Debriefing

Michael J. Murphy, Esq.
Morrison Sund PLLC
5125 County Road 101, Suite 200
Minnetonka, MN 55345

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“It’s a very sobering feeling to be up in space and realize that one’s safety factor was determined by the lowest bidder on a government contract.”

Alan Shepherd
What is Debriefing Under the FAR?

• According to Webster's New Universal Unabridged Dictionary one of the definitions of the word “Debrief” is: “To question formally and systematically in order to obtain useful intelligence or information.”

• Though not specifically defined under the FAR, the word Debriefing could be defined as “Opportunity”.

For the Offeror

A Debriefing, as used in the FAR at Part 15, describes an opportunity for an Offeror to learn and understand the basis for the agency’s selection decision by communicating with, and questioning, the contracting agency. Debriefings with the contracting agency provide Offerors:

• An explanation of the evaluation process;
• An assessment of the strengths and weaknesses of their proposal in relation to evaluation criteria;
• A general understanding of the agency’s reasoning and rationale for its decision;
• Confidence that qualified people evaluated the proposal;
• An opportunity to ask questions about the award decision.

For the Agency

A Debriefing, as used in the FAR at Part 15, describes an opportunity for the Agency to:

• Educate the Offeror regarding the significant strengths, weaknesses and deficiencies in its offer;
• Clarify any open questions regarding the Agency’s evaluation process, thereby reducing the chance of avoidable protests.

NOTE: Historically, protests were often used as “fishing expeditions” to discover information that the agency did not provide. Debriefings were designed to stop this.
Why Request a Debriefing?

Offeror Perspective:

• Learn what can be improved to make offers more attractive;
• Learn what was successful and well received;
• Use as a marketing tool;
• Learn the basis for the award decision;
• Determine if there were any errors made in the evaluation process.

Why Facilitate a Debriefing?

Agency Perspective:

• Help instill confidence in the procurement process by providing transparency to reinforce a perception of fairness;
• Help minimize misunderstandings and frustration resulting in otherwise avoidable protests;
• Help enhance the agency's relationship with contractors and industry.

When is a Debriefing Under the FAR Available to an Offeror?

• A Debriefing may always be available to an Offeror if requested, but a Debriefing is not always required under the FAR.

• Required: A Debriefing under the FAR is only required in connection with Competitive Acquisitions/Proposals as described under FAR Part 15 Contracting by Negotiation, and IDIQ orders exceeding $5 million at FAR Part 16.5.

NOTE: “Competitive Acquisitions/Proposals” are not defined in the FAR.
When is a Debriefing Under the FAR Available to an Offeror (cont)?

- **Not Required:** A Debriefing is not required in connection with Sealed Bid Acquisitions under FAR Part 14, or other types of acquisition methods including Federal Supply Schedules at FAR Part 8, or Simplified Acquisitions in FAR Part 13. In such cases, an Offeror can always request a Debriefing, but the agency is not required to provide a Debriefing. Even if the agency provides a Debriefing, if the Debriefing is not required, it will not toll the deadlines for filing a timely protest or stopping performance.

**NOTE:** Offerors are entitled to only one (1) Debriefing for each proposal.

Debriefing vs. Brief Explanation

- In certain circumstances, if a Statement of Work is involved, the agency is required to provide a “brief explanation” of the basis for the award decision if requested by the Offeror and if award was based upon factors other than price alone.

**NOTE:** A “brief explanation” is not a Debriefing. It is important that the Agency and the Offeror not confuse this terminology.

- **Agency:** By consistently referring to a “brief explanation” as a “Debriefing”, an Agency could be held to the higher standard.
- **Offeror:** By misunderstanding what is being offered, an Offeror could compromise its right to protest and/or stay the contract by assuming a “brief explanation” is a “Debriefing”.

**NOTE:** “Promptly” is not defined in FAR.

When Does the Opportunity for a Required Debriefing Arise?

- **PRE-AWARD DEBRIEFING:** FAR Part 15.505 grants Offerors the right to request a Debriefing after the date on which the Offeror receives notification that it has been excluded from the Competitive Range or otherwise excluded from the competition before award.

