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Understanding and Improving the Debriefing Process

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Welcome & Introduction



Timothy Sullivan
Partner
Thompson Coburn



Ralph C. Nash, Jr.
Professor Emeritus of Law
The George Washington University

Introduction

- Debriefings are a source of great frustration for both contractors and Government personnel
- The stated purpose of a debriefing is often at odds with the intentions of the parties
- In theory, debriefings are available to help a company know what deficiencies and significant weaknesses were found in its proposal and understand why it was not awarded the contract

When is a Debriefing Required?

- In connection with any contract awarded under Federal Acquisition Regulation (“FAR”) Part 15
- In connection with any order exceeding \$5 million under an IDIQ contract [See FAR 16.505(b)]

When is a Debriefing Not Required?

- In acquisitions under the Federal Supply Schedule procedures set forth in FAR Part 8 (but contractors should always ask for one)
- In simplified acquisitions pursuant to FAR Part 13
- In sealed-bid acquisitions under FAR Part 14

How Does the Opportunity for a Debriefing Arise?

- The Government is required to notify offerors of their exclusion from the competitive range, or otherwise of their elimination from the competition before contract award [FAR 15.503(a)]
- The Government sends a written notification of award to both the awardee (FAR 15.504) and to disappointed offerors (FAR 15.503)--a debriefing is available to both



The Pre-Award Notice of Exclusion

- Offerors may request a pre-award debriefing within three days of receiving the notice or they may ask to delay the debriefing until after award (FAR 15.505)
- Agencies may elect to delay a requested pre-award debriefing until after award for compelling reasons or when it is in the Government's best interest
- Offerors are entitled to only one debriefing

The Post-Award Notice to Unsuccessful Offerors

- Provided per FAR 15.503(b)
- It should contain:
 - The number of offerors solicited
 - The number of proposals received
 - The name and address of each offeror receiving an award
 - The items, quantities and any stated unit prices of each award (if practicable)
 - In general, the reason(s) the offeror's proposal was not accepted

What if the Government Delays A Debriefing?

- Under FAR 15.505, the contracting officer has the discretion to delay the debriefing until after award
- Under FAR 15.506(a)(2), the Government is supposed to provide the debriefing within five days after receipt of a written request, but there is little an offeror can do if that does not happen –polite but firm pressure is the only viable approach
- If a company is eliminated from the competition before award, some people believe it should always ask for a pre-award debriefing—otherwise the company runs the risk of filing an untimely protest if it limits its request to a post-award debriefing

Manner of Debriefing

- A debriefing can be conducted orally, in writing or by any other method acceptable to the C.O.
- This is the C.O.'s call – not the offeror's
- Most contractors prefer in-person debriefings
- Written debriefings present the biggest problem to a disappointed offeror, but they are very useful to an agency

How Many Types of Debriefings are There?

- Pre-award – FAR 15.505 and
- Post-award – FAR 15.506

What an Offeror Entitled to Learn in a Pre-award Debriefing (FAR 15.505)

YES

- The agency's evaluation of significant elements in the debriefed offeror's proposal
- A summary of the rationale for eliminating the debriefed offeror from the competition
- Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations and other applicable authorities were followed in the process of eliminating the debriefed offeror from the competition

What an Offeror is Entitled to Learn in a Pre-award Debriefing (FAR 15.505)

NO

- The number of offerors
- The identity of other offerors
- The contents of offerors' proposals
- The ranking of other offerors
- The evaluation of other offerors

What An Offeror is Entitled to Learn in a Post-award Debriefing (FAR 15.506)

YES

- The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal
- The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror
- The overall ranking of all offerors, when any ranking was developed by the agency during the source selection
- A summary of the rationale for award
- For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror
- Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations and other applicable authorities were followed

What an Offeror is Entitled to Learn in a Post-award Debriefing (FAR 15.506)

No

- Point-by-point comparisons of the debriefed offeror's proposal with those of other offerors
- Information prohibited from release by the Freedom of Information Act, including trade secrets, privileged or confidential manufacturing processes and techniques, commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates and similar information
- The names of individuals providing past performance information about the debriefed offeror

Are Time Limits Important?

