

Government Contracts Blog

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Ten Tips for a Successful Debriefing

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A debriefing can be a valuable opportunity on many levels: from learning how to write more successful proposals to identifying potential grounds for challenging an agency's evaluation and source selection decision. Based on our experience, the tips below generally help contractors to maximize the amount and value of the information obtained at a debriefing and to better position themselves for a potential bid protest.

- 1. Always request a debriefing – even if you are the awardee.** A debriefing can provide valuable information for a potential protest. However, there are many reasons to request a debriefing, even as the awardee. The benefits of a debriefing to both awardees and potential protestors include obtaining information that can be used to improve the quality of future proposals, educating the agency about their products and services, and solidifying their relationships with the agency. For awardees in particular, a debriefing provides an opportunity to identify any issues that should be addressed early in performance, to determine whether the agency's source selection decision may be vulnerable to a potential protest, to offer support to the agency in the event a protest is filed, and to introduce your legal team to the agency should that protest assistance be necessary.
- 2. Submit your request, in writing, as soon as you receive the notice of award.** An agency is only required to provide a debriefing if it receives a contractor's written request for a debriefing within three days after the contractor's receipt of a notice of award or notice of elimination from the competitive range. Accordingly, it is best to submit a written request for a debriefing immediately, via facsimile, email, and/or overnight mail, to the point of contact identified in the notice. An agency may honor a late request for a debriefing, but it is not required to do so. Even where an agency chooses to honor a late debriefing request, the debriefing is not considered to be a "required" debriefing for purposes of obtaining an automatic stay of performance in the event of a protest to the Government Accountability Office ("GAO"), so timely requests for debriefings are important.
- 3. Accept the first date offered for the debriefing.** In order to obtain an automatic stay of award or performance, a contractor must file its protest within ten calendar days of award or five days of the first date offered for the debriefing, whichever is later. Asking the agency to push

back a debriefing will either decrease the amount of time between the debriefing and the filing deadline for obtaining an automatic stay or simply make it impossible to obtain an automatic stay, no matter how soon after the debriefing the protest is filed. In addition, requesting an agency to delay a debriefing could be deemed to constitute a failure to diligently pursue a contractor's grounds for protest, thus impacting not only the ability to obtain an automatic stay, but also the timeliness of the contractor's protest.

4. Do not elect to defer your debriefing until after award. Following elimination from the competitive range, an agency may provide a contractor with the option to delay its debriefing until after award of the contract. Electing to delay the debriefing allows a contractor to obtain more information, particularly with regard to the agency's evaluation of the awardee's proposal. However, a post-award protest allegation may be deemed untimely with respect to facts that a contractor would have learned at a pre-award debriefing, *i.e.*, facts relating to the agency's evaluation of the contractor's proposal.

5. Know what information the agency is required to disclose at the debriefing. The required scope of a post-award debriefing is significantly broader than that of a pre-award debriefing, particularly with regard to information concerning the evaluation of other offerors' proposals.

- **Post-Award Debriefings.** The agency is required to disclose its evaluation of the significant weaknesses and deficiencies in the debriefed offeror's proposal, the overall evaluated cost or price and technical rating of the debriefed offeror's proposal and the awardee's proposal, the debriefed offeror's past performance information, the make and model of the item to be delivered by the successful offeror (commercial item procurements only), and reasonable responses to relevant questions regarding whether the agency followed the terms of the solicitation and applicable law. On the other hand, the agency is prohibited from disclosing any information that is exempt from disclosure under the Freedom of Information Act, including, without limitation, trade secrets, privileged or confidential manufacturing processes and techniques, commercial and financial information that is privileged or confidential (*e.g.*, cost breakdowns, profits, indirect cost rates, and similar information), and the names of the individuals providing reference information about the contractor's past performance.

- **Pre-Award Debriefings.** The agency is required to disclose its evaluation of the significant elements in the offeror's proposal, a summary of the rationale for eliminating the offeror's proposal from the competition, and reasonable responses to relevant questions regarding whether the agency followed the terms of the solicitation and applicable law. The agency is prohibited from disclosing the categories of information that cannot be disclosed at a post-award debriefing, as well as the number, identity, and ranking of offerors, the content of other offerors' proposals, and the agency's evaluation of other offerors' proposals.

6. Prepare questions in advance of the debriefing. For a disappointed offeror, an important goal for the debriefing will be to learn as much as possible regarding why the agency downgraded its proposal, whether the agency evaluated proposals in a manner consistent with the solicitation, and on what basis the agency decided to issue an award to another offeror. Prior to the debriefing, it is useful to prepare a list of specific questions that focus on these issues, as well as a few general questions regarding the agency's evaluation of the awardee.

7. Do not generally bring outside counsel to the debriefing – unless you are the awardee. Bringing outside lawyers to a debriefing puts the agency on the defensive, often limits the flow of information, and thus can make debriefings much less productive. On the other hand, for awardees that anticipate the possibility of a protest, a debriefing can provide a good opportunity to introduce their counsel to the relevant agency procurement personnel and to offer their counsel's assistance in defending a potential protest. A positive working relationship between the awardee's attorneys and the agency can be critical to successfully defending a protest.

8. Listen. The purpose of a debriefing is to obtain as much relevant information as possible from the agency. If possible, it is best to allow the agency to make its presentation in uninterrupted fashion, caucus to discuss the presentation, and then engage in a dialogue.

9. Take Notes. The information disclosed at a debriefing will be helpful only if it can be recalled accurately. Contemporaneous notes are far more effective in facilitating the decision regarding whether to protest than are often conflicting memories. Further, if the agency makes a statement that is particularly troubling, it is useful to transcribe that statement as close to verbatim as possible.

10. Do not argue. A debriefing is not the time to attempt to persuade the agency that it was wrong. It will not work. Even if the agency were persuaded, it would be unlikely to acknowledge its error. At a debriefing, the agency is in the mode of (a) persuading the unsuccessful offeror that it lost fair and square and that a protest would be fruitless and (b) "circling its wagons" against a possible protest. Accordingly, it is best for a contractor to listen to what is said, take notes, and think rather than attempting to win its case at a debriefing.

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