**NOTE:** The agency is required, with limited exceptions (urgency, 8(a)) to notify Offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from competition, and provide the basis for this determination.
When Does the Opportunity for a Required Debriefing Arise (cont)?

- POST-AWARD DEBRIEFING: FAR Part 15.506 grants Offerors the right to request a Debriefing after the date on which the Offeror receives notification of contract award.

- Notice: The agency is required to notify in writing each Offeror whose proposal was in the competitive range but not selected for award within three (3) days after the date of contract award. The Notice must include:

  - (i) The number of Offerors solicited;
  - (ii) The number of proposals received;
  - (iii) The name and address of each Offeror receiving an award;
  - (iv) The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and
  - (v) In general terms, the reason(s) the Offeror's proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an Offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other Offeror.

This information must also be made available upon request to unsuccessful Offerors in solicitations using simplified acquisition procedures in FAR Part 13, and to unsuccessful Offerors that received a pre-award notice of exclusion from the competitive range.
Who Should Request a Required Debriefing?

- **PRE-AWARD**: All Offerors who receive notice that they have been excluded from the Competitive Range or otherwise excluded from the competition before award.

- **POST-AWARD**: All Offerors who receive notice that they have not been selected for contract award, AND the awardee.

How to Request a Required Debriefing?

- The request must be in writing. Be explicit. Specifically and directly ask for a debriefing. Refer to the FAR clause permitting a Debriefing. Leave no doubt that you are seeking a timely Debriefing under the rules. (see sample letter provided)

  **NOTE**: The written request need not be a letter. It can be an email.

When to Request a Required Debriefing?

- **PRE-AWARD**: submit a request in writing to be received by the agency within three (3) days after the Offeror's receipt of the notice of exclusion from the competition.

- **POST-AWARD**: submit a request in writing to be received by the agency within three (3) days after the Offeror's receipt of notification of contract award.
NOTE: Do not wait for the post-award notice! Ask or monitor FedBizOps to learn if an award has been made. If the post-award notice is not promptly issued and received, you will still have the right to a required Debriefing if timely requested, and to protest and/or stay the contract award, but a stay may have no meaning if the contract has been substantially or completely performed in the meantime.

NOTE: If you miss the deadline for requesting a required Debriefing, you lose the right to a required Debriefing. Though the agency is no longer required to provide the Debriefing, it can voluntarily accommodate a Debriefing. Even if the agency voluntarily accommodates a Debriefing, the Offeror may lose its right to protest and/or stay the contract award.

NOTE: Any reference to days under the rules is a reference to “Calendar Days.”

### Scheduling the Pre-Award Debriefing

- **Pre-award:** The Debriefing is to be scheduled as soon as practicable, subject to a delay for compelling reasons in the interest of the agency. If delayed by the agency until after award for compelling reasons, the required Debriefing shall be provided no later than the time allowed for post-award Debriefings and include all information provided in a post-award required Debriefing.
- **The Offeror may also request that the required Debriefing be delayed until after award. If delayed until after award at the Offeror's request, the required Debriefing shall include all information provided in a post-award required Debriefing.**

NOTE: I do not recommend that the Offeror request a delay as this could compromise the Offeror's right to protest and/or stay the contract award.

### Scheduling the Post-Award Debriefing

- **Post-award:** To the maximum extent possible, the Debriefing should occur within five (5) days after receipt of the written request.
- **NOTE:** Always take the first date offered for a required Debriefing. Do not request or negotiate a delay! All post-Debriefing timelines and deadlines are based upon the first date offered by the agency. If the Agency does not schedule the post-award required Debriefing within five (5) days, there is little the Offeror can do but apply some polite pressure.

NOTE: If an Offeror fails to timely request a required Debriefing after receipt of a pre-award notice, the Offeror is not entitled to request a required post-award Debriefing.
Who Participates in the Debriefing?

FOR THE OFFEROR: Bring at least two (2) people to the required Debriefing (one to listen and ask questions and one to take notes). Bring the relevant business people to show you are serious about the opportunity;
- Involved senior management;
- Sales personnel;
- Proposal writers;

NOTE: Keep your attorney informed, but do not bring your attorney to the required Debriefing as an unsuccessful Offeror. This will generally stifle open and honest discussion.
- If an awardee, and there is a potential for a protest against the award, bringing your attorney to the Debriefing allows the attorney to establish a relationship with the agency, and possibly assist with defending against any protest.

