

# Client Alert

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## Practice Pointers for Agency Debriefings Following Federal Contract Award Decisions

By Rick Vacura and Tina Reynolds

As the end of the government fiscal year looms, a frenzy of contract awards generally follows, accompanied by an uptick in the number of bid protests filed at the Government Accountability Office (GAO) and the Court of Federal Claims. Below, just in time for protest season, are some best practice reminders that relate to debriefings:

1. Debriefings are an opportunity for your company to learn more about the circumstances of an award, to gather data that will help you to improve future offers and determine if a basis for protest exists. The purpose of the debriefing is to obtain as much information about the procurement as possible. Per Federal Acquisition Regulation (FAR) 15.506, a post-award debriefing must include:

- the agency's evaluation of significant strengths and weaknesses in your proposal
- the overall evaluated cost or price, and the technical rating, of your offer and the awardee's offer
- information about how your past performance was evaluated
- the overall ranking of all offerors, if done
- a summary of the rationale for the award
- reasonable responses to questions about whether the evaluation scheme and applicable regulations were followed

Some agencies will provide additional information, although agencies cannot disclose confidential, trade secret or source selection information, or any information that would not be releasable under the Freedom of Information Act.

2. Always ask for a debriefing, even if you are the awardee. For unsuccessful offerors, it never hurts to find out why your efforts to secure a contract have been unsuccessful. If you are the awardee, details about the strengths and weaknesses of your proposal and why you won are always useful.

3. Be sure to make a request for a debriefing within three days of the notice of an award. Debriefings are not required in FAR Part 8 or Part 12 procurements. Sometimes agencies will provide them anyway, although all the agency is required to furnish is a brief explanation of the award decision. In a Part 15 procurement, the agency is required to give a full debriefing when one is timely requested.

4. Debriefings should generally take place within five days of a request. Always take the first debriefing date offered by the government, even if it is inconvenient or if it means you must conduct the debriefing telephonically

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rather than in person. Competition in Contracting Act statutory stays are triggered from the first debriefing date offered, not the actual debriefing date. Once you have asked for a debriefing, the GAO may dismiss as premature any protest filed before the debriefing. Depending on your actual debriefing date, you could be put in the position of being too early to file a protest but too late to obtain a stay if you do not accept the first offered date.

5. Bring the following with you to the debriefing:

- a list of debriefing items to which you are entitled under the FAR
- a list of other questions specific to the procurement
- a copy of the solicitation, particularly the evaluation factors for award as described in Section M
- at least two people – one to listen and one to take notes
- a good attitude – it is not the time to be confrontational or accusatory

It is generally not a good idea to bring your lawyer, even if you think it very likely that you will file a protest, as the presence of your attorney tends to limit conversation.

6. Ask for the following at the debriefing:

- the names and job titles of everyone in attendance
- a copy of the source selection memorandum (You will likely will be provided with a redacted version, or only that portion that relates to your evaluation)

7. After the debriefing:

- discuss with your attorney possible grounds for protest (but be sure to get your attorney involved before the protest, as soon as you receive a notice of the award)
- you may send post-debriefing requests for clarification or follow up questions to the agency but these will not extend your deadline for filing a protest
- conduct a “lessons learned” session with the proposal team and other relevant personnel

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