAO decisions on 13 rebid protests
Lessons for incumbents from lost rebids

It’s not often we get the chance to see the details of another company’s lost rebid, what they think about the loss and an analysis of how the customer made the decision. In fact in many cases we don’t always get to see these lessons from our own business!

But in the USA there is an established process where losing bidders can protest against a lost bid (or rebid) decision, and one which results in publicly published summaries of the circumstances of the procurement, the reason for protest – and the analysis of why that protest is upheld or denied.

The United States Government Accountability Office (GAO) is one of the bodies responsible for (amongst other things) reviewing and making decisions on bid protests filed regarding procurements made by federal government agencies. Protests are usually filed by losing bidders and the GAO publishes summaries of the protests and their decisions. They often make interesting reading. Not just because they provide useful illustrations of how Federal Acquisition Regulations (FAR) work, but because they can illustrate the mistakes real bidders make (most bid protests are denied) when putting in their bids.

Many of the mistakes are not specific to FAR but are general mistakes from which bidders anywhere can learn. Some of the protesting bidders are incumbents and we have used some cases to illustrate ideas within the Rebid Guide and in the Rebid Centre. In this paper we bring these examples, plus some others, together to show real life examples of mistakes incumbents can make in their rebids (or recompetes as they are more often known in the USA). The examples we have picked out are those where we see similar mistakes made by bidders outside the US as well: so if you are an incumbent anywhere, these real life examples are still relevant to you.

It’s also interesting to note that many of the companies protesting are very experienced and capable bidding organisations. For us that illustrates something we often see: knowing the principles and processes in theory isn’t always the same as putting them into practice under the pressure of a real rebid.

We won’t cover all the detail of the protest and decision criteria and have only picked out those elements relevant to the specific lessons we see in the examples. If you want to follow up and read the full decisions go to www.gao.gov and search for the decision using the Reference we give for each example.
What we’re delivering now is fine

One of the problems some incumbents have in their rebids is they rely too much on their present performance on the contract. They don’t innovate enough in their rebids perhaps assuming that, as they have performed well on the existing contract and the customer is happy, they don’t need to. These cases illustrate the potential dangers of not being seen to be innovative enough in your rebid;

GAO decision dated: June 7th 2012.

Reference: B-406460

Protester: Science Applications International Corporation (SAIC)

SAIC, the incumbent protested against the award of a contract to Lockheed Martin. It protested on two areas. The first was cost realism (which we will come back to later in this paper). The second was a protest that the agency assigned it an ‘acceptable’ technical rating versus an ‘outstanding’ rating for Lockheed.

In their discussion the GAO state that

“According to SAIC, the sole reason that its proposal was not rated higher is because it lacked detail regarding its technical approach. According to SAIC, this is inconsistent with the evaluation of its proposal which found that SAIC’s approach, while lacking detail in some areas, nevertheless showed a thorough understanding of the requirements and represented a low risk of unsuccessful performance.”

However;

“...the agency explains that the evaluators’ primary concern was that while SAIC demonstrated a thorough understanding of the requirements, it did not provide a detailed approach to accomplishing all of them. Further, according to the agency, SAIC did not describe in its proposal any new innovations, but instead indicated that it would continue to utilize the same approach that it was currently utilizing as the incumbent. In these circumstances, the evaluators did not believe that SAIC’s description of its intended approach warranted a rating higher than acceptable.”

Based on this, as well as other reasons, the GAO denied the protest.

GAO decision dated: October 10th 2012

Reference: B-406987

Protestor: Integrated Science Solutions Inc (ISSi)

ISSi, the incumbent, protested against the award of a contract to Earth Resources Technology (ERT). The protest was partially based on the scoring of a case study included in the RFP, where ISSi felt they should have been scored higher.

In their published decision GAO state:
“ISSi complains that NASA misevaluated its proposal under the technical approach subfactor, because NASA did not identify ISSi’s response to case study A as a strength. ISSi contends that the technical requirements in the statement of work were nearly identical to the technical requirements of the contract ISSi has been performing, so that its proposal of its incumbent approach demonstrated its proven ability to comply with the applicable regulations and demonstrated a clear understanding of the technical requirements.”

However:

“The agency responds that it reasonably evaluated the two firms’ responses to case study A. With respect to ERT’s response, the SEB found that ERT had proposed cost-effective and innovative approaches to the renovation of a laboratory facility, which would help ensure regulatory compliance and employee safety......In contrast, the agency notes that, although ISSi’s response to the case study was appropriate, reasonable, and effective for all of the required elements, it did not propose anything unique or innovative that warranted a finding of a strength.... Further, the agency states that its evaluation was based on its review of the offerors’ proposals, and not upon an offeror’s performance as the incumbent contractor.”

The GAO denied the protest.

Discussion and lessons

The ideal rebid has a clear combination of intelligently using your incumbency by ensuring the customer has a clear understanding of the achievements you have delivered for them on your existing contract; and bringing innovation to bear in your new solution. Whether or not the customer is asking for something different to the existing contract specification, they are rarely looking for exactly the same solution they are already receiving. And competitors will bring new ideas, ways of working and innovations. At the same time most customers recognise some element of risk in bringing in a new contractor vs retaining the incumbent.

However too many incumbents can get this mix wrong. Even if the customer has been extremely happy with the service delivered to date, any perceived risk of bringing in a new contractor can be overcome if the existing contractor is not offering the best possible solution for the next contract (even if the existing solution was the best way to deliver the previous contract). Especially as the customer has competitors offering new and innovative alternatives whilst convincing the customer (as they will of course aim to do) they are a low risk alternative.