Who Participates in the Debriefing (cont)?

FOR THE AGENCY: Required Debriefings should be chaired by the Contracting Officer, with evaluators and other technical support staff providing input and support as needed.
- Team leads;
- Technical experts;

NOTE: The agency generally does not bring counsel.

Preparing for the Required Debriefing

Offeror:
- Discuss and review the applicable regulations to understand what can be discussed at the required Debriefing – take a copy of the applicable regulation to the Debriefing for reference;
- Discuss and review the solicitation, specifically the evaluation factors;
- Discuss and review the proposal submitted;
- Review the notice received from the agency;
- Prepare and write down a reasonable number of questions;
- Provide the agency with important questions in advance to assure the agency is prepared to discuss and answer the questions.
Preparing for the Required Debriefing

• Confirm that the requested Debriefing is required;
• Confirm all notice dates to assure the required Debriefing is timely requested and offered;
• Discuss and review the applicable regulations to understand what can be discussed and disclosed during the Debriefing;
• Discuss and review the solicitation, specifically the evaluation factors;
• Discuss and review the Offeror's proposal;
• Discuss and review the awardee's proposal;
• Discuss and review evaluation sheets;
• Ask the Offeror for questions in advance in order to best prepare;
• Prepare some expected questions, and do a “dry run,” possibly with agency counsel;
• Compile and have available all relevant documents (RFP, Offeror's proposal, evaluation reports, past performance data, source selection authority's determination).

Types of Required Debriefing

Debriefings may be done:
• Orally, in person, by telephone, by video conference;
• In writing (including email), or any method acceptable to the CO.

NOTE: Agencies are tending toward written responses to requests for Debriefings. While possibly more efficient, written responses often result in continued misunderstandings and mistrust. Offerors can always ask for a follow-up oral Debriefing after receipt of the written Debriefing, but the Agency need not provide a follow-up, and this will likely not protect or extend any filing deadlines.

What to Expect at a Required Pre-Award Debriefing

Topics to discuss at a Pre-award Debriefing include, at a minimum:
• The agency's evaluation of significant elements in the Offeror's proposal;
• A summary of the rationale for eliminating the Offeror from the competition; and
• Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the Offeror from the competition.
What Not to Expect at a Required Pre-Award Debriefing

Topics not disclosed or discussed at a Pre-award Debriefing include at a minimum:

1) The number of Offerors;
2) The identity of other Offerors;
3) The contents of other Offerors proposals;
4) The ranking of other Offerors;
5) The evaluation of other Offerors; or
6) Any of the information prohibited in 15.506(e), (see next slide);
7) Point by point comparisons with other Offeror proposals, including common weaknesses.
8) Evaluation factors not expressly set forth in the solicitation.
9) Names of people on the Source Selection Committee (unless present).

What to Expect at a Required Post-Award Debriefing

Topics to discuss at a Post-award Debriefing include, at a minimum:

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 and the debriefed Offeror, and past performance information on the debriefed Offeror;
3) The overall ranking of all Offerors, when any ranking was developed by the agency during the source selection;
4) A summary of the rationale for award;
5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful Offeror; and
6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

What Not to Expect in a Required Post-Award Debriefing

Topics not disclosed or discussed at a Post-award Debriefing include at a minimum:

- Post-award: point-by-point comparisons of the debriefed Offeror's proposal with those of other Offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure by 22.323 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including – information prohibited in 15.306(a):
  1) Trade secrets;
  2) Privileged or confidential manufacturing processes and techniques;
  3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and
  4) The names of individuals providing reference information about an Offeror's past performance.
Appropriate Conduct During the Debriefing

Dos:
• Be on time;
• Take the Debriefing opportunity seriously;
• Be professional, courteous and prepared;
• Listen, let the other side speak and explain;
• Ask questions (Offeror);
• Request advice on how to improve (Offeror);
• Present your questions and answers with confidence;
• Take good notes;
• THANK the participants for their time and consideration.

