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Final Rule Makes Permanent DoD Enhanced Debriefing Procedures

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The DoD Cements Enhanced Debriefing Procedures

The Department of Defense (“DoD”) issued a final rule recently which makes permanent several post-award debriefing procedures temporarily in place through a DFARS class deviation since 2018. The rule cements DoD requirements to provide additional information during the debriefing process and provides clarity as to when an offeror’s clock to file a protest begins running in the enhanced debriefing process.

The Rule Requires Source Selection Briefing

DoD must provide a redacted source selection briefing to offerors—whether successful or not—in the debriefing if a contract award is over \$100 million. Even in procurements between \$10 million and \$100 million, small business and nontraditional defense contractors may request a redacted copy of the source selection decision. If they ask for one, DoD must provide it. Within two days of the debriefing, offerors may ask additional questions. DoD then has two days from submission to provide written responses.

The Rule Removes Protest Timeliness Uncertainty

The class deviation’s allowance of two days after debriefing for additional questions created uncertainty regarding the timeliness of a bid protest following the debrief. The final rule clarifies that the clock for filing begins running once the offeror receives its debriefing. Then, only if the offeror asks additional questions in the following two-day period, the five-day clock is reset. It starts running from zero again once the DoD provides its written responses. This final rule tracks the Federal Circuit’s February 2021 decision of the same issue in *Nika Technologies, Inc. v. United States*.