

DEBRIEFING & BID PROTEST TIPSHEET

Debriefings

- * Debriefings are provided in procurements under FAR Part 15 (negotiated) & FAR 16.505(b)(6) (task or delivery orders that exceed \$5.5 million).
- * Under FAR Part 15, contractors are entitled to both pre-award (FAR 15.505) and post-award (FAR 15.506) debriefings (provided that your request is timely).

Requesting the Debriefing

- * E-mail to the CO and request a debriefing pursuant to FAR 15.505 (pre-award), FAR 15.506 (post-award).
- * Include that your request timely (within 3 days of notice of award or exclusion from competitive range). Remember, agency COB is presumed 4:30pm local time unless otherwise stated. If untimely requested, the debrief (if given) is not “required.”
- * Take the first debriefing date offered, always.
- * Pre-Award – debrief as soon as practicable, do not delay until after award (agency may choose to delay).
- * Post-Award – debriefings “should occur” within 5 days after receipt of the written request for debrief.

Debriefing Tips

- * Relationship building & information gathering.
- * Process: pre-debriefing, debriefing, post-debriefing.
- * Always request a debriefing, win or lose.
- * Use the debriefing to learn what you can do to improve proposals & to develop a good relationship with agency personnel. Even if you lose, agency might want you for other opportunities.
- * Re-read your proposal and RFP (§§ L, M). Refresh memory with what you proposed, what the agency wanted, and how you were to be evaluated.
- * Bring someone to transcribe the debriefing.
- * Review what the agency is required to disclose and what the agency cannot disclose (middle column).
- * Prepare questions/submit to agency in advance (various online resources for sample questions).
- * Be polite during debrief.
- * Post-debriefing (lessons learned, protest go/no-go).

Pre-Award Debriefing

FAR 15.505(e) (at minimum)

- * Evaluation of significant elements in your proposal.
- * Summary of the rationale for eliminating offeror.
- * Reasonable responses to relevant questions about whether solicitation procedures or applicable laws and regulations followed.

FAR 15.505(f) (not include)

- * *Not required to disclose number or identity of offerors, content of other proposals, ranking, evaluation of other offerors, and any information prohibited in FAR 15.506(e).*

Post-Award Debriefing

FAR 15.506(d) (at minimum)

- * Significant weaknesses or deficiencies, if applicable (terms are defined in FAR 15.001).
- * Overall evaluated cost/price and technical rating of awardee and debriefed offeror & past performance of debriefed offeror.
- * Overall ranking, if developed.
- * Summary of the rationale for award.
- * Commercial items, the make and model procured.
- * Reasonable responses to relevant questions about whether solicitation procedures or applicable laws and regulations followed.

FAR 15.506(e) (not include)

- * *No point-by-point comparisons, trade secrets, privileged or confidential manufacturing processes, commercial or financial information (cost breakdowns, profit, indirect cost rates, etc.), and names of persons providing past performance reference information.*

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DoD Class Deviation 2018-O0011, Enhanced Postaward Debriefing Rights (Implementing 2018 NDAA Sec. 818(b) and (c))

- * For post-award debriefings in DoD procurements, unsuccessful offerors have the option to “submit additional questions related to the debriefing within two business days after receiving the debriefing.”
- * Requires the agency to respond to the additional questions in writing within 5 business days.
- * Where offeror submits additional questions, the debriefing is not over until the agency delivers its written response.

Bid Protest Tips

- * Objective, procedural grounds typically prevail.
- * Subjective grounds tend to lose (agency discretion).
- * GAO has strict timeliness rules (4 CFR § 21.2); post-award protests must be filed within 10 days known or should have known (if debriefing is “required,” protest due within 10 days after debrief ends).
- * “CICA stay” – protest must be filed the later of 10 days after award or 5 days after a “required” debrief ends (31 USC § 3553(d)(4)) (required = timely filed).
- * Awardees should consider intervening (defend award, protect confidential info, monitor protest).
- * GAO Task Order Threshold: DoD>\$25m; Civ>\$10m.

Sample Post-Award Protest Grounds

- * Unreasonable cost or price evaluation (failure to conduct a required price realism analysis).
- * Unreasonable technical evaluation.
- * Unreasonable past performance evaluation (failure to consider the relevance of past performance info).
- * Failure to follow evaluation criteria (§ M).
- * Using unstated evaluation criteria.
- * Lack of meaningful discussions.
- * Unequal treatment.
- * Inadequate documentation of the record.
- * Unreasonable/flawed selection decision.