

THE NUTS AND BOLTS OF FEDERAL GOVERNMENT CONTRACT DEBRIEFINGS

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WILLIAMS MULLEN

PRESENTERS



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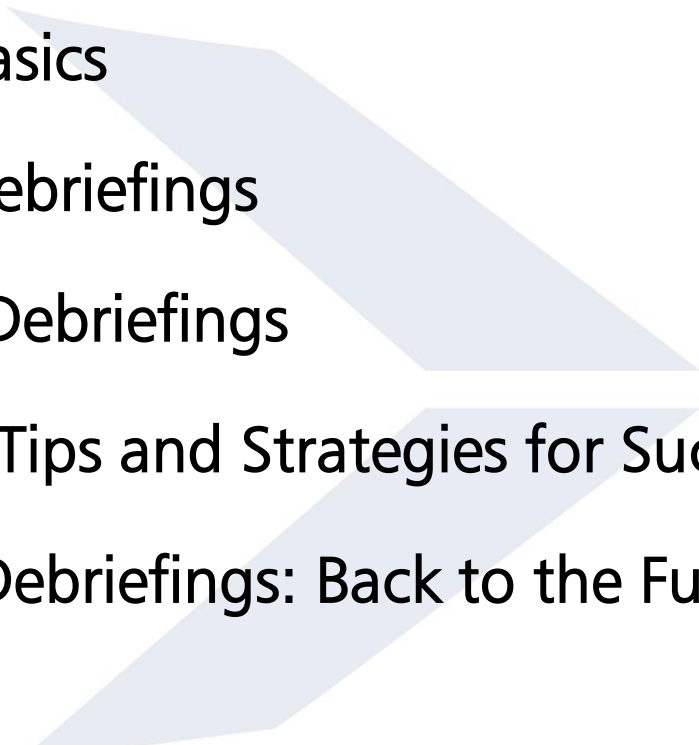
AUDIENCE PARTICIPATION/POLLING QUESTIONS



1. In the past 3 years, have you received or provided a debriefing from a federal government agency? (yes/no)
61% - yes; 39% - no
2. In the past 3 years, in oral vs. written debriefings, have you had or given: more written debriefings/ more oral debriefings/ about the same number of each?
46% - more written debriefings; 8% - more oral debriefings; and 46% - about the same number of each
3. In the past 3 years, did you have a debriefing where the federal agency failed to provide information that you thought was required to be disclosed, whether as the contractor or from the agency's side? (yes/no)
31% - yes; 69% - no
4. Following your debriefing(s), in what percentage of cases was a bid protest filed? (less than half the time/ about half the time/ more than half the time/none)
40% - less than half the time; 3% - about half the time; 5% - more than half the time; and 53% - none
5. Have you ever had an agency fail or refuse to provide a debriefing following a timely request? (yes/no)
28% - yes; 73% - no
6. Please provide an overall rating for how satisfied you have been by your federal contract debriefings over the past three years. (Unsatisfied/Satisfied/Very Satisfied/N/A)
16% - unsatisfied; 59% - satisfied; 0% - very satisfied; and 25% - N/A