Incumbents must always challenge the status quo (i.e. their existing solution) when preparing for their rebid. It’s usually too late for the bid team to find new solutions and innovations when the RFP / ITT has been released and they are writing the bid. Time can be far too short- especially when the bid programme set by the customer is tight.

Instead this challenge to all aspects of the existing solution, understanding the customer’s future needs, the search for new solutions which best meet these needs (and whenever possible testing them with the customer,) needs to be done as part of the pre rebid preparation – with both the contract team and rebid team involved. That’s one of the reasons why we recommend incumbents
start their rebid preparations in earnest at least six months before the customer starts their official rebid process and goes to the market.

Starting your rebid preparation early gives you time to review:

- What has gone well, and not so well on the contract;
- What has changed for the customer in their wider environment, the pressures on them and their own strategies;
- What you have learned about the contract and what could be improved in your performance;
- What the customer is likely to ask for in the rebid to meet their needs in the next contract;
- What potential changes you could make to your own solution to meet changes in industry best practice, new technology, competitor offerings and of course the new or changed needs the customer will be looking for;
- The new you have created (and potentially tested) which meets all these needs.

This will involve challenging your existing solution. Every aspect should be challenged; from assumptions about costs; assumptions about the potential performance levels achievable; assumptions about the operational model and how it works.

We usually recommend using someone, or a team, from outside the contract to take the customer needs you have identified from your review and build a solution from scratch, ignoring the existing contract and its assumptions and looking at the latest market opportunities and innovations. This might not be the solution you put into your rebid, but it creates a challenge to those assumptions and how the contract is presently run which will help generate new thinking and avoid a ‘business as usual’ solution which has not been fully reviewed and tested to include innovation and new thinking.

Innovation rarely just ‘appears’ during the bid writing phase. It needs to be worked on: with ideas and challenge to test what will work best bought together as an explicit effort over time during the rebid preparation stage if you are to truly offer the customer more than a rerun of what they already have.

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The customer already knows that, we don’t need to tell them again

Assuming the customer already knows what you do is a common mistake made by incumbents at rebid. It can take two general forms.

Firstly: not including performance and achievements from the existing contract to evidence capability to deliver the new contract and show why your solution is the best for the customer (with the caveat of not using this instead of innovation – see above).

Secondly, and potentially more damaging when customer evaluation processes are strict: not including all the required evidence or answers to the questions asked in the procurement documents on the assumption that the customer will fill in the gaps because they already know, or have the information. These examples show the potential results:

GAO decision dated: June 22nd 2007
Reference: B-299737
Protestor: HealthStar VA, PLLC

HealthStar protested to the GAO about losing their contract for providing primary medical care to assigned veterans. The contract was won by Valor Health Care.

Following award of the contract to Valor, HealthStar were given a debrief by the customer, during which;

“HealthStar was informed of two significant weaknesses found in its proposal: a failure to adequately address the services to be provided for patient-focused care and a failure to provide proof of licensing of nursing staff and competency of support staff. This protest followed on April 26.”

GAO state:

“Our review of HealthStar’s proposal indicates that the assignment of these two weaknesses was well-founded. Nevertheless, HealthStar, the incumbent contractor, complains that it was not evaluated in a reasonable manner because the agency should have considered its knowledge of its incumbent contract performance in evaluating these areas.”

“In its protest filings addressing the patient-focused care weakness, HealthStar details in its protest a plethora of patient-focused services, which were admittedly not identified in its proposal due to page constraints. With regard to the other significant weakness, HealthStar asserts that its proposal stated that all professional staff were licensed, in good standing, credentialed in the Veterans Administration system, and that copies, while not included in its proposal, were available on file in the Central Arkansas Veterans Healthcare System or would be provided upon request; again, HealthStar asserts that the agency was aware of these licenses because of its incumbent status, which were not submitted due to the page limitations.”

However, GAO is clear on its view:
“An offeror’s technical evaluation is dependent upon the information furnished; there is no legal basis for favoring a firm with presumptions on the basis of its incumbent status. It is the offeror’s burden to submit an adequately written proposal; an offeror, including an incumbent contractor, must furnish, within its proposal, all information that was requested or necessary to demonstrate its capabilities in response to the solicitation.”

HealthStar’s protest was denied.

**GAO decision dated:** May 22nd 2012

**Reference:** B-406423

**Protestor:** ASPEC Engineering

This was an LPTA (Lowest Price Technically Acceptable) procurement not lost on price. The new contract being procured combined two existing contracts for operation and maintenance services in the Azores: one for waste water treatment where ASPEC were the incumbent, the other for water treatment where the eventual winners of the combined contract, SETH were the incumbent.

As is the approach with LPTA contracts, technical and experience parts of the evaluation only require an ‘acceptable’ mark to pass, beyond which the lowest price bidder with acceptable evaluation marks for other aspects wins.

ASPEC received an ‘unacceptable’ evaluation for two parts of their technical submission.

ASPEC protested these ‘unacceptable’ scores. However the GAO in its published decision shows how the company did not in fact give the detail required in the questions. For example:

“The record shows that ASPEC provided an organization chart in its proposal identifying the individuals the firm proposed to use during performance, along with their job titles, and the resumes of the individuals’ past work responsibilities and experience. However, the record also reflects that ASPEC did not address how the individuals proposed would be used to perform the agency’s requirements under the contemplated contract. Thus, we find reasonable the agency’s determination that ASPEC’s proposal failed to adequately demonstrate how its proposed organization would be used to complete the work successfully.”

