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PRATT'S
**GOVERNMENT
CONTRACTING
LAW**
REPORT



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Twelve Tips for a Successful Debriefing

*By Keith R. Szeliga**

Debriefings are an important tool for contractors. The author of this article suggests 12 important strategies for maximizing the value of a debriefing.

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 award to your competitor. The tips below identify 12 important strategies for maximizing the value of your debriefing.

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 other reasons to request a debriefing, even as the awardee. The benefits include obtaining information that can be used to improve the quality of future proposals, educating the agency about your products and services, and solidifying your relationships with the agency. For awardees, a debriefing also provides an opportunity to determine whether the agency's source selection decision may be vulnerable to a potential protest, to offer support to the agency if a protest is filed, and to introduce your legal team to the agency should their protest assistance become necessary.

2. UNDERSTAND WHEN A DEBRIEFING IS REQUIRED

Debriefings are required only for negotiated procurements¹ and task or delivery order procurements exceeding \$5.5 million.² With respect to Federal Supply Schedule,³ commercial item,⁴ and simplified acquisitions,⁵ offerors are entitled, at most, to a "brief explanation" of the basis for award. The "brief explanation" is not required to include any of the information that is mandatory in a FAR Part 15 debriefing. Even if the agency treats the "brief explanation" as a debriefing, it is not a "required" debriefing. This is critical in the bid protest

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¹ FAR Part 15.

² FAR Part 16.5.

³ FAR Part 8.

⁴ FAR Part 12.

⁵ FAR Part 13.

context. When a debriefing is “required,” a GAO bid protest must be filed within 10 day after the debriefing to be timely and within five days after the debriefing to obtain an automatic stay of performance. When a debriefing is not “required,” the protest must be filed within 10 days of when you first knew or should have known the grounds for protest in order to be timely and within 10 days of award to obtain the automatic stay. A “brief explanation,” unlike a “required” debriefing, does not extend the protest deadline.

3. 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 your written request within three days after your receipt of a notice of award or notice of elimination from the competitive range. An agency may honor a late request for a debriefing, but it is not required to do so and the debriefing is not a “required” for protest purposes.

4. ACCEPT THE FIRST DATE OFFERED FOR THE DEBRIEFING

To obtain an automatic stay, you must file your protest within 10 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. Requesting an agency to delay a debriefing also could be deemed a failure to pursue diligently your grounds for protest, thus impacting not only the automatic stay, but also the timeliness of your protest.

5. DO NOT DEFER YOUR DEBRIEFING UNTIL AFTER AWARD

Following elimination from the competitive range, an agency may allow you to delay your debriefing until after award. Electing to delay the debriefing allows you to obtain more information. However, a post-award protest may be untimely with respect to facts that you would have learned at a pre-award debriefing.

6. 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 for 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 your proposal, the overall evaluated cost or price and technical rating of your proposal and the awardee’s proposal, your 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 trade secrets, 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 past performance references.

- *Pre-Award Debriefings.* The agency is required to disclose its evaluation of the significant elements in your proposal, a summary of the rationale for eliminating your 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.

7. PREPARE FOR THE DEBRIEFING

If you did not receive an award, you should prepare a list of specific questions that focus on why the agency downgraded your proposal, whether the agency complied with the solicitation, and on what basis the agency decided to issue an award to another offeror. You should also prepare a few general questions regarding the agency's evaluation of the awardee. In order to identify the right questions, it is critical to review and understand the RFP and any evaluation materials provided before the debriefing.

8. DO NOT BRING OUTSIDE COUNSEL—UNLESS YOU ARE THE AWARDEE

Bringing outside lawyers to a debriefing often puts the agency on the defensive, limits the flow of information, and makes debriefings much less productive. Effective preparation for the debriefing can mitigate any downside of leaving your outside lawyer home. On the other hand, for awardees that anticipate the possibility of a protest, a debriefing can provide a good opportunity to introduce your counsel to the agency and to offer their assistance in defending a potential protest. A positive working relationship between your attorneys and the agency can be critical to a successful protest defense.

9. LISTEN AND TAKE NOTES

A debriefing is not the time to attempt to persuade the agency that it was wrong. It will not work. Rather, the purpose of a debriefing is to obtain as much relevant information as possible from the agency. Allow the agency to make its presentation in uninterrupted fashion, caucus to discuss the presentation, and then engage in a dialogue. Moreover, 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.

10. REQUEST REDACTED COPIES OF THE SOURCE SELECTION DECISION

It never hurts to ask. Some contracting officers will agree to furnish a redacted copy of the source selection decision. This practice, although currently rare, will become more common in Department of Defense (“DoD”) procurements. The National Defense Authorization Act (“NDAA”) for Fiscal Year (“FY 2018”) requires DoD to establish new procedures for the disclosure of redacted source selection materials. The requirement will apply to all awards over \$100 million and, for small businesses and nontraditional defense contractors, to any award above \$10 million.

11. UNDERSTAND WHEN THE DEBRIEFING ENDS

Sending requests for clarification or additional information after conclusion of a debriefing can be advantageous. Debriefings conducted by civilian agencies are presumed to end at the conclusion of the debriefing session, absent a “clear indication” by the agency that the debriefing is being “held open” to respond to additional questions. A different rule applies to DoD procurements. Pursuant to the NDAA for FY 2018, agencies must allow you to submit follow-up questions within two business days after a post-award debriefing, and the five-day deadline for filing a protest that entitles you to an automatic stay does not begin until the government furnishes the written response to the questions.

12. USE WHAT YOU LEARNED AT THE DEBRIEFING

Debriefings are only useful if you act on the information you learned. It is often beneficial to meet with your colleagues immediately after the debriefing to analyze and synthesize the information provided by the agency. If you are considering a protest, contact your attorney immediately to help analyze potential protest grounds and their likelihood of success. You only have five days after the debriefing to file a protest if you want an automatic stay, so it is important to move quickly. You should also conduct a “lesson learned” session with the proposal team and other relevant personnel. Identify and document

what you did well and what you could have done better, circulate this information to the proposal team, and revisit your analysis before submitting your next proposal.

Debriefings are an important tool for contractors. By following these simple tips, you can maximize the value of your debriefing, better position yourself for a potential protest, and improve your competitive position for future procurements.