



Are Changes Coming to Federal Government Contract Debriefings?

10.16.2017

In the world of government contracts, there are lots of rules and regulations that must be followed. Some apply to the contractor, and some apply to the government. One rule requires the government to take certain actions once it picks the winner of a contract after a competition. That rule requires the government to offer a "debriefing" to all competitors. Under the rule, the debriefing must include certain information, including a listing of all significant weaknesses or deficiencies and past performance information for the debriefed contractor. See Federal Acquisition Regulations (FAR) 15.506(d). For businesses that operate only in the commercial marketplace, these rules and regulations can seem peculiar or quirky. But for government contractors, these rules are familiar and ordinary. Depending upon what happens in the next few months on Capitol Hill, things may change dramatically. There is language in the Senate version of the National Defense Authorization Act for Fiscal Year 2018 (NDAA) that, if enacted, would re-write the rules for debriefings.

The Current Rules for Debriefings

The current rules for debriefings are set forth in the FAR. The FAR requires agencies to disclose the following information in a "post-award" debriefing:

- Evaluation of significant weaknesses or deficiencies in the offeror's proposal;
- Overall evaluated cost or price (including unit prices) and technical rating of the successful offeror;
- Overall evaluated cost or price and technical rating of the debriefed offeror;
- Past performance information regarding the debriefed offeror;
- Overall ranking of offerors, if one was developed;
- Summary of the rationale for award; and
- Reasonable responses to relevant questions about whether source selection procedures, applicable regulations and other authorities were followed.

FAR 15.506(d). Our *Practical Guide to Federal Government Contract Debriefings* is available [here](#)

New Debriefing Requirements in Senate Version of NDAA

For the past few years, there has been talk on the Hill about acquisition reform. Much of the discussion has centered around reform of the bid protest process. When Congress starts looking at acquisition reform, bid protests are one of the "usual suspects" that get rounded up and blamed for delays in the procurement process. One reasonable approach to reform that process to eliminate or mitigate those delays comes in the form of proposals to increase information provided to contractors in the debriefing process. The logic is that, if contractors get more information about agency source selection decisions, there will be fewer protests filed and less delay in the acquisition timeline. Section 822 of the NDAA that passed the Senate in September 2017 contains the following provisions for these "enhanced" post-award debriefings:

- Disclosure of the "agency"s written source selection award determination, redacted if necessary to protect competitors' confidential and proprietary information;
- A "requirement for a combined written and oral debriefing for all contract awards and task or delivery orders" of \$10 million or more;
- An opportunity for "access to an unredacted copy of the source selection award determination and the supporting agency record for [contractors?] outside counsel or other appropriate outside representative" in procurements of \$10 million or more;
- A full opportunity for contractors to ask questions while being certain that no protest deadlines will be triggered until all questions are answered;
- Robust procedures to protect confidential and proprietary information of all competitors; and
- Provisions permitting both losing contractors and winning contractors to participate in these "enhanced post-award debriefings."

The Senate version of the NDAA can be found here. If the Senate gets its way, DoD would be required to write new regulations to establish procedures for these "enhanced debriefings."

When Will This Happen?

The timeframe for passage of the NDAA is anyone's guess. But the joint committee formed to resolve differences in the Senate and House versions of the NDAA began the reconciliation process this week. And, the continuing resolution that funds the government expires on December 9, 2017. So, there is a chance that legislation containing an overhaul to the debriefing process will be on the President's desk before that time. Or, these enhanced debriefing provisions could wind up on the cutting room floor after the reconciliation process is completed. Stay tuned!

To download a copy of ***A Practical Guide to Federal Government Contract Debriefings***, please click [here](#).

Related People

- Anthony H. Anikeeff ? 703.760.5206 ? aanikeeff@williamsmullen.com
- Michael D. Maloney ? 703.760.5230 ? mmaloney@williamsmullen.com