Tellingly the GAO also state:

“ASPEC generally responds to its unacceptable evaluation by suggesting that the agency should have known it had the necessary capability to perform the contract based on its incumbent performance of the waste water treatment plant contract. ASPEC’s view that the agency was required to recognize ASPEC’s incumbency as providing an adequate substitute for including required information in its proposal is unpersuasive; an offeror must submit an initial proposal that is adequately written and affirmatively states its merits, or run the risk of having its proposal rejected as technically acceptable where the proposal omits or provides inadequate information addressing fundamental factors.”

The protest was denied

**GAO decision dated:** May 21st 2012

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Reference: B-405673.3

Protestor: Wegco Inc

Another LPTA bid not lost on price. Wegco protested the loss of a contract let by the General Services Administration (GSA) due to their proposal being found technically unacceptable. Wegco were a subcontractor to the existing incumbent.

In their discussion GAO state:

“Wegco objects to GSA’s determination that the firm’s proposal was technically unacceptable because it did not include licenses of the firm’s key personnel. Wegco argues that the RFP did not require the submission of licenses and that the agency’s interpretation of the RFP is unreasonable.... Wegco also contends that the firm did not need to submit the licenses because GSA already had copies of the licenses due to Wegco’s work with the incumbent contractor.”

Within their review GAO say:

“GSA’s evaluation was clearly consistent with the express provisions of the RFP. Specifically, the RFP required offerors to “provide proof of licensing and/or certification of all key personnel.” ... Wegco did not. Rather, Wegco provided resumes for its key personnel which included statements regarding what licenses and certifications, if any, each individual held. The agency reasonably concluded that such representations did not comply with the RFP requirement to “provide proof.””

Also:

“Finally, Wegco argues that, even if the RFP required that proposals include copies of licenses for key personnel, Wegco was not required to comply with this requirement because Wegco “was offering to provide the same personnel presently performing [under the incumbent contract]” and, accordingly, the licenses of the proposed personnel “are in the possession of the Agency.” In this context, Wegco maintains that the agency was required to consider this “close at hand” information in evaluating Wegco’s compliance with the solicitation’s requirements.... We disagree.”

And:

“...the information that Wegco argues is too close at hand for GSA to ignore, i.e., the licenses of key personnel, relates to an RFP requirement for technical acceptability under the key personnel factor. As noted above, an offeror’s technical evaluation is dependent on the information furnished, and an offeror that fails to submit an adequately written proposal runs the risk of having its proposal rejected as unacceptable.”

Protest denied.

**Discussion and lessons**

As with the other examples throughout this paper, we won’t comment directly on the thinking or background to the protestors problems as we only have the evidence of the GAO decisions to go on. However we do see a lot of incumbents who either explicitly or implicitly assume in writing their
rebids that the customer knows what they do and will ‘fill in the gaps’ for them if they don’t include all the detail they need to in their rebid answers.

As we said at the start of this section this can take two general forms:

- Not fully completing all the answers, explaining in detail their solution or not including all the required documentation in the rebid submission
- Or not clearly showing the customer what the incumbent has achieved on their existing contract to support the validity of their new solution and why the customer should choose them for the next contract.

Taking the first of these points. Bidders should always answer the questions set and include all information in the submission that the customer has asked for. Procurers often say they want incumbents to approach the rebid as if it was a new bid. This is part of that approach. You wouldn’t assume a new customer already knew anything about you. In terms of answering the questions set in a procurement as the incumbent you should take this same approach. If you don’t you risk being marked down in the evaluation, or even being disqualified from the procurement as being non compliant.

The second point is less about compliance and sometimes has a less obvious impact. You are unlikely to be non compliant for not including evidence from your existing contract to support your new solution (although we have seen occasional situations where this has happened). The impact on your chances of winning your rebid however can be just as severe. On occasion we see rebid submissions (at RFI/PQQ stage and at RFP/ITT stage) where you wouldn’t know from reading the document that the company was actually the incumbent. Whilst we recommend approaching the rebid as if it was a new bid, totally ignoring your delivery of the existing contract is not what we mean.

As the incumbent you have a huge potential advantage in your rebid from the experience you have of delivering the existing contract. For instance;

- You should know the customer and the details of how the existing contract works better than any of your competitors;
- You should have a huge amount of evidence of how well you have delivered the contract to date to use in your rebid to convince your customer you are the company that will continue this good performance into the future.

But as with the previous point we have made, you can’t expect the customer to fill in the gaps for you: you need to show them in your submission you understand them and you have delivered. And you need to use this information intelligently to persuade them that your new solution, based on your experience, is better fitted to their needs, and that your proven delivery in the past will continue into the future.

The customer won’t (in many cases because of a strict evaluation process and marking scheme they can’t) give you marks in the evaluation for your performance if you don’t tell them – even if they know how well you have performed. And many of the people marking your rebid documents may not actually know in detail how well you have performed because they have not been involved day to day in the operations of the contract.
But this isn’t an issue of bid writing alone. In order to capture and analyse the information from your contract you need to start early in your rebid preparation process. In many cases only the contract team will know the details of how you have performed on the contract; the initiatives you have put in place to deliver improved services; the issues you have overcome; and the details of how the contract and customer requirements work in practice. On longer contracts even the contract team may have forgotten some of the details from earlier in the contract period.