Appropriate Conduct During a Debriefing

Don’ts:
• Do not make the Debriefing adversarial;
• Do not threaten (legal action - protest, lawsuit adverse agency action (suspension, debarment); or personal retaliation — report to superiors, etc.);
• Do not argue or challenge or try to persuade the other party that it is wrong;
• Do not accuse or suggest a lack of competence or ability.

Sample Questions
(Courtesy of John Kilian)

✓ Was our proposal responsive to your needs? If not, what did we miss?
✓ Did we meet all solicitation requirements? If not, which ones were deficient?
✓ Did it sound like we understood your project? If not, which aspects did we come up short on?
✓ Did we clearly call out the benefits to you of our approach? If not, what was lacking?
✓ Was our technical approach to resolving your problem adequate? If not, what was lacking?
Sample Questions (cont) (Courtesy of John Kilian)

- Was our approach to managing the project what you were looking for? If not, how could we have improved?
- Was the proposal easy to understand and follow? If not, which sections did you have trouble with?
- Were our costs too high?
- What is the name of the winning Contractor?
- Please provide a copy of the source selection memorandum.

Debriefing Process

- Introductions of all participants;
- Agency description of the Debriefing process (agenda, objections, ground rules);
- Agency to advise that it will seek to address all relevant and appropriate questions during the Debriefing;
- Allow sufficient time for discussion, but avoid debates;
- Will not discuss the validity of the requirements, the integrity of the evaluation process, or other information prohibited by law.

Post Debriefing Actions

Unless clearly and specifically stated, “a clear indication,” a Debriefing is presumed to end at the end of the Debriefing session. Follow-up questions, communications or information requests, though the agency may respond, do not automatically extend the Debriefing.

AGENCY:

- Place an official summary of both pre-award and post-award Debriefings in the contract file!
- Place all other documents used in the Debriefing in the contract file (the request for Debriefing, any written questions, any handouts, etc.)
- While Debriefings generally have positive results they can lead to protests and/or litigation.
**Post Debriefing Actions (cont)**

OFFEROR:
As a first post-Debriefing action, meet with the management team to discuss the results of the Debriefing (do a “lesson learned” session).

Next, discuss the results and conclusions with the attorney to determine and decide if any further action is required or appropriate (follow-up conversation, protest, litigation, etc.).

**Filing a Timely Protest with the Agency or the General Accountability Office**

- Generally: unless the protest is based upon an alleged impropriety in a solicitation, in which case it must be filed prior to bid opening or the time set for receipt of initial proposals, the protest must be filed not later than ten (10) days after the basis for the protest is known or should have been known, whichever is earlier.

- Exception: in cases where a Debriefing is requested, and required, no protest will be accepted prior to the offered Debriefing date, but any protest based upon matters known or that should have been known prior to the Debriefing, or that are learned during the Debriefing, must be filed not later than ten (10) days after the offered Debriefing date.

**Obtaining a Stay in Contract Award or Performance**

- Generally: If a pre-award protest is filed, the contract cannot be awarded while the protest is pending. If a post-award protest is filed not later than ten (10) days after award, the agency must stay performance of the contract while the protest is pending.

- Exception: in cases where a post-award Debriefing is requested, and required, the agency is required to stay performance under the contract during the pendency of a protest only if the post-award protest is filed not later than five (5) days after the offered Debriefing date, if later than the ten (10) day filing limit.

**NOTE:** A significant discrepancy in the time to file a post-award protest following a Debriefing. Though the Offeror has ten (10) days to file the protest after the offered Debriefing date, the automatic stay of performance of the contract only triggers if the protest is filed not later than five (5) days after the offered Debriefing Date, if later than the general ten (10) day filing limit.
Michael J. Murphy has over 20 years of experience in the practice of Government Contracts law, both in the United States and overseas. In addition to a thorough knowledge of Government Contracts law, he recognizes and understands the practical business aspects of contracting and working with public agencies in a very competitive environment.

Mr. Murphy practices with an affirmative, “hands-on” approach to achieve swift, cost-effective and satisfactory results for his contractor clients.