

The Five Types of Post-Award Debriefings Every Government Contractor Should Know How to Execute

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Government Contracts Issue Update

After months of tirelessly pursuing a government contract that is crucial to your business plans, you finally receive the agency's notice of award and offer for a debriefing. Whether you were selected for award or not, there are important strategic decisions to be made regarding the post-award debriefing, which must be requested in writing within three days of receiving the award notice to preserve the benefits of a "required" debriefing.

Debriefings play a critical role in negotiated procurements. Contractors typically have little time to prepare for debriefings, and there may be competing business interests in the debriefing process, so it is important to understand the strategic reasons for pursuing a debriefing as well as the mechanics and logistics involved. Every government contractor should have a system in place for participating in debriefings that maximizes the likelihood that, whatever the underlying business objectives may be, the debriefing will be successful.

Federal regulations require contracting agencies to provide offerors with timely-requested debriefings in FAR Part 15 procurements, and specify that the debriefing must include meaningful information and offer an opportunity for the contractor to ask relevant questions about the procurement. This makes the debriefing a strategically important event for the business. Because a required debriefing may also be an important milestone for the timeliness of a potential protest, it is also legally significant.

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What a contractor hopes to accomplish through the debriefing process will depend on a variety of factors, including whether the contractor was selected for award and what actions, if any, the contractor intends to take as a result of the agency's award decision. Keeping in mind that a contractor might have multiple and overlapping goals, the keys to success in any debriefing scenario are to (1) realistically assess the situation, (2) determine your debriefing goals, (3) tailor a plan to achieve those goals, and (4) execute the plan with professionalism and discipline. There are five basic types of post-award debriefings that every government contractor should consider—and be able to execute—depending on the circumstances the contractor confronts:

1. The “Pre-Protest” Debriefing

The pre-protest debriefing is for disappointed offerors that have already decided to pursue a protest challenging the agency's award decision. This is often the primary motivation when the notice of award or other indicators point to likely prejudicial agency error with respect to a critical contracting opportunity, or when the business has identified other reasons to pursue a protest, such as the strategic significance of a program. The primary goal of this debriefing is to collect information to position the company for a protest. The debriefing is not about convincing the Government it is wrong. It is about discovery. FAR 15.506(d) requires the Government to provide the overall evaluated cost/price, technical ratings, and past performance ratings for both you and the awardee, and to identify all of the significant weaknesses or deficiencies in your proposal. If the Government ranked the proposals, you are entitled to know the overall ranking of the offerors. The agency is also required to provide you with a summary of its rationale for award and reasonable responses to relevant questions. It is in responses to questions and the dialogue with the Government about its findings that you may be able to uncover the “little extra” to fuel the merits of the likely protest. It is most effective to try to engage the Government in a back and forth, and get them “off script” as early in the debriefing as possible. The worst that can happen is that they refuse to do so, which in itself may provide some insight. Common areas to explore include the specific areas of concern that are fueling the desire to protest the agency's rationale for assessing specific weaknesses, why important aspects of a proposed technical approach did not warrant strengths, the basis for any most probable cost adjustments or price-related risk adjustments, and the key discriminators between your proposal and the awardee's.

While it is important to plan ahead for any debriefing, advance planning is particularly important for this type of debriefing since you are, in essence, building the record upon which your protest will be based. Assuming an in-person or telephonic debriefing, at a minimum you should make the following preparations: (1) assemble a team comprised of the appropriate personnel (the question of whether in-house or even outside counsel should attend often involves a strategic choice; while their presence may arguably stymie free conversation, there are often some benefits as well); (2) assign roles (including designated speakers and a dedicated note-taker); and (3) develop a list of mostly open-ended questions to ask the agency. (Note that those previously-prepared questions often become secondary in the debriefing once you learn new information. The team should be agile and prepared to follow up on details first learned at the debriefing, not simply wedded to the prepared questions.)

For in-person debriefings, you should also make arrangements to have a dedicated space at the debriefing site to caucus as a team, outside of the Government's presence. For a telephonic debriefing, if any of your

team members are participating remotely, you should have access to an alternate dial-in number for caucus purposes that is separate and distinct from the phone line being used with the Government. You should also make plans to convene all relevant stakeholders immediately following the debriefing to review your notes, confirm the protest grounds you will assert, and make assignments for the key tasks that will be required to get the protest on file within the five days usually allotted.

2. The “Fact-Finding” Debriefing

The fact-finding debriefing is for unsuccessful offerors that are not sure whether they will protest the agency’s award decision. The primary objective for this type of debriefing is determining whether the agency appropriately followed the source selection procedures outlined in the solicitation and the FAR. As with any debriefing, you should be well-versed on both the terms of the solicitation and the contents of your proposal. This familiarity will help you be nimble to identify any inconsistencies or ambiguities in the Government’s evaluation process or any departures from the stated evaluation scheme. While the Government has the right to determine the debriefing format, if an offeror is given a choice, in-person or telephonic debriefings are best for fact-finding because they provide opportunities to observe and interact with the Government that are not typically possible with a written debriefing.

A fact-finding debriefing is the perfect opportunity to assess any perceived risk the agency may have regarding its evaluation process and ultimate award decision. During an in-person or telephonic debriefing, offerors should pay close attention to any comments from the Government that indicate the agency deviated from the solicitation’s stated evaluation criteria, as well as the nuances of word choice, body language and the tone of the agency’s responses to your questions. You should also be on the lookout for any signs of uncertainty or doubt the agency may display. This sort of behavior could reflect the agency’s awareness that its evaluation process was potentially flawed, and therefore might suggest the need to follow-up on certain lines of inquiry. If an agency is not prepared to provide answers to reasonable questions “on the spot,” ask if the agency will hold the debriefing open to allow additional time to engage in follow-up questions and answers (and always confirm any extension of the debriefing in writing to preserve the timeliness of any potential protest).