At the start of your rebid preparation effort we recommend running a workshop to ‘kick start’ the preparation process. This workshop should bring together the rebid team and the contract team to go through the history of the contract, drawing out what has happened, how you have performed and improved, and where the evidence for this is. You then have time to gather this data, turn it into relevant information and evidence for the rebid and turn it into future oriented arguments. The key point to remember is you are not aiming to use this evidence to persuade the customer of how well you have performed on the contract to date, but how well you will perform on the next contract.
The customer will choose our superior solution, even though it’s expensive

This is one of the most common reasons why incumbents are told they have lost a rebid – their solution was great – but the price was too high compared to the competition. And even though the heading to this section might not be what the team are explicitly saying, it can often be an underlying assumption that feeds the solution – and the price of the rebid. The several examples below illustrate how even after losing, some incumbents still think the customer should have seen it their way.

GAO decision dated: January 22nd 2013
Reference: B-407603
Protestor: Exelis Systems Corporation

Exelis protested the loss of a contract to L-3 for logistics support services to the Department of the Army’s Fort Bragg Directorate of Logistics. Exelis protested a number of areas including that the agency misedvaluated proposals and made an unreasonable source selection decision.

Amongst the discussion of the protest GAO states:

“The protester contends that, with regard to the RFP’s requirements, it has superior technical experience in comparison to L-3 because it is the incumbent contractor for these requirements.”

The GAO state this was taken into account:

“We note that the Army’s evaluation recognized that Exelis is the incumbent contractor for these requirements... The record shows that the agency took Exelis’s experience into account, inasmuch as it assigned Exelis’s proposal an outstanding mission capability rating as compared to a good rating assigned to the L-3 proposal.”

Exelis further challenged:

“Exelis also challenges the agency’s evaluation of L-3’s proposal under the management approach and staffing approach elements of the mission capability factor. According to the protester, L-3 proposed inadequate staffing in three areas...”

However:

“As with its challenge to the agency’s technical evaluation, Exelis’s sole basis for objecting to the agency’s cost evaluation is its assertion that, because L-3’s proposed staffing is not the same as Exelis’s, it must necessarily be inadequate to perform the requirement.”

“We find no merit to this aspect of Exelis’s protest. The sole underlying basis for Exelis’s contention is that L-3’s staffing in these three areas was lower than that proposed by Exelis in the same areas; this contention, however, does not show that L-3’s proposed staffing in the areas identified by Exelis is inadequate.”
“The pertinent inquiry is not whether an offeror’s proposed costs resemble another offeror’s proposed costs, but, rather, whether its proposed costs are adequate in light of its unique technical approach.”

Exelis also challenged the source selection decision:

“Exelis challenges the Army’s source selection decision. According to the protester, the agency improperly failed to consider the magnitude of its technical superiority compared to what it describes as the modest cost premium associated with its proposal. The protester also maintains that the agency did not give it adequate credit for the significant strengths and strengths found in its proposal. In essence, the protester maintains that the agency could not reasonably have selected L-3’s lower-rated, lower-cost proposal over Exelis’s higher-rated, higher-cost proposal.”

But the GAO found no issue with the decision:

“We have considered all of Exelis’s assertions relating to the agency’s source selection decision and find no merit to this aspect of its protest. In a best value acquisition, agencies must perform a cost or price/technical tradeoff to determine whether one proposal’s technical superiority is worth its higher cost or price. Even where cost is significantly less important than the non-cost considerations, an agency properly may select a lower-cost, lower-rated proposal if it reasonably concludes that the cost premium involved in selecting a higher-rated, higher-cost proposal is not justified.”

“The SSA ultimately concluded that the Exelis proposal was superior to the proposal submitted by L-3... Nonetheless, he also concluded that the cost premium associated with the Exelis proposal was not worth the added technical superiority offered”

The protest was denied.

GAO decision dated: April 10th 2013

Reference: B-407919

Protestor: Halfaker and Associates LLC

Halfaker protested their loss of a contract to provide services to the Navy at various Navy Regional Operation Centers. The bid was evaluated under best value criteria. When the bid was awarded to Native Hawaiian Veterans LLC (NHV) Halfaker put in a protest on several counts.

The elements relevant to us in this example were the scores awarded to Halfaker and NHV vs their respective prices. The best value evaluation was to be based on “two non – price factors – performance approach and past performance – and price. The performance approach and post performance factors were of equal importance, and the non price factors in combination were more important than price”

Halfaker were evaluated as “outstanding under the performance approach factor, substantial confidence under the past performance factor and outstanding overall – the highest evaluation ratings available”
NHV were rated overall as ‘good’, based on ratings for ‘good ‘for the performance approach factor and (after a review by the contracting officer) ‘satisfactory confidence’ for past performance.

However NHV’s price was 11% less than that of Halfaker.

Having satisfied itself that Halfaker’s other protests were not merited, the GAO go on to address Halfaker’s assertion that “the Navy’s best value decision was improper. Halfaker contends that the Navy failed to conduct a comparative analysis of the proposals, and that the selection of NHV’s lower-rated, lower-price quotation was not consistent with the solicitation’s evaluation scheme providing that the non-price factors were more important than price.”

