

Debriefing Offerors

An Overview for Agency Personnel

BACKGROUND: Changes to the FAR affected the rules and regulations regarding the debriefing of offerors. This paper addresses that information authorized for disclosure under debriefing regulations, and provides additional guidance on debriefings.

REFERENCES: FAR Subpart 15.505, 15.506
FAR Subpart 33.103
Clinger-Cohen Act of 1996, Public Law 104-106
41 U.S.C. 253b(e)-(g)

INTRODUCTION: Debriefing is the process that affords offerors to a competitive solicitation with an explanation of the evaluation process, an assessment of their proposal in relation to the evaluation criteria, a general understanding of the basis of the award decision, and the rationale for their exclusion from the competition. The purpose of the debriefing has been expanded to instill confidence in the process by reflecting that proposals were treated fairly. Statutory and regulatory changes to the debriefing rules were created to enhance and better establish the debriefing as a viable right that would further reduce the number of protest filings, and that would further strengthen and enhance the government's relationship with industry.

GUIDANCE: Debriefing of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the Contracting Officer (CO). There is no specific requirement to hold face-to-face debriefings; sending the written debriefing materials via mail/facsimile is a proper method. If using this method, it is very important to maintain some evidence that the offeror received the written debriefing. Sometimes, it will be financially prohibitive for the offeror to attend a debriefing in person. The needs of the offeror should be afforded due consideration, but the CO makes the final decision as to the debrief location and methodology. Do not hesitate to make use of available technology, and do what makes sense!

Debriefings consist of two distinct types, pre-award (offerors excluded from the competitive range) and post-award. Separate regulations have been established for governance of each type, detailed below. It should be noted, there are no separate rules for debriefing Best Value awards. Evaluation criteria have been spelled out in the solicitation, and offerors have been notified of

the place cost/price plays in the overall decision for award. A well-documented decision memorandum will note the cost/technical tradeoffs that were made in making the award decision.

A debriefing requires thorough preparation. Experience has shown that going into a debriefing unprepared is the surest way to lose the confidence of the offeror and increase the prospects of a protest. Offerors may rely heavily on these sessions to influence their decision regarding the filing of a protest. An effective debriefing can often deter a protest by demonstrating that the government conducted a thorough, fair evaluation and made a sound decision according to the established solicitation evaluation methodology.

Pre-award Debriefings

Law and regulations require the CO to “make every effort” to provide timely requested pre-award debriefings “as soon as practical.” CO’s are provided latitude in delaying the debriefing if providing the debriefing is not in the government’s best interest. Only one debriefing is required, so if the CO provides a pre-award debriefing, there is no need to later provide a post-award debriefing.

Pre-award Debriefing Minimum Contents

- Agency’s evaluation of significant elements of requester’s proposal;
- Summary of the rationale for exclusion from the competition; and,
- Reasonable responses to questions about the following of source selection procedures.

In a pre-award debriefing, do not disclose the following:

- Number of offerors;
- Identity of other offerors;
- Content of other proposals;
- Ranking of offers;
- Evaluation of other offers;
- Point-by-point comparisons with other offers; and
- Information not releasable under the Freedom of Information Act (FOIA).

Post-award Debriefings

Any offeror kept in the competitive range, including the awardee, has a right to a timely post-award debriefing, provided the offeror

submits a timely written response. If an award is made on the initial proposal without discussions (i.e., no competitive range is made), any offeror submitting a proposal has a right to a timely post-award debriefing, provided the offeror submitted a timely written request for a debriefing to the CO. Timely submitted written requests for debriefings are considered “required debriefings.”

Notices of award trigger debriefings. Notices of contract award to the unsuccessful offerors must be sent no later than 3 days after award. Notices of award letters are not required to contain the advise concerning the rights to request a debriefing that is required under the pre-award notices to offerors excluded from the competitive range. Establishing the date the offeror received the notice may be difficult if the notice is sent by regular mail. Accordingly, you should consider sending the notice by mail with return receipt requested or by electronic transmission (facsimile) with immediate acknowledgement requested.

Count days as calendar days, and include weekends and legal holidays. Do not count the day the offeror received the notice. Start with the next day. For instance, the offeror receives the notice of award at 3 p.m. on Tuesday. That means the CO must receive a request for debrief by close of business on Friday. A “required debriefing” results from the timely receipt of a written request for a debriefing. It is a “required debriefing” only if the requester submits in writing the request to the CO within 3 days after receipt of the notice of exclusion from the competitive range or within three days after receipt of the notice of award.