As in any post-award debriefing, offerors are entitled to reasonable responses to relevant questions during a fact-finding debriefing. If the agency fails to meet this requirement and significant doubts remain as to the propriety of the award, a protest may provide an avenue for counsel to obtain relevant information that was withheld during your debriefing (it is likely that any information revealed in a protest will be covered by a protective order that will restrict access to such information). While an inadequate debriefing is not an independent basis for protest, GAO has noted that an agency’s failure to provide reasonable responses to relevant questions “may unnecessarily cause an unsuccessful offeror to file a bid protest in order to obtain such information.” *Del-Jen Educ. & Training Grp./Fluor Fed. Sols. LLC*, B-406897.3, May 8, 2014, 2014 CPD ¶ 166 n.5.

3. The “Lessons Learned” Debriefing

The lessons learned debriefing is for unsuccessful offerors who are not planning to protest their non-selection for award. While it is wise to always keep an open mind on the possibility of protesting an award, the primary objective of this debriefing type is to obtain feedback from the agency on your proposal that can improve your competitive position in future procurements.

As discussed above, FAR 15.506(d) requires the Government to inform you of any significant weaknesses or deficiencies identified in your proposal. Sometimes contractors will simply come out and ask the Government something along the lines of, *"We want to learn for next time what we could have done better?"* Often, government personnel try to avoid a question phrased that way on the grounds that it is asking for speculation. Questions that will help you obtain the same type of information during a lessons learned debriefing, without the typical shut down response, include: *"What was the basis for assigning weaknesses or deficiencies to our proposal for each evaluation factor? Were there any solicitation requirements we failed to address? Were there any specific considerations that precluded us from being selected for award? Was anything missing from our proposal?"* Although FAR 15.506(e) precludes the Government from providing "point-by-point comparisons" of your proposal with those of other offerors, learning about the weaknesses and deficiencies of your own proposal can still be a tremendous benefit. Just as important as learning about areas where an agency viewed the proposal as weak, use the opportunity to learn about what you did well and what the evaluators liked. All of this information can help strengthen your approach in future competitions.

4. The "Marketing Pitch" Debriefing

The marketing pitch debriefing is one in which a disappointed offeror takes advantage of the opportunity to meet with the agency during an in-person debriefing to promote their company. All debriefings are essentially marketing opportunities. Each debriefing type presents a chance for the contractor to showcase the company's competence, organization and professionalism, thereby helping to burnish its reputation for future procurements. But there are times when marketing is the overriding goal of a debriefing—for example, when little is at stake in the present procurement, but more significant contracting opportunities lie ahead.

While an offeror may have failed to win the contract at issue, a marketing pitch debriefing may allow the company to make a positive impression on the agency, which may serve it well in future procurements. This is particularly true for companies looking to make inroads with a new agency, because they do not have an existing contracting history with the agency or are a new company that may lack name recognition.

To execute an effective marketing pitch debriefing, an offeror should be prepared to present its company in the best possible light within the context of a debriefing. This means putting aside the disappointment of not being selected for award and focusing on the valuable opportunity to showcase your company before a captive government audience. To prepare for a successful marketing pitch debriefing, you should develop thoughtful questions that will allow you to highlight your company's relevant experience and competencies while obtaining the information you seek on your proposal's evaluation. The following is an example of such a question: *"Our company has outstanding CPARS on the six different federal contracts we included in our Past Performance proposal, which involved the same or similar services solicited in this procurement. Could you please explain how that information was used in the source selection process?"* Another aspect of the

marketing pitch debriefing is building rapport with the government participants. Often some of the most meaningful exchanges take place between individuals from the respective contractor and government teams either before, or particularly after, the formal debriefing.

5. The “Dress Rehearsal” Debriefing

The dress rehearsal debriefing is strictly for offerors that have been selected for award. As the awardee, you have a vested interest in ensuring the agency’s award decision is not disturbed by the protests of disappointed offerors. One way to do this is to help the agency prepare for debriefings with unsuccessful offerors by having a “dress rehearsal” debriefing with you. As the awardee, it is perfectly acceptable to request that the agency provide your debriefing first, before debriefing any of the disappointed offerors. During a dress rehearsal debriefing, it may be a good idea for the awardee to pose questions to the Government that disappointed offerors are likely to ask about the source selection and evaluation process. This includes any unexpected or “wildcard” questions that the Government may not have considered. Successful offeror debriefings provide an opportunity to discuss with the agency how a disappointed offeror could misconstrue an agency’s answers to questions to create a potential protest issue. The agency will benefit from the opportunity to conduct a debriefing with a live, “friendly” audience, and the contractor will benefit from an opportunity to learn about how its proposal was evaluated and cultivate its relationship with the government customer.

Conclusion

By giving thought to the company’s ultimate business objectives, you can adopt a debriefing strategy that will best facilitate those goals. As discussed above, these strategies will be dictated in part by circumstance—whether you won or lost the competition—and in part by short- and long-term business goals. Regardless of the underlying circumstances, contractors should be prepared to take full advantage of the valuable opportunities that post-award debriefings provide.

For more information, please contact a Wiley Rein attorney.