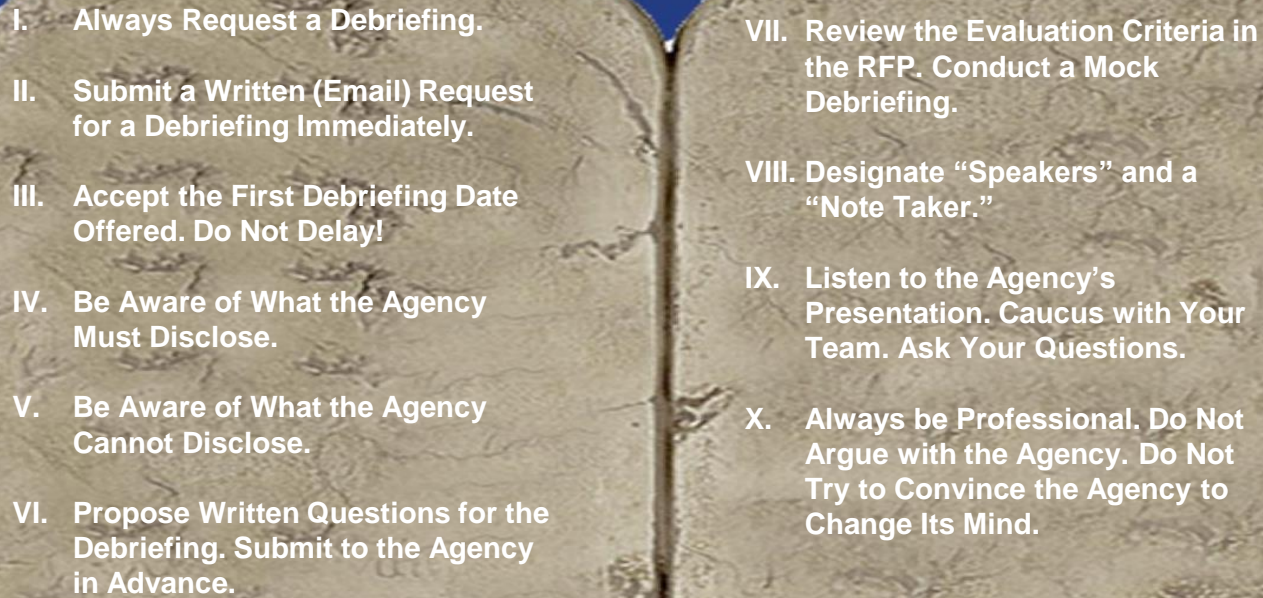
AGENDA



1. "The Ten Commandments"
 2. Debriefing Basics
 3. Pre-Award Debriefings
 4. Post-Award Debriefings
 5. Preparation, Tips and Strategies for Success
 6. Inadequate Debriefings: Back to the Future
 7. Mythbusters
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“THE TEN COMMANDMENTS”

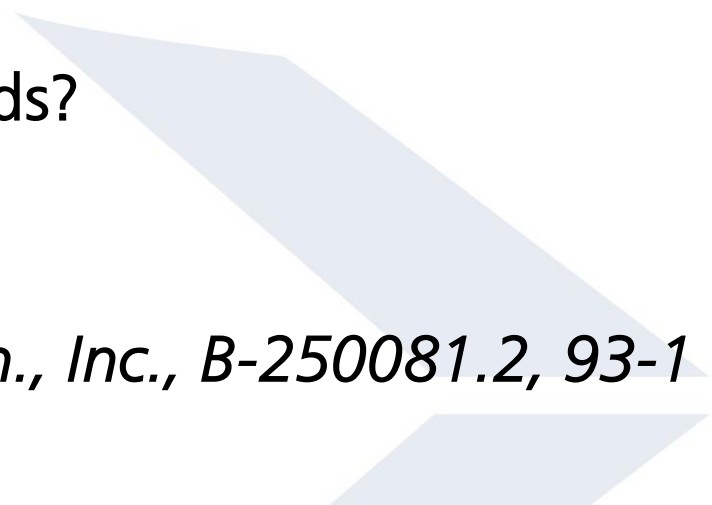
“THE TEN COMMANDMENTS”

- 
- I. Always Request a Debriefing.
 - II. Submit a Written (Email) Request for a Debriefing Immediately.
 - III. Accept the First Debriefing Date Offered. Do Not Delay!
 - IV. Be Aware of What the Agency Must Disclose.
 - V. Be Aware of What the Agency Cannot Disclose.
 - VI. Propose Written Questions for the Debriefing. Submit to the Agency in Advance.
 - VII. Review the Evaluation Criteria in the RFP. Conduct a Mock Debriefing.
 - VIII. Designate “Speakers” and a “Note Taker.”
 - IX. Listen to the Agency’s Presentation. Caucus with Your Team. Ask Your Questions.
 - X. Always be Professional. Do Not Argue with the Agency. Do Not Try to Convince the Agency to Change Its Mind.

DEBRIEFING BASICS

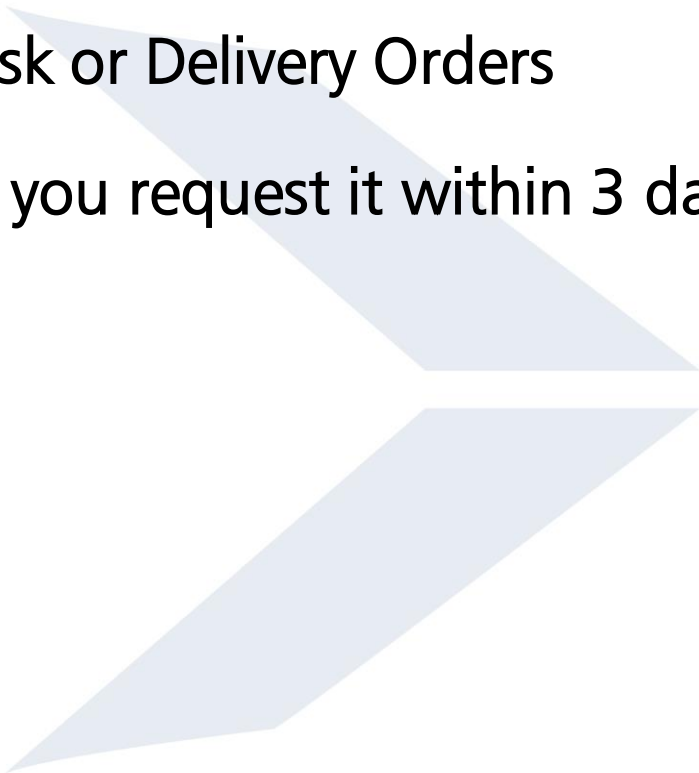
DEBRIEFING – WHAT IS IT?



- > Opportunity
 - > Protest grounds?
 - > Agency view
 - > *See AWD Tech., Inc., B-250081.2, 93-1 CPD ¶ 83 (1993)*
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