However the GAO state:

“Even where, as here, technical merit is significantly more important than cost, an agency may properly select a lower-cost, lower-rated proposal if it reasonably decides that the cost premium involved in selecting a higher-rated, higher-cost proposal is not justified.”

And that the contracting officer:

“..reviewed the evaluation criteria that considered the non-price quote more important than the price quote and recognised Halfaker’s highest possible technical ratings. Ultimately, however, the contracting officer decided that the price difference between the two firms was too significant to be overcome by the technical advantages associated with award to Halfaker”

The protest was denied.

**GAO decision dated:** September 10th 2013

**Reference:** B-408420

**Protestor:** SoBran Inc

This Best Value procurement was for warehouse support services for the Social Security Administration. The incumbent, SoBran lost out to a lower priced competitor despite having a superior score on the non price element of the evaluation, Past Performance, which the Agency had said was the only other evaluation criteria, being approximately equal in importance to price.

Across the past performance criteria SoBran averaged a score of ‘Very Good’ vs the FRS’s (the winner’s ‘Neutral’ score. But:

“The contracting officer then performed a comparison of SoBran’s higher-rated, higher-priced quotation with FRS’s lower-rated, lower-priced quotation... She specifically acknowledged SoBran’s “exceptional” performance as the incumbent, but found that its performance record was not worth the “several hundred thousand dollars” of additional costs.”

And: “She also found that the risk of issuing the order to FRS was extremely low, and the transition from SoBran would be almost seamless, because most of the incumbent’s employees would likely continue on with FRS as a result of the RFQ’s non-displacement of qualified workers clause. As a result, the contracting officer determined that FRS’s quotation provided the best value and the agency issued the task order to FRS.”
Despite SoBran’s protests that they should have scored a higher mark for past performance and that the Agency did not properly consider SoBran’s superior performance in the best value tradeoff, the GAO decided that the past performance evaluation had taken their performance into account:

“For example, the contracting officer acknowledged that the CPAR evaluators found that SoBran provides timely, high quality reports, that it exceeds contract requirements, that it ships warehouse items with over 99 percent accuracy, and that it is proactive and efficient, among other things.”

However the GAO ultimately stated that:

“Although SoBran disagrees with the agency’s best value determination, we do not see, and the protester has not persuasively demonstrated, that it was unreasonable, under a FSS best value procurement, for a federal agency to determine that it was not worth paying nearly half a million dollars more for warehousing services based on the protester’s superior past performance.”

SoBran’s protest was denied.

GAO decision dated: November 30th 2012

Reference: B-407234

Protestor: Preferred Systems Solutions Inc

Preferred Systems Solutions (PSS), the incumbent, protested the award of a contract for help desk / call centre support services to Computer World Services Corporation (CWS). The procurement by the US Transportation Command was issued under a Best Value basis with three evaluation factors: past performance, mission capability and price, where past performance and mission capability were of equal importance and combined were significantly more important than price.

The final scores given for past performance were Substantial Confidence for PSS and Satisfactory Confidence for CWS. For Mission Capability both scored one strength and no weaknesses. However CWS were awarded the contract. Their price being around 40% less than PSS’s.

“The Source Selection Evaluation Team stated that, although the non-price factors were significantly more important than price, PSS’s higher substantial confidence past performance rating was not worth the substantial price premium”

Despite PSS’s protests about the agency’s price realism evaluation, and the agency’s evaluation of PSS’s mission capability score (“primarily arguing that, as the incumbent, it should have received credit for various other technical strengths”), the GAO found no fault with the agency’s evaluation and denied the protest.

GAO decision dated: December 16th 2013

Reference: B-4008520.2

Protestor: CACI-WGI Inc.

The CACI-WGI protest is about a contract for support personnel to the Army lost to A-T Solutions Inc. There were protests submitted to the GAO on four areas. The most relevant one for us was the
fourth, that the customer did not give enough credit for the additional strengths the additional staffing in CACI’s proposal offered the customer, and therefore the customer should not have chosen the lower price-lower quality bid from ATS.

However the GAO state:

“...the selection decision acknowledges that CACI’s proposal offered more personnel, but states that the additional personnel “is an average of [DELETED] people per option year” and that they are “spread throughout the proposal so there are only a few areas where the difference is discernable, and even then, [ATS’s] lower staffing levels were found acceptable.” The selection decision further acknowledges that the additional staffing spread throughout CACI’s proposal is a benefit, and that the SSA would have selected CACI’s proposal for award had the price difference been more “proportionate” to that benefit. Id. Ultimately, however, the selection decision concludes that CACI’s 29 percent higher staffing, coupled with the other strengths in CACI’s proposal, did not justify paying an additional $38,855,240.

The CACI-WGI protest was, on the grounds of this, and GAO finding no merit in their other three points of protest, denied.

Discussion and lessons

There has been a lot of talk in the USA about the pressure on costs and prices put onto incumbents by the ‘new’ Lowest Price Technically Acceptable (LPTA) form of procurements, and we will cover that in part in the next section. LPTA has recently started to be used in the UK so the examples are just as relevant to a non US audience. However you can still lose on price, even when the customer is procuring through a Best Value (or in the UK, Most Economically Advantageous Tender) format, if you misjudge the customer’s appetite for high quality & high price solution vs an acceptable quality lower price alternative.

There are many formats and scoring regimes across the outsourcing and contracting world. In some (for instance in the UK Public Sector procurement processes) the customer will often give a clear indication of the relative importance of price vs quality – for instance telling you exactly what % of the total score will be based on price and what on other elements, and even how many marks you will lose relative to the lowest priced bid depending on how much more expensive your own price is.

