Preparation Is Key to Post-Award Debriefing for Government Contracts

A DEBRIEFING PROVIDES AN OPPORTUNITY TO GAIN AN OVERALL UNDERSTANDING ABOUT THE BASIS OF THE AGENCY’S DECISION AND TO ASCERTAIN WHETHER THE AGENCY MADE ANY ERRORS IN ITS EVALUATION PROCESS.

The primary goal of offerors’ requesting a debriefing after a government contract is awarded is to learn what they can do to make their proposals more attractive for future procurements. Even the winning proposal is likely not perfect. Practically speaking, an agency may sometimes select an awardee not because its proposal was perfect, but because the agency determined that, based on factors set forth in the solicitation, the awardee’s proposal best satisfied its needs.
The successful offeror should use the debriefing as a “lessons learned” opportunity. It is also likely that both the successful offeror and the unsuccessful offeror will use the debriefing as an opportunity to market themselves to the agency. For an offeror, this is an important aspect of the debriefing because it will provide the agency with more information about the company, which may be useful to the agency for future procurements.

Finally, for unsuccessful offerors, a debriefing provides an opportunity to gain an overall understanding about the basis of the agency’s decision and to ascertain whether the agency made any errors in its evaluation process.

Under Federal Acquisition Regulation (FAR) 15.506, an offeror has three days from receipt of the award notification to submit a written request for a debriefing. The debriefing should occur within five days of the agency’s receipt of the written request.

Generally, it is the contracting officer who prepares and presents the debriefing, but often, members of the technical evaluation team will also lend support throughout the debriefing process. The contracting officer may choose to debrief offerors either orally or in writing. FAR 15.506(b) (2005). However, in most instances, an oral debriefing is the more efficient and expeditious method. Nonetheless, it is the contracting officer who has the final say on how the debriefing should be conducted.

**What Information Should Be Released?**

FAR 15.506(d) requires that the following information, at a minimum, be provided at a debriefing:

- The agency’s evaluation of the significant weaknesses and deficiencies in the offeror’s proposal

- The overall evaluated cost or price and the technical rating of the awardee and the debriefed offeror

- The overall ranking of all offerors, if such a ranking was developed by the agency

- A summary of the award rationale

- A response to the offeror’s relevant questions with respect to whether the agency followed the source selection procedures in the solicitation, regulations and other applicable authorities.
FAR 15.506(e) prohibits a contracting officer from making a point-by-point comparison of offers, providing information exempt from release under the Freedom of Information Act (FOIA), or releasing the identity of individuals providing past performance information.

However, a contracting officer may release a significant amount of information to an unsuccessful offeror to explain the basis for the agency’s decision and for the offeror’s lack of success.

**Preparation Is Key for the Agency and Contractor**

Preparation is vital to conducting a thorough and informed debriefing for both participants. A prepared contracting officer and debriefing team can instill in the offeror a sense of confidence in the government procurement system, as well as a belief that its proposal was treated fairly. The offeror, on the other hand, must have a team that is well-versed in its proposal and prepared to ask questions designed to obtain as much information as possible to confirm whether it was treated fairly and how it can be better prepared for future procurements. The offeror team must go in with an open mind — their proposal may not have been as good as the team thought it was at the time of submission. Keeping an open mind is critical, otherwise an offeror may not obtain the information necessary to understand why its proposal missed the mark and what can be done to improve future proposals. If the contracting officer and his or her team are not prepared, it will cast doubt on the agency’s process and decision making, which could lead to a protest, even when there is little doubt that the agency made the correct decision.

In preparing for the debriefing, the contracting officer should review the source selection documents, the offeror’s and awardee’s proposals, and evaluation sheets. The CO should also meet with members of the evaluation team to discuss the proposals. If, during this review, the contracting officer discovers an error, the immediate task is to determine whether the error materially affects the award decision. This must be accomplished prior to the scheduled debriefing because a material error that is prejudicial to an offeror should result in the agency canceling the debriefing and taking corrective action. On the other hand, when the error is not material, the review provides the agency with the opportunity to present an accurate picture of the evaluation process.

The contracting officer needs to understand that, once the debriefing begins, the successful or unsuccessful offeror can ask relevant questions. This is why it is critical for both parties to take the necessary time to prepare for the debriefing. In this way,
the discussion about the offeror’s proposal — including the strengths and weaknesses, specific questions about the offeror’s past performance, and the rationale for the award — can provide both parties with an opportunity to meet their respective goals for the debriefing.

**Stand By Your Decision**

During a debriefing, there are a variety of reasons why an agency might want to limit the amount of information released. For example, many contracting officers do so in the belief that it will avoid a protest. However, this is not a guarantee. Moreover, the unsuccessful offeror must maintain its focus to obtain as much information as possible, which will allow it to make an educated decision whether a protest will be worth the effort, risk and cost.

The Government Accountability Office has held that a protest based on information that was withheld from the protester, though requested, will be considered timely when the information is discovered later through either an immediate request under FOIA\(^1\) or during the course of a protest.\(^2\) In those instances, the contracting officer will have succeeded in avoiding a protest only for a finite period of time.

The contracting officer’s actions can also cast doubt on the procurement process, which is counterproductive and could result in a reprimand or worse. In many procurements, the contracting officer is faced with making difficult decisions that ultimately determine who will be awarded a contract. It is these decisions that some contracting officers are reluctant to reveal during a debriefing. Contracting officers should avoid this impulse.

The agency has made its decision, it was reviewed at the appropriate levels, and the contracting officer carefully reviewed the file and discussed the issues with the evaluation team prior to the debriefing. At this point, the contracting officer should feel confident in the award decision.

It is important to remember that the purpose of the debriefing is not to obfuscate potential protest issues. Rather, debriefings are an integral part of the procurement process that increase transparency and instill trust in the entire process.

Further, providing appropriate information during the debriefing to unsuccessful offerors should increase competition for future procurements. Offerors will now be able to utilize this information to make their future proposals more complete and responsive to the agency’s solicitation.
Take the High Road

When conducting a debriefing, the contracting officer and his or her team must remember that the unsuccessful offeror will be disappointed that its hard work did not result in a contract. The offeror team may feel a sense of frustration with the agency or be angry that a competitor, who they view as less qualified, was selected for the award. Likewise, the disappointed offeror must go into the debriefing assuming that the award process followed statute and regulation, focus on the facts, and look to receive additional information that will allow it to discover how the award process was administered, the specific reasons for the award, and how to better prepare a future proposal and/or file a protest.

The key in these situations is for neither party to get emotional or confrontational. The contracting officer must keep in mind the purpose of the debriefing — to present the facts, walk the unsuccessful offeror through the evaluation process, and assist them in understanding the agency’s award decision. The unsuccessful offeror also needs to focus on the purpose of the debriefing and get all the information it can to be more successful in submitting a future proposal or filing a protest.

At a minimum, these steps should encourage confidence in the procurement process, even when an unsuccessful offeror does not fully accept the agency’s decision rationale.

It is also important to remember that the debriefing process helps to further build and enhance the relationship between the government and industry. Keeping the debriefing professional and avoiding getting bogged down in personal attacks will help strengthen the relationship to the benefit of all.

Pepper Hamilton has experience counseling large and small businesses concerning debriefings, including preparation and related strategies. If you have any questions, please contact the authors.

Endnotes
