

EVERYONE WISHES AGENCIES WOULD COMPLY, BUT...

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On January 5, 2017, the Acting Administrator for Federal Procurement Policy issued a “Myth-Busting” memorandum on the importance of agencies giving good debriefings. As readers know, Federal Acquisition Regulation (“FAR”) 15.505 provides for pre-award debriefings and FAR 15.506 and 16.505 provides for post-award debriefings. These sections of the FAR explain when debriefings are required, who has a right to a debriefing, and what information may and may not be shared with contractors. The Administrator’s memorandum attempts to convince agencies that they should give first-class debriefings in order to help maximize the return on acquisition investment, which was \$440 billion in fiscal 2015. It’s a commendable memo, and we can only hope that agencies will follow its advice, but that remains to be seen.

The memorandum notes that “debriefings afford offerors ... an explanation of the evaluation process, an assessment of their proposal in relation to the evaluation criteria, a general understanding of the basis of the award decision, and the rationale for exclusion from the competition.” It also notes the following benefits of debriefings:

- Help vendors understand their weaknesses in their proposals so they can make stronger efforts on future procurements (especially important for small business)
- Contribute to a more competitive supplier base for future work
- Allow agencies to evaluate and improve their own processes
- Decrease protests where agencies conduct quality debriefings.

The Memo includes a long table of “Misconceptions and Facts About the Debriefing Process” which is summarized below:

Misconception 1: Companies do not really use the information provided in a debriefing to improve their work.

Fact: Industry has indicated that offerors are less likely to protest when they understand their weaknesses and have clarity on the source selection outcome. Offerors spend money to prepare offers and deserve to receive a meaningful debriefing.

Misconception 2: Debriefings always lead to protests.

Fact: An effective debriefing process can greatly reduce the frequency of protests. Unsuccessful offerors are able to accept unfavorable findings in a debriefing if they perceive that the government has acted with fairness, consistency, objectivity and in accordance with the evaluation criteria in the solicitation.

Misconception 3: Debriefings are unpredictable and there is no way for government personnel to prepare.

Fact: A successful debriefing, whether oral or in writing, requires attentive preparation that can be planned with the aid of relevant subject matter experts and can vary with the complexity and the value of the procurement.

Misconception 4: Contracting officials should provide minimal feedback for procurements conducted under Federal Supply Schedules (“FSS”) or simplified acquisition procedures because offerors understand that agencies are only required to give a brief explanation for the basis of the award decision.

Fact: Providing meaningful debriefings can improve the government’s ability to gain better value from acquisitions using simplified acquisition procedures or the FSS.

Misconception 5: When an offeror brings an attorney to the debriefing that signals that the offeror will protest, therefore, contracting officials should limit the debrief discussion.

Fact: A vendor’s decision to bring an attorney to the debriefing does not necessarily signal a heightened potential for a protest or potential of a difficult conversation.

Misconception 6: To avoid any issues being raised by offerors, the debriefing should disclose only the offeror’s proposal ratings and that it was not selected as the winning proposal--the government should avoid engaging in further discussions or follow up questions during the debrief.

Fact: The debriefing is meant to provide a thorough explanation of the basis for award, including an explanation of the strengths and deficiencies of the offeror’s proposal, ratings of debriefed offeror’s proposal and successful proposal, past performance ratings of the offeror, overall general ranking (when developed), and reasonable responses to relevant questions.

Misconception 7: The government should not spend time debriefing the winning offeror—this is not valuable to either side.

Fact: An effective debriefing can provide long term benefits for both contracting officials and the successful and unsuccessful offerors. FAR 15.506 allows for post award debriefings for any requesting offeror, including the winning offeror.

Misconception 8: All debriefings should be completed in writing.

Fact: Debriefings may be completed orally, in writing or by any other methods acceptable to the contracting officer. Both agencies and industry have expressed a preference for in-person debriefings—whether in person, videoconference, or teleconference.

Agencies should take these suggestions to heart and offerors should insist that agencies provide meaningful debriefs. However, it remains to be seen if debriefs actually improve.