However even this is only of limited use if you don’t challenge your own assumptions on what the most cost effective solution is, what your own cost levels are and what an acceptable margin will be for your new solution.

So, what can you do to reduce the risk of delivering a gold plated solution which is beaten by a ‘cheap and cheerful’ competitor’s offering?

- An increasing number of companies are starting to use the ‘price to win’ approach to bidding. In outline this approach reverses the usual sequence of creating your operational solution and then (often with little time to spare before the deadline) adding up the costs, adding your margin and putting in your price. The price to win approach first reviews your
customer and your competitors. It assesses the customer’s likely budget and preferred price and quality tolerance, and it assesses your competitor’s approaches and costs and so their likely prices. This gives you a ‘winning price’ for the bid. From that you put together a solution you can deliver for that price.

- Even if you don’t go for the price to win approach, during your rebid preparation stage you should be using your relationships with the customer to get a clear understanding of what their own priorities are regarding price and quality. Don’t just ask your direct operational customer contacts. It’s likely they will be biased more towards a quality solution than others in the customer organisation might be (such as the procurement and finance teams). And these others may have more influence over the decision of who wins the rebid than you think (or your operational customer may like to admit).

- Don’t just extrapolate from the pressures you are under on your existing contract. Some customers will, as pressures on budgets have increased, have come to you and asked how you can cut prices and costs on your existing contract provision, even at the expense of some levels of delivery or performance quality or scope. Hopefully you will have worked with them to help. Others will not have done so. They will have continued to drive you to meet present levels of performance and improvements to delivery. That doesn’t automatically mean they want these same levels in the next contract. The new contract is a chance for the customer to update their requirements and react to the pressures they are under now and anticipate being under in the future. As we have said above, senior staff and departments other than your direct operational customer will have a significant influence over these decisions and priorities could change dramatically in the rebid requirements and expectations. If your assumptions are still based on the past you could be badly caught out.

- Set a clear rebid strategy: what is the outcome you are looking to achieve (winning of course – but how?). Make sure everyone involved in the rebid effort is clear and coordinated on how you aim to win and what the key elements will be of your final solution – then they can all be working to achieve that aim rather than potentially going off in different directions, some working on high price solution elements, others focussed on cutting costs. This strategy needs to be set early in your preparation period. Not just as you start writing.

- Challenge your existing assumptions and solution. We have talked about this in the section above regarding innovation – but (as part of your rebid strategy) you need to be clear on what the innovations you are looking to include need to deliver: is it higher performance even at higher cost, or is it innovative ways to deliver a basic solution significantly cheaper? Innovation without direction will not be likely to give you a winning solution.

- Accept that your contract turnover and margin for the new contract may need to be lower than it is now. This won’t always be the case – some customers will want a high quality solution and be willing to pay for it – but you need to know that from real evidence of their future needs – not from assumptions based on your existing contract. You may have managed to increase your contract turnover and profit during the existing contract period (indeed we would expect this to be a key aim), either through organic growth and / or learning to deliver more efficiently. But don’t take the present levels of turnover and margin as given for the pricing and bid margin for the rebid. You may need to cut both to win. Then once you have won you have the opportunity to grow both again over the next contract.
There is a lot you can do to prepare the right solution for your rebid. But you need to start early. Waiting until you have started writing will not give you the opportunity to find, test and tune the right solution to win.
They can’t deliver it for that price!

This is often the first reaction of a losing incumbent when they find out they have lost the contract to a lower priced competitor. Sometimes it is true. But more often the incumbent finds that their competitor has found a way to deliver at a significantly lower price – and still make a profit. Even if the competitor doesn’t manage this, you have still lost. And it is rare for the customer to come back out to retender the new contract early.

Note: For those not familiar with the terms cost realism and cost reasonableness, which are used in the examples below, a (very basic) description of the difference is:

- Cost realism tests whether the price put in by the bidder (i.e. the cost to the customer) is too low to be realistic – either the bidder has misunderstood the requirements of the bid, or will not be in a financial position to deliver the service if they are losing money due to the price they have put in. In some types contract the customer will run a price realism analysis. In others they do not need to. The key is what they say they will do in the tender instructions;
- Cost reasonableness tests whether prices put in by bidders are higher than they should be. The customer will usually have their own estimate of what the cost to them of the contract should be (see IGE below). They will test whether bidders’ prices are at or below this level. If they are above they may run a cost reasonableness review.

GAO decision dated: June 6th 2012
Reference: B-406492
Protestor: Resource Ltd

This was a contract let for custodial services at a US Air Force base in the UK. Resource Ltd already provided 60% of the service as the incumbent, but lost out to Sodexo on price in the new LPTA based procurement which expanded the scope of the contract.

In this case all bidders put in prices below the customer’s own assessment of what the price would reasonably be (the Independent Government Estimate, or IGE) and following discussions and challenges to the bidders the customer reviewed and reduced their own IGE, and asked bidders to revise their proposals and prices. Resource’s new price was above the new IGE, but Sodexo’s was below.

Following the final decision Resource Ltd protested the agency’s price realism analysis.

