

A Pocket Guide to Federal Government Contract Debriefings

2016

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Holland & Hart Government Contracts Practice

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Debriefings – The Ten Rules

1. Disappointed Bidders and Awardees should always request a Debriefing.
2. 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. *See Pages 10 and 15, Sample Debriefing Requests.*
3. Don't delay! Accept the first Debriefing date offered.
4. Know what the Agency must disclose. *See Pages 12 and 17.*
5. Prepare written questions for the Debriefing. *See Pages 21-23.* Submit them to the agency in advance.
6. Review the RFP evaluation criteria, and conduct a "Mock Debriefing" to prepare.
7. Leave your outside counsel behind – unless you are the awardee and expect a protest.
8. Designate one or two team members to take verbatim notes. Transcribe the notes ASAP.
9. Listen to the Agency's presentation. Next caucus with team. Then ask questions.
10. Do not argue with the Agency or try to persuade the Agency to change the Award.



What is a Debriefing?

A Debriefing under FAR Part 15 is an opportunity for an offeror to better understand the basis for an agency's selection decision. Debriefings give you a chance to hear from the agency regarding:

- the evaluation process;
- how your proposal was evaluated in relation to the evaluation criteria;
- what was successful in your proposal;
- what was lacking and in need of improvement in your proposal; and
- reasonable responses to relevant questions about whether source selection procedures were followed.



When is a Debriefing Required?

1. A Debriefing is required for procurements under FAR Part 15 - Contracting by Negotiation.
2. A Debriefing also is required for task or delivery orders exceeding \$5.5 Million under FAR 16.505(b)(6).

BUT ONLY IF:

... a written Debriefing request is received by the agency within 3 calendar days after notification of exclusion from the competitive range (FAR 15.505) or notification of Contract Award (FAR 15.506).



When is a Debriefing Not Required?

1. Commercial Items Procurements (FAR Part 12);
2. Required Sources of Supply Procurements
- GSA Schedule (FAR Part 8)*;
3. Simplified Acquisition Procurements (FAR Part 13)*; and
4. Sealed Bid Acquisitions (FAR Part 14).

A Debriefing also is not required when the Debriefing was not timely requested (within 3 days of Notification of Contract Award). FAR 15.506(a)(1). **Note:** The Agency still *may* grant a request for a Debriefing even though it was not timely requested. FAR 15.506(a)(4)(i).

* Where award is based on factors other than price alone, the Agency is required to provide - upon request - "a brief explanation of the basis for the award decision." FAR 8.405-2(d) and 13.106-3(d).



Debriefing or Brief Explanation?

A required Debriefing affords contractors valuable rights and affects the deadline for filing protests and obtaining an automatic stay of performance. A Brief Explanation does not have the same impact. *Gorod Shtor*, B-411284, May 22, 2015.

Bonus Tip:

Don't confuse a Debriefing with a Brief Explanation. It doesn't matter what the agency calls it. If the procurement is not conducted under FAR Part 15 or Part 16.5 for task or delivery orders exceeding \$5.5 million, **it is not a Debriefing.**



Pre-Award Debriefings

1. The agency should provide notification to offerors that are eliminated from the competition. FAR 15.503(a). The notice should state the basis for that determination.
2. The offeror may request a Pre-Award Debriefing under FAR 15.505 by submitting a written (email) request for Debriefing that is received by the agency within 3 calendar days after receipt of the notice of exclusion from the competition. *See Page 10.*

Bonus Tip:

Saturday email notice from agency "is deemed received on the next business day." *Int'l Res. Group, B-286663, 2001 CPD ¶ 3.*

You have the right to request that the Pre-Award Debriefing be delayed. FAR 15.506(d). **DON'T DO IT!** (Delayed Debriefings can negatively affect your rights and the timeliness of protests and the automatic stay.)



Sample Pre-Award Debriefing Request Letter

[CONTRACTOR LETTERHEAD]

[Date]

VIA EMAIL

[Contracting Officer's Name]

[Title]

[Agency Name]

[Street Address]

[City, State, ZIP Code]

**Re: Request for pre-award debriefing under RFP/
Solicitation No. [RFP no.]**

Dear [Contracting Officer's Name]:

[Contractor] respectfully requests a pre-award debriefing pursuant to FAR 15.505. This request is timely submitted within three (3) days after the date on which [Contractor] received notification of exclusion from the competition under RFP No. [RFP no.].

Please confirm receipt, and contact me if you need any further information.

Very truly yours,

[Contractor Representative Name]

[Title]

[Contractor Name]

[Street Address]

[City, State ZIP Code]

[Contractor Representative telephone no.]

[Contractor Representative email address]



When Should a Pre-Award Debriefing Be Held?

FAR 15.505(b)

1. The Contracting Officer shall make every effort to debrief the unsuccessful offeror as soon as practicable, but may refuse the request for a Debriefing if, for compelling reasons, it is not in the best interests of the Government to conduct a Debriefing at that time.
2. If the Contracting Officer delays the Pre-Award Debriefing, it shall be provided no later than the time Post-Award Debriefings are provided under FAR 15.506.
3. If the requested Pre-Award Debriefing is held at the time of the post-award debriefings, the information required by FAR 15.506(d) must be provided in the debriefing.



Pre-Award Debriefing Disclosures: Required Content

FAR 15.505(e)

1. The agency's evaluation of significant elements in the offeror's proposal;
2. A summary of the rationale for eliminating the offeror from the competition; and
3. Reasonable responses to questions regarding the process for eliminating the offeror from the competition, including compliance with applicable regulations and source selection procedures contained within the solicitation and other applicable authorities.



Pre-Award Debriefing Disclosures: Prohibited Content

FAR 15.505(f)

The Agency Shall Not Disclose:

1. The number of offerors;
2. The identity of the offerors;
3. The content of other offerors' proposals;
4. The ranking of other offerors' proposals;
5. The evaluation of other offerors' proposals; or
6. Any information prohibited by FAR 15.506(e).
See Page 18.



Post-Award Debriefings

1. The agency should provide notification to unsuccessful offerors whose proposal was in the competitive range within 3 days after the date of contract award. FAR 15.503(b).
2. The Award Notice shall include:
 - The number of offerors solicited;
 - The number of proposals received;
 - The name and address of awardee(s);
 - The items, quantities, and stated unit prices of each award; and
 - In general terms, the reason the offeror's proposal was not accepted.
3. The offeror may request a Post-Award Debriefing under FAR 15.506 by submitting a written (email) request for Debriefing that is received by the agency within 3 calendar days after receipt of the Award Notice. *See Page 15.*



Sample Post-Award Debriefing Request Letter

[CONTRACTOR LETTERHEAD]

[Date]

VIA EMAIL

[Contracting Officer's Name]

[Title]

[Agency Name]

[Street Address]

[City, State, ZIP Code]

**Re: Request for post-award debriefing under RFP/
Solicitation No. [RFP no.]**

Dear [Contracting Officer's Name]:

[Contractor] respectfully requests a post-award debriefing pursuant to FAR 15.506. This request is timely submitted within three (3) days after the date on which [Contractor] received notification of contract award under RFP No. [RFP no.].

Please confirm receipt, and contact me if you need any further information.

Very truly yours,

[Contractor Representative Name]

[Title]

[Contractor Name]

[Street Address]

[City, State ZIP Code]

[Contractor Representative telephone no.]

[Contractor Representative email address]



When Should a Post-Award Debriefing Be Held?

A Post-Award Debriefing should be held within 5 days after the request “to the maximum extent practicable.”

FAR 15.506(a)(2).

Although the regulations provide that “to the maximum extent practicable, the debriefing should occur within 5 days after the receipt of request,” FAR 15.506(a)(2), they do not **require** that debriefings occur within 5 days. *Heritage of America, LLC vs. U.S.*, 77 Fed.Cl. 66 (2007) (emphasis added).



Post-Award Debriefing Disclosures: Required Content

FAR 15.506(d) (Minimum Requirements)

1. The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;
2. The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror;
3. The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the debriefed offeror;
4. Past Performance information regarding the debriefed offeror;
5. The overall ranking of all offerors, if a ranking was developed by the agency during the source selection;
6. A summary of the rationale for award;
7. For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and
8. Reasonable responses to relevant questions about whether source selection procedures contained within the solicitation, applicable regulations, and other applicable authorities were followed.



Post-Award Debriefing Disclosures: Prohibited Content

FAR 15.506(e)

The Agency Shall Not:

1. Include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors; or
2. Reveal any information exempt from release under the Freedom of Information Act (5 U.S.C. § 552) including:
 - a. Trade secrets;
 - b. Privileged or confidential manufacturing processes and techniques;
 - c. Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and
 - d. The names of individuals providing reference information about an offeror's past performance.

Bonus Tip:

Always designate all trade secrets and other confidential commercial or financial information contained in proposals submitted to the Government. You should mark every page of your proposal that contains such information with the following language: *Proprietary and Confidential Information Not For Release Under FOIA.*



How to Prepare for a Debriefing

1. Review the applicable FAR provisions (cited above) and bring copies with you to the Debriefing.
2. Review the RFP—especially the evaluation criteria and all subfactors.
3. Review the notice of exclusion from the competition or the Notice of Award.
4. It's okay to prepare with your lawyers but generally not advisable for your lawyers to attend the Debriefing. Remember The Ten Rules!
5. Prepare reasonable questions.
6. Conduct a “Dress Rehearsal.”



Additional Debriefing Recommendations

Be Courteous and Friendly.

Stay for the Entire Debriefing.

Cautionary Tale:

Two offerors walked out of a debriefing. Subsequently, they filed a bid protest more than 10 days after the debriefing based on information that would have been presented in the debriefing if the offerors had stayed for the entire debriefing. Protest dismissed, as the protestors were accountable under “diligent pursuit” rule. *Franz Rubenbauer Raumausstatter*, B-290317.3, et al., 2002 WL 1562079 (Jul. 16, 2002).

Always Ask How You Could Have Done Better!

Bonus Tip:

Inadequate debriefings generally are not valid protest grounds. However, an inadequate debriefing may lower the pleading threshold for valid protest grounds.



Sample Debriefing Questions

Always ask how you could have done better, and always ask about all evaluation criteria including subfactors. **Be sure to check the agency's math!** Here are some sample questions:

1. Please describe the evaluation process used for this procurement.
2. Please identify the strengths, weaknesses, and deficiencies in our proposal for each evaluation factor and subfactor.
3. Did the agency identify any significant weaknesses in our proposal?
4. Were we compliant with all technical requirements?
5. Were there any solicitation requirements that we failed to address? If so, what were they?
6. We proposed _____ as a technical enhancement. Did the government consider this to be an enhancement?
7. Were discussions conducted? If so:
 - a. Were there any significant deficiencies identified by the Government during discussions not adequately addressed in our response to your Evaluation Notices?



Sample Debriefing Questions (continued)

8. In order of importance, what were the most critical evaluation criteria that distinguished our proposal?
9. What were the most critical evaluation criteria that proved to be tie breakers in the evaluation of proposals?
10. Was a cost realism analysis used? If so, please describe the process used.
11. Did the agency prepare an independent cost estimate?
12. Did the government make a cost/technical trade-off?
13. Did the government make a competitive range determination?
14. Were any areas of our proposal considered overpriced?
15. Was experience evaluated?
 - a. If so, what was our rating?
 - b. How was this rating used in the source selection process?
16. How did the government evaluate risk?
17. Were risks identified in our proposal?



Sample Debriefing Questions (continued)

18. How did the risk evaluation impact the rating of our proposal?
19. How was past performance evaluated?
20. What was our past performance rating?
21. How was our past performance rating applied to the source selection process?
22. Please identify any information not contained in our proposal that was used by the evaluators in evaluating our proposal.
23. What, if any, specific considerations precluded us from being selected as the awardee?
24. Was there anything missing from our proposal?
25. Is there anything we need to do to improve our next proposal?



When Does the Debriefing End?

Sometimes Contractors send post-debriefing requests for clarification or additional information.

Absent a “clear indication” by the agency that the Debriefing is being extended to respond to additional questions, the debriefing is presumed to have ended at the conclusion of the session.

New SI, LLC, B-295209, 2005 CPD ¶ 71.

Asking post-debriefing questions does not extend bid protest deadlines!

[illegible]

This Pocket Guide is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys. This Pocket Guide is not intended to create an attorney-client relationship between you and Holland & Hart LLP. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.

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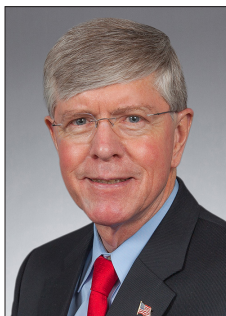


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