A Pocket Guide to Federal Government Contract Debriefings

Revised August 31, 2016

www.hollandhart.com
Audience participation/polling questions

1. In the past three years, please indicate if you received a debriefing from a federal government agency. (yes/no) If you answered no, please do not answer any of the following questions.

2. In the past three years, as far as numbers of oral or written debriefings, have you had: more written debriefings/ more oral debriefings/ about the same number of each?

3. Please provide an overall rating for how satisfied you have been by your federal contract debriefings over the past three years. (Unsatisfied/Satisfied/Very Satisfied/ N/A or none)

4. In the past three years, did you have a debriefing by a federal agency where the agency failed to provide information that you thought was required to be disclosed? (yes/no/ N/A)

5. Following your debriefing(s), in what percentage of cases did you file a bid protest? (less than half the time/ about half the time/ more than half the time/ never or N/A)

6. Have you ever had an agency fail or refuse to provide a debriefing following a timely request? (yes/no)

Response data will be made available to all webinar participants.
Agenda

“The Ten Rules”
Debriefing Fundamentals
Pre-Award Debriefings
Post-Award Debriefings
Tips & Strategies for Success
Where do we go from here?
Questions/Continue the Conversation
“The Ten Rules”
“The Ten Rules”

i~ Disappointed Bidders and Awardees should always request a Debriefing.

ii~ Submit a written (email) Debriefing request immediately after receiving notice of your exclusion from the competition or notice of award. The Debriefing request must be received by the Agency within 3 days after your receipt of notification.

iii~ Don’t delay! Accept the first Debriefing date offered.

iv~ Know what the Agency must disclose.

v~ Prepare written questions for the Debriefing. Submit them to the agency in advance.

vi~ Review the RFP evaluation criteria, and conduct a “Mock Debriefing” to prepare.

vii~ Leave your outside counsel behind – unless you are the awardee and expect a protest.

viii~ Designate one or two team members to take verbatim notes. Transcribe the notes ASAP.

ix~ Listen to the Agency’s presentation. Next caucus with team. Then ask questions.

x~ Do not argue with the Agency or try to persuade the Agency to change the Award.
Debriefing Fundamentals
Debriefing—What Is It?

- Opportunity
- Protest grounds?
- Agency view

See AWD Tech, Inc., B-250081.2, 93-1 CPD ¶ 83 (1983)
When is a Debriefing Required?

- FAR Part 15 Procurements
- FAR Part 16 Task or Delivery Orders
- . . . but only if you request it!
When is a Debriefing Not Required?

- Commercial Items Procurements (FAR Part 12)
- GSA Schedule (FAR Part 8)*
- Simplified Acquisitions (FAR Part 13)*
- Sealed Bids (FAR Part 14)

See Gorod Shtor, B-411284, May 22, 2015 (And see our blog on this case at www.governmentcontractinsider.com: Agency’s “Brief Explanation” was a Trap for Unwary Protester)

* “Brief Explanation”? © Holland & Hart LLP 2016
Debriefing Basics

- Pre-Award and Post-Award
- Rules for timing and content
- Impact on bid protests and GAO’s “automatic stay”
Pre-Award Debriefings
Pre-Award Debriefings

- Contractors excluded from the competitive range/competition before award
- “Prompt” Notice from Agency
Pre-Award Debriefings – Timing

- Request w/in 3 calendar days
- Weekend Notice? (See Golight, Inc., B-401866, 2009 CPD ¶ 184)
- Right to Delay Pre-Award Debriefing
Pre-Award Debriefings – Timing

- When?
- Agency Refusal?
Pre-Award Debriefing – Format

- Oral?
- Written?
- Other?
Pre-Award Debriefing – Required Content

- Evaluation Results
- Rationale for Excluding
- “Reasonable” responses to “relevant” questions
Pre-Award Debriefing – Prohibited Content

Point-by-point comparison, etc.
Post –Award Debriefings
Post-Award Debriefings

- Any losing contractor who has not had a pre-award debriefing
- Written request within 3 calendar days
- When?
Post-Award Debriefing – Required Content

- Deficiencies and Significant Weaknesses
- Ratings
- Past Performance
- Total evaluated cost/prices
- Overall ranking
- “Reasonable” responses to “relevant” questions
- Summary
Post-Award Debriefing – Prohibited Content

Point by point comparison of proposals
FOIA Exemptions
Debriefing Impact on Bid Protests

- Timeliness of Protest Grounds
- Automatic Stay
Tips & Strategies for Success
Debriefing Preparation

- Prepare list of items to which you are entitled
- Prepare list of “relevant” questions
- Always ask how you could have done better!
Debriefing - Strategies for Success

- Request oral or written?
- Provide questions in advance?
- Have you received written debriefing materials in advance of debriefing session?
Debriefing Attendees

- Business Development group
- Proposal Preparation group
- Government sales executive(s)
- Generally don’t bring outside counsel
Debriefing – Conduct and “Tone”

- Behave reasonably and dispassionately
- You are there to learn, not accuse
- Don’t ask “irrelevant” questions
  - Unsupported accusations of agency bias or misconduct
- Conduct “lessons learned” session afterwards
Tips - Stay for the Entire Debriefing

- *Franz Rubenbauer Raumausstatter*, B-290317.3, et al., 2002 CPD ¶ 124

- Two protesters walked out of debriefing
When Does the Debriefing End?

- Sometimes Contractors send requests for clarification or additional information AFTER the debriefing session

- “Clear indication” from agency
  (See New SI, LLC, B-295209, 2005 CPD ¶ 71)

- Simply asking post-debriefing questions does not extend bid protest deadlines!
Errors Appearing Only In The Debriefing Materials?

- Not a valid protest ground
Protesting Inadequate Debriefings?

- Not a valid protest ground
Where Do We Go From Here?
Debriefings – Where do we go from here?

A Call to Action!

- Inadequate debriefings—what remedy?
CONGRESSIONAL ACTIVITY
FY 17 NDAA

- HASC proposal would:
  - authorize outside study of protests of DOD contract awards to GAO
  - permanently authorize GAO protests of all task order awards over $10 million (not just DOD)

- SASC proposal would:
  - impose costs on losing protesters
  - create disincentives for incumbent protesters
  - drastically limit GAO jurisdiction to review DOD task order awards

- Proposed Senate changes would drastically increase importance of debriefings
  - possible improvements to debriefing process?
  - Air Force Extended Debriefing Program
Questions?
Continue the Conversation…

- Follow us on Twitter @GovConInsider
- Visit our blog at: www.governmentcontractinsider.com/

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