From the GAO’s published decision:

“The protester argues that the agency failed to perform a proper realism evaluation of Sodexo’s price proposal and contends that the awardee’s price is insufficient to perform the required services... The protester also argues that Sodexo’s low prices demonstrate the firm’s lack of understanding and appreciation for the work required by the RFP and represents an unacceptable performance risk to the government... In this regard, Resource contends that only its proposed price is realistic.”
“Resource ... claims that, as the incumbent for approximately 60 percent of this requirement, it can better judge the realism of offerors’ pricing.”

However the GAO, having reviewed the process the procuring agency undertook, said:

“Based on our review of the record, we conclude that Resource’s various arguments challenging the agency’s analysis and judgments reflect Resource’s mere disagreement or dissatisfaction with the agency’s determinations, and provide no basis to object to the agency’ analysis here.”

Resource’s protest was denied.

**GAO decision dated:** November 16th 2012

**Reference:** B-407152

**Protestor:** A&T Systems Inc

A&T, the incumbent, protested the award of a contract for telecommunication and engineering support services to American Systems Corporation under an LPTA bid.

Amongst a number of objections A&T protested that American System’s could not have bid enough people to perform the work. As the GAO decision states:

“A&T contends that American Systems’ proposal should have been found technically unacceptable because its staffing plan is inadequate to perform the required work. Underlying its broad challenge is A&T’s belief that, as the incumbent, only its proposal “featured the absolute lowest staffing composition and corresponding price still capable of satisfying all of the Solicitation requirements.”

... A&T alleges that it is “not feasible for [American Systems’], or any offeror’s, proposal to satisfy the Solicitation’s criteria for technical acceptability with less staff than that proposed by A&T.”

However GAO state;

“A contracting agency has the primary responsibility for determining its legitimate needs and for determining whether an offered item will satisfy those needs, since it is the agency that is most familiar with the conditions under which the supplies or services will be used and that must bear the burden of difficulties incurred by reason of a defective evaluation..... A protester’s mere disagreement with the evaluation does not show it lacked a reasonable basis”

The GAO review convinced them that the agency had undertaken enough review to assure them that the American Systems offer was feasible:

“The TOEB specifically concludes that American Systems can adequately and sufficiently perform the required work with [deleted] FTEs, considering the firm’s proposed staffing mix, staff qualifications, and technical approach”

Based on this, and a denial of A&T’s other objections, the protest was denied.
As a final example under this heading we return to SAIC’s protest against Lockheed Martin covered above. Reference: B-406460. SAIC also protested the cost realism of Lockheed’s price.

“SAIC, the incumbent contractor, asserts that the agency failed to perform a reasonable cost realism analysis of Lockheed Martin’s proposal. Offerors were required to propose direct labor rates for 35 labor categories. SAIC asserts that the proposed direct labor rates of Lockheed Martin and its subcontractors were below SAIC’s incumbent rates such that, given Lockheed Martin’s proposal to retain up to [REDACTED] of the incumbent workforce, a reasonable cost realism analysis of Lockheed Martin’s cost proposal would have resulted in an upward adjustment to Lockheed Martin’s labor rates (and consequently its overall cost), as well as a negative risk assessment under the technical approach factor.”

However the GAO state:

“We find the agency’s cost realism analysis to be unobjectionable. SAIC assumes in its protest that a reasonable cost realism analysis must be based on a comparison of Lockheed Martin’s proposed rates to SAIC’s proposed rates or the rates it is currently paying the incumbent employees, such that a proposed rate which is less than the incumbent employee’s rate was unrealistic. SAIC, however, has not provided any information which indicates that the direct rates Lockheed Martin and its subcontractors proposed were less than the current market rates for similar labor categories.”

Based on this, and a more detailed review of Lockheed’s proposed rates by the agency described by GAO, this aspect of the protest was also denied.

Discussion and lessons

This is in many ways an extension of the previous set of examples – but the drivers and assumptions can be rather different. For Best Value procurements there may be a reasonable assumption that the customer does not want the lowest possible priced solution, and the decision the incumbent must make is what the quality : price trade off of their solution should be. In Lowest Price Technically Acceptable (LPTA) contracts there should be no such confusion: the customer wants the lowest price possible for a solution which meets their acceptable level of quality and past performance criteria – any increase in quality above this acceptable level will get you no additional marks. And if it costs money to deliver it is likely to lose you the contract on price.

In the above examples (and many other GAO protests) the issues contested are around staffing. Either the number of staff or the salaries offered to staff. This area of salaries offered to staff is an issue that is very relevant in the USA where, unlike in the UK and Europe, there are no Acquired Rights Directive / TUPE regulations which stipulate that staff on the contract will transfer to the new contractor on their existing terms and conditions. However the principle applies to all aspects of cost.

Many incumbents fail to focus the strongest possible challenge on their costs. LPTA exacerbates this problem, but the issue is not exclusive to LPTA type bids. If an LPTA contract specifies a particular set of capabilities and experience is required for particular levels of staff within a contract, competitors
will bid directly to those set requirements. The incumbent’s issue can be that their own staff, through delivering the contract for the past period may be more experienced than the level set as ‘acceptable’ by the customer. Combined with salary increases they may have received during the contract this could well mean the incumbent’s present staff salaries are higher than the market level, and the level for the experience and qualifications actually set as required by the customer. Hard as it may seem, to win the incumbent may need to replace their existing staff with less qualified (and therefore cheaper) staff – and / or tell their staff they will need to reduce their salaries to the market competitive level.

