

DOD Implements First Steps Toward Enhanced Debriefings

As competitors in federal negotiated procurements recognize, post-award debriefings are an important feature of the procurement process. Federal Acquisition Regulation (FAR) 15.506 has long mandated that an unsuccessful offeror in negotiated procurements be given an opportunity to obtain certain baseline information regarding the agency evaluation of its proposal and the rationale for the agency selection decision. For several years, commentators and disappointed offerors have criticized agency debriefings based on the paucity of information shared by contracting officers and the pressure to make a final decision to either accept or challenge the selection decision within a very short time with insufficient information to make a reasonably informed decision.

NDAAs FY 2018 Debriefing Mandates

In December 2017, Congress passed the [National Defense Authorization Act for Fiscal Year 2018, Public Law No. 115-91](#) (NDAA). Section 818 of the NDAA attempts to address inadequacies in the current debriefing requirements in two ways: (1) by requiring additional information be shared; and (2) by expressly authorizing additional time and process to seek and obtain additional debriefing information.

The Current Defense FAR Supplement (DFARS) Deviation

By a class deviation letter titled "[Enhanced Postaward Debriefing Rights](#)" the U.S. Department of Defense (DOD) recently implemented several elements mandated by Section 818. Specifically, the DOD directed its agencies and procurement officials as follows:

- Contracting officers must allow unsuccessful offerors to submit written questions within two business days after receiving a debriefing.
- The agency must provide written responses to the questions within five business days.
- The agency shall not consider the debriefing closed until it delivers its written responses to the unsuccessful offeror.

Lastly, the DOD reiterated that agencies must implement a stay of performance upon the filing of a bid protest at the Government Accountability Office (GAO)—

- within 10 days of contract award;
- within five days after a debriefing date is offered, but no questions are submitted; or
- within five days after the agency delivers its written responses to the unsuccessful offeror.

What Is Not Addressed?

The class deviation letter *did not* address the other aspects of Section 818 that require the release of contract award information. Under Section 818, for example, agencies will be required to release their written source selection decision for contracts in excess of \$100 million in a manner redacting the confidential information of offerors. Agencies also will be required to provide small business and nontraditional contractors with the option of obtaining redacted contract award information in procurements above \$10 million. Such changes, however, will be implemented in forthcoming revisions to DFARS.

Despite the enhanced debriefing rights, contractors should be mindful that these rights only apply to DOD procurements and do not apply to civilian agency procurements.

Enhanced debriefings offer prospective benefits to both disappointed offerors and DOD agencies. For the disappointed offeror, the opportunity for supplemental questions beyond the initial debriefing process and the additional time built into that process may provide additional information and more time to consider whether a protest is viable and makes business sense. For the DOD procuring agency, sharing more information and providing more time to digest that information may reduce the number of protests it needs to address.

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