- **ABSOLUTELY!**
- An offeror must request its debriefing within three days of receiving the notice of exclusion [See FAR 15.503(a)] or the notice to unsuccessful offerors (See FAR 15.505(a)(1) and 15.506(a)(1))
- The timing of any protest an offeror might decide to file will depend on the debriefing date
- Experienced companies try to accept the first debriefing date offered; if the date must be postponed, they should propose a date as close as possible to the offered date

How Should an Offeror Prepare for a Debriefing?

- Always review the applicable debriefing regulation – print a copy and have it with you at the debriefing
- Review the RFP, especially the RFP's evaluation criteria
- If discussions were held, familiarize yourself with the issues that were covered in discussions
- Review the notice to unsuccessful offerors – does it contain information that raises certain questions?
- Prepare a chart including a column for each evaluation criterion
- Prepare a reasonable number of questions in advance
- Conduct a dry run

How Should an Offeror Behave in a Debriefing?

- Always be polite and friendly
- Avoid antagonistic remarks
- Avoid using the word “protest”
- Do not be argumentative
- Remember that listening is your most important responsibility
- Always ask how your company could have done better

How Should the Government Behave in a Debriefing?

- Be courteous and professional
- Stick to the regulations
- Try to stay on point and within your debriefing plan
- Do not engage in arguments
- Stay in control of the meeting

How Does a Debriefing Relate to a Bid Protest?

- The information obtained in a debriefing will be critical to deciding whether and where to file a bid protest
- Also, the time period for filing a bid protest is triggered by the debriefing (five calendar days to trigger the “automatic stay” or ten days if the stay is not important)

Examples of When a Debriefing Led to a Successful Protest

- *Matter of A&D Fire Protection Inc.*, B-288852.2, May 2, 2002, 2002 CPD 74
- *Matter of Creative Information Technology, Inc.*, B-293073.10, March 16, 2005, 2005 CPD 110

Do You Bring Your Lawyer?

- Different views on this

For offerors:

- We recommend preparing with your lawyer but not bringing a lawyer to the debriefing
- The presence of a lawyer can send the wrong message to the Government and chill the discussion
- This advice does not change even if the Government lawyer is going to attend
- Offerors should arrange to “debrief” their lawyer immediately after the actual debriefing –**the protest clock is ticking!**

Do You Bring Your Lawyer?

For the Government:

- Bringing a lawyer could send the signal that the agency is worried about a protest
- Debriefings are essentially business meetings, but they could have legal implications
- The presence of a lawyer might have an intimidating effect on some offerors
- If a Government lawyer is going to attend, be sure to prepare with them in advance of the debriefing—a dress rehearsal is prudent

Summary—For the Offeror

- Offerors should submit a written request for a debriefing quickly
- If the agency delays the debriefing, apply polite but firm pressure to get the debriefing as soon as possible
- Prepare your team thoroughly, including questions you want answered
- Act professionally; avoid confrontation
- Take good notes and “debrief” your lawyer afterward

Summary—For the Government

- Carefully consider whether delaying a pre-award debriefing is a good idea
- Always consider whether a written debriefing would fit the situation
- Handle all communications with the disappointed offerors in a prompt and courteous manner
- Make sure the entire team is aware of the need for security precautions in terms of debriefing-related information, *i.e.*, the C.O. is the only POC for such information
- Go by the regulations—do not deviate
- Conduct a dress rehearsal

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Q & A

Thank you!

Tim Sullivan
Thompson Coburn LLP
tsullivan@thompsoncoburn.com
202.585.6930

Ralph C. Nash, Jr.
Professor Emeritus of Law
The George Washington
University