DEBRIEFING & BID PROTEST TIPSHEET

October 2020

Debriefings

* Debriefings are provided in procurements under FAR Part 15 (negotiated) & FAR 16.505(b)(6) (task or delivery orders that exceed $6 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 occurs as soon as practicable; do not voluntarily delay debrief until after award, impacts protest (if agency decides to delay, that's ok).
* 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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Enhanced Post-Award Debriefing Rights (DoD)

* 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 a 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.
* If no questions submitted, unclear when debriefing ends. Depends on language in agency's notice. There's a Federal Circuit appeal docketed that might provide clarity (*NIKA Techs.*, No. 20-1924, June, 25 2020).

Bid Protest Tips

* Objective, procedural grounds typically prevail.
* Subjective grounds tend to lose (agency discretion).
* GAO strict timeliness rules (4 CFR § 21.2); protests of solicitation defects must be filed before proposals due; protests other than solicitation defects (post-award, excl. comp. range) must be filed w/in 10 days known or should have known (if debrief "required," protest due within 10 days of when debrief ends).
* Trigger "CICA stay" – protests must be filed later of 10 days after award or 5 days after "required" debrief ends (31 USC § 3553(d)(4)) (required = timely filed).
* Awardees consider intervening (defend award, protect confidential info, correct action, monitor).
* GAO Task Order Threshold: DoD>$25m; Civ>$10m.

Sample Bid 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.

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