The agency must provide the required debriefing, to the maximum extent practical, within 5 days from receipt of the request for debriefing. In a required debriefing, timing is important for purposes of potentially extending the opportunity to stop contract performance in the event of a protest. An offeror who protests within 5 days after receiving a “required debriefing” can suspend (stop work) contract performance even if the contract was awarded more than 10 days or months prior to the protester receiving the required debriefing. This makes the timely providing of the required debriefing an important post-award consideration in avoiding belated interruptions in contract performance.

Accommodating Debriefings

If an offeror’s written request for a debriefing is not received by the CO within 3 days after notice of contract award or notice of

exclusion from the competitive range, it is not a “required debriefing,” and the CO need not promptly provide the debriefing within 5 days of the receipt of the written request. However, the regulations do require the belated requests to be considered to the maximum extent practicable. These accommodating debriefings do not extend the period for possible protest suspension of performance.

Both required and accommodating debriefings trigger the 10-day-basis for timely protest rules. Therefore, the need to respond to any debriefing requests remains unchanged with regards to protest issues that are based on first-learned information that is disclosed at the debriefing. However, receipt of a debriefing does not preclude an offeror from later filing a protest on an issue about which it was not advised by the agency during the debriefing.¹ It should also be noted that a FOIA request is not a written request for a debriefing.² If an offeror waits too long to request a debriefing, resulting protests may be dismissed for lack of due diligence on the part of the protester.³

Post-award Debriefing Minimum Contents

At a minimum, the following information must be provided to the offeror in the debriefing:

- Offeror’s evaluated significant weaknesses or deficiencies;
- Overall evaluated price/cost and technical ratings of the debriefed offeror and awardee;
- When ranking was developed, the overall ranking of offerors (i.e., ranked 4th out of 6 proposals; do not identify other unsuccessful offerors by name);
- A summary of the rationale for award (identifies the significant advantages of the awardee’s proposal in general terms without revealing confidential information, and may address cost/technical tradeoffs);
- For acquisition of commercial items, the make and model of item to be delivered; and,
- Reasonable responses to relevant questions about whether source selection procedures were followed.

¹ In Geo-Centers, Inc., B-276033, May 5, 1997, the GAO held a protest filed 3 months after award as timely on information subsequently obtained under FOIA, since the information was initially withheld at the debriefing.

² In Automated Medical Products Corporation, B-275835, February 3, 1997, the GAO noted the pursuit of information under FOIA is not due diligence on the part of the protester, where the information could have promptly been provided under debriefing rules.

³ In Professional Rehabilitation Consultants, Inc., B-275871, February 28, 1997, the GAO dismissed a protest based upon information provided at a non-required debriefing because the protester did not request a debriefing until more than two months after notice of award.

In a post-award debriefing, do not include the following:

- A point-by-point comparison between the debriefed offeror's proposal with those of other offerors;
- Names of individuals providing referenced past performance information about the offeror;
- Information which is exempt from release under FOIA, including trade secrets; privileged or confidential manufacturing processes/techniques; and, commercial and financial information, including cost breakdowns, profits, indirect cost rates and similar information.

Remember, the CO is required to include an official summary of the debriefing in the contract file!

TIPS:

For informational purposes, here are a couple of helpful tips to make your debrief successful:

- Keep some evidence of when an offeror receives notice of being excluded from the competitive range or notice of award.
- Use source selection documents and evaluation reports to form the basis for creating your debriefing material. Government personnel needed for potential debriefings should not generally schedule leave immediately after award when there is a high likelihood that unsuccessful offerors will timely request a debriefing.
- If a timely written request is received for a required debriefing, prepare to provide the debriefing immediately, but no later than 5 days from receipt of request. Carefully review the calendar for reducing the suspension of performance opportunity to coincide with the 10 days from award period. Confirm in writing the date when the government offered to make the debriefing.
- Obtain a list of who will be attending on behalf of the unsuccessful offeror and elicit written specific questions they wish addressed at the scheduled debriefing.
- Except for those weaknesses identified as a result of changes in the Final Proposal Revision, each weakness discussed during the debriefing should have already been discussed with the offeror.
- Assure responses to questions correspond to areas evaluated during source selection.
- Someone not involved in the debriefing should be assigned to take notes of oral debriefing questions and answers. These notes, as well as any written debriefing materials, will constitute the record of the debriefing that must be maintained with the contract file.

- Instruct the debriefing team to be polite, professional, confident, and to avoid arguments, but not to be overly apologetic regarding the evaluation made by the team. Remember, a good award decision, and a well-presented debriefing means not having to say you are sorry!

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