But the same principle applies (LPTA or not) to all costs. Supplier prices may have grown to be more expensive than market rate over the contract period. Quality of parts, facilities, materials and all other aspects of costs must be tested by the incumbent as part of their rebid preparation: does the customer actually need the quality we are presently delivering, and are we paying (high quality or not) more than the absolute minimum required to deliver what the customer will accept. The same applies to ‘accepted’ levels of margin and company overheads applied to the contract. Challenge them. Leave no assumption unquestioned.

As with so much of the rebid solution, leaving this process until the rebid proposal is being written is usually too late. It can take time to review the market, find the lowest prices for acceptable quality and negotiate their provision. For staff you may need to start churning existing staff over to lower cost staff prior to the rebid to ensure you have the right level of costs already in place.

All this of course whilst focusing on how you can change and innovate your operational solution (not just the costs of your existing solution) to deliver the right level of quality : price the customer is demanding.
No one told us our contract was being rebid!

GAO decision dated: November 23rd 2010

Reference: B-403585

Protestor: Bestcare Inc

Bestcare protested the award of contracts to several bidders for home healthcare services let by the Department of Veteran Affairs.

The agency posted a presolicitation notice for the procurement on the FedBizOpps website on 2nd April 2010 and received bids from 12 firms by the closing date of 11th May.

The GAO decision states:

“Bestcare later filed a protest with the agency, asserting that it had not been notified about the issuance of the RFP and requesting an opportunity to submit a proposal. Bestcare then filed this protest with our Office, arguing that, as an incumbent contractor for a period of years, it was entitled to be individually notified of the issuance of the RFP.”

“Bestcare argues that it was excluded due to the fact that “the agency chose an outlet which is rarely, if ever, used for public bidding,” FedBizOpps. Protest at 1. Bestcare also states that the VA did not notify incumbent contractors that the RFP had been issued, that the program administrators were not aware that the RFP had been issued, and that the RFP was not available through the VA website.”

However the GAO go on to say:

“We disagree. Far from being a rarely used outlet for the advertisement of procurement opportunities, FedBizOpps is the currently designated Governmentwide Point of Entry (GPE), “the single point where Government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public.””

And:

“Finally, we also find it unremarkable that the VA program staff were unaware that the RFP had been issued, as contracting actions are not generally undertaken by the program office, but by the agency’s contracting office.”

The protest was denied.

Discussion and lessons

This might seem to be an extreme example – surely this wouldn’t happen to us? Perhaps not to this extent, but a remarkable number of incumbents are ‘caught out’ by the rebid starting (though not usually finishing) before they expected or are ready.
Often the reason is that the incumbent expected an extension (perhaps on the hint given by their operational customer) and so failed to set their rebid preparations in motion, only to find that the operational customer was wrong or overruled and they suddenly see the official customer notice that the rebid is beginning being announced.

At other times the incumbent ‘knows’ when the rebid is due, but because of other pressures the company or contract team fail to focus resources onto the rebid preparations early enough or to a clear planned process. Suddenly they find when they read the questions set by the customer, or realise the extent of change in the new contract the customer is letting, that they don’t have the time to react – and find that rather than being able to leverage their customer contracts, experience and their position on the contract to test new ideas, they are scrambling to get basic answers and forced to put in a much poorer solution and rebid proposal than if they had properly prepared.

At a company level the business can overcome this by:

- Setting out exactly when all its rebids are due and updating the list regularly so they can plan to budget and resource for rebids over the coming years;
- Putting in place a ‘rebid preparation process’ setting out the actions which should take place at particular points in the months prior to the end date of their contracts;
- Ensuring it takes rebids as seriously as new bids (sometimes there is an assumption that you are most likely to win so there is less attention paid to preparation) and allocating (and budgeting) the right resources early so the proper level of rebid team is made available to follow the rebid processes set out.

On a contract level the team can prepare by:

- Not assuming there will be an extension until they have signed confirmation from the customer in their hands – even if they are being told there will be one, they should still prepare for the rebid as if no extension was to be granted;
- Being clear that the rebid will start in earnest well before the ‘rebid date’ – which in many contract team’s thinking is usually the last day of the existing contract. Look back to the last procurement and see how long this took. Sometimes the official rebid process – typically from the point you are expected to express interest in the new procurement – can be a year long. And prior to this the customer will be working on the rebid making decisions as to the breadth of the new contract, the specification, etc. Work though the timing of this process. When the customer starts preparing for the rebid (probably behind closed doors), so should you.

Going back through the examples above you will see some of the preparations you should be making. As the incumbent you have many advantages in your chances to win your rebid. Failing to properly prepare will nullify many of these advantages, so start early and use the time you have to best effect.
This paper is one of many you will find in the Rebid Centre. All the ideas we refer to in the paper are more fully described in the Rebid Guide and the Rebid Centre, together with step by step guidance of how to put them into action on your contract and rebid. You will also find papers and advice on all aspects of how to prepare for and run your rebid. To join the Rebid Centre go to www.rebidcentre.co/join-the-rebid-centre or buy the Guide at www.rebidsolutions.co

Rebidding Solutions helps incumbents win their rebids. As well as providing articles, advice and processes for incumbents in the Rebid Centre we have also published the Rebid Guide which contains 60 ideas for incumbents to put into practice from day one of their contract to improve their chances of winning their rebid. We also provide consultancy and bespoke training for incumbent companies and contracts, helping them put together the processes and actions that lead to rebid success.

For an overview of all our services visit our website at www.rebidding.co.uk and sign up to our free newsletter giving hints and tips on what to do to win your rebid.