How to Make the Most of a Debriefing (Training, Tips, and other Tidbits…)

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USACE – Alaska District
Presentation Outline

- Background
- Pre-Award and Post-Award Debriefing Rules
- Checklist to Prepare for a Debriefing
- Strategies for Successful Debriefings
- Task and Delivery Order Protests
Background – Purpose and History of Debriefings

- Learn how to improve future offers
- Determine if there exists a basis for protest
- Debriefings should:
  - Instill confidence you were treated fairly
  - Assure you that qualified people evaluated your proposal & that the offer was evaluated in accordance with RFP evaluation criteria
  - Prevent misunderstandings during the evaluation process
- Historically, many protests are filed for “discovery” purposes where the agency has not provided adequate source selection information
Debriefing Summary:

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.
Background - Debriefing Basics

- Formal debriefing rules specify timing and content of deb briefings. 
  FAR 15.505/15.506

- Debriefing rules apply only to FAR Part 15 negotiated procurements; other types of competitive procedures require only limited disclosure of evaluation information. FAR 8.405-2(d)

- Debriefings affect timing for filing bid protests and obtaining the GAO’s “automatic stay” of contract award and performance

- Two types of Debriefings: Pre-Award and Post-Award
Pre-Award Debriefings – Timing

- Must be held “as soon as practicable” after timely request. *FAR 15.505(b)*

- Agency may refuse request if, for “compelling reasons,” a timely debriefing is not in Government’s best interest. *FAR 15.505(b)*

- If pre-award debriefing refused:
  - Agency must provide debriefing within post-award debriefing time requirements (5 days)
  - Agency must provide broad post-award debriefing information
Pre-Award Debriefing – Format

- Methods for conducting pre-award debriefings:
  - Oral
  - Written
  - Any other method acceptable to the Contracting Officer
  - Subject to ability to meet minimum informational requirements in FAR 15.505(e)

- FAR 15.505(d)
Pre-Award Debriefing

What Must Be Discussed?

- Evaluation results of significant elements in proposal
- Summary of rationale excluding offer
  - “Reasonable” responses to “relevant” questions about whether the Government followed the rules
- What do “reasonable” and “relevant” mean?

FAR 15.505(e)
Pre-Award Debriefing

What May Not Be Discussed?

- Point by point comparison
- Proprietary or exempt information
- Number of offerors
- Identify of offerors
- Content of other offerors’ proposals
- Ranking of other offerors
- Evaluation of other offerors

FAR 15.505(f)
Pre-Award Debriefings – Notice of Exclusion

- Only for those excluded from competitive range or otherwise excluded from competition prior to award.

- KO should provide “prompt” written notice of exclusion and basis for not requesting a proposal revision. FAR 15.503(a)

- “Prompt” is not defined in the FAR, but notification would be provided prior to contract award.
Pre-Award Debriefings – Time for Requesting and Deferral Option

- Contractor must request in writing within 3 calendar days of notification. FAR 15.505(a)(1); if no timely written request, no right to a debriefing. FAR 15.505(a)(3)

- Saturday email notifying contractor of its competitive range exclusion is “deemed received on the next business day.”

- Contractor may delay its one debriefing until after award and obtain broader post-award debriefing information
  - But, competition is over, Agency invested in outcome
Post-Award Debriefing

- Any losing contractor who has not had a pre-award debriefing

- Written request must be filed within 3 calendar days after notification or no right to a debriefing. FAR 15.506(a)(1)

- Should be held within 5 days “to the maximum extent practicable.” FAR 15.506(a)(1)
Post-Award Debriefing

- What must be discussed?
  - Deficiencies and significant weaknesses of proposal
  - Ratings of your and awardee’s proposal
  - Your past performance ratings
  - Total evaluated cost/prices, including unit prices (only requestor & awardee)
  - Overall ranking of proposals, if done
  - Summary of rationale for award decision
  - “Reasonable” responses to “relevant” questions

FAR 45.502(a)
Post-Award Debriefing

- What is not discussed?
  - Point by point comparison of proposals
  - Any information exempt from disclosure under the Freedom of Information Act (FOIA)
    - Trade Secrets
    - Confidential manufacturing processes
    - Commercial or financial information
    - Names of individuals providing past performance information

- FAR 15.506(e)
When Is a Debriefing “Required”?

- “Required” = procurement conducted on the basis of “competitive proposals” where debriefing is requested and required. 4 CFR 21.1(a)(2)

- A debriefing is not “required” if not timely requested. FAR 15.505(a)(3); 15.506(a)(4)

- “Competitive proposals” is not defined by GAO’s Bid Protest Regulations, nor by statute or regulation.

- Timely requested debriefings under FAR Part 15 procurements are “required.”
When Does the Debriefing End?

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

- Absent “clear indication” that a debriefing is extended pending the Agency’s response to additional questions, the debriefing is presumed over at the conclusion of the session.

- Posing questions after the debriefing session concludes does not extend time for filing a bid protest.
Protesting the Debriefing

- Inadequate debriefing generally not a valid protest ground

- Bad debriefing has no effect on previously-made Agency source selection decision

- Inadequate debriefing will, however, lower the threshold for pleading protest grounds with specificity
Errors Appearing Only In The Debriefing Materials

- If evaluation “errors” appear in the debriefing materials only, and not the evaluation record, no valid protest.

- Debriefing occurs after the evaluation is complete, evaluation errors must appear in the evaluation record for a valid protest.

- GAO: debriefing is only an explanation of the Agency’s evaluation and source selection decision, not the evaluation or decision itself.
Debriefing Preparation

- Procurement-specific list of items to which you are entitled

- Prepare list of “relevant” questions
  - Specific to each evaluation factor and subfactor
  - Address past performance information
  - Ask for source selection information (may be provided in redacted format – with only your specific source selection information made available)
Debriefing - Strategies for Success

- Participation Strategy
  - Request oral or written debriefing
    - Agencies are trending to written debriefings in lieu of in-person debriefings
    - Smart to ask follow-up questions to written debriefings
    - Protest and Stay deadlines triggered from date of written debriefing
  - Provide questions in advance
  - Have you received written debriefing materials in advance of debriefing session?
Debriefing Attendees

- Relevant Business Development group employees
- Relevant Proposal Preparation group employees
- Government procurement executive(s)
Debriefing – Conduct and “Tone”

- Behave reasonably and dispassionately – and have a good attitude

- You are there to learn, not accuse (not the forum to be confrontational or accusatory)

- Don’t ask “irrelevant” questions
  - Unsupported accusations of agency bias or misconduct

- Conduct “lessons learned” session with business development and proposal team after debriefings
Debriefing – Other Tips

- Ask for the following at the Debriefing:
  - The names and job titles of everyone in attendance
  - A copy of any debriefing slides

- After the Debriefing:
  - 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; and
  - Conduct a “lessons learned” session with the proposal team and other relevant personnel.

In summary, debriefings are important and valuable tools for government contractors. By following a few simple rules you will be able to effectively add this tool to your bid and proposal strategic planning.
Task and Delivery Order Protests

- Protests to GAO are now authorized by statute for task or delivery orders valued in excess of $10 million

- Effective May 2008 for DoD, FAR rule pending

- Offerors must be given a post-award debriefing

- GAO has not ruled whether task order debriefing is “required”

- For now, don’t rely upon GAO exception to timeline for stay and timely protest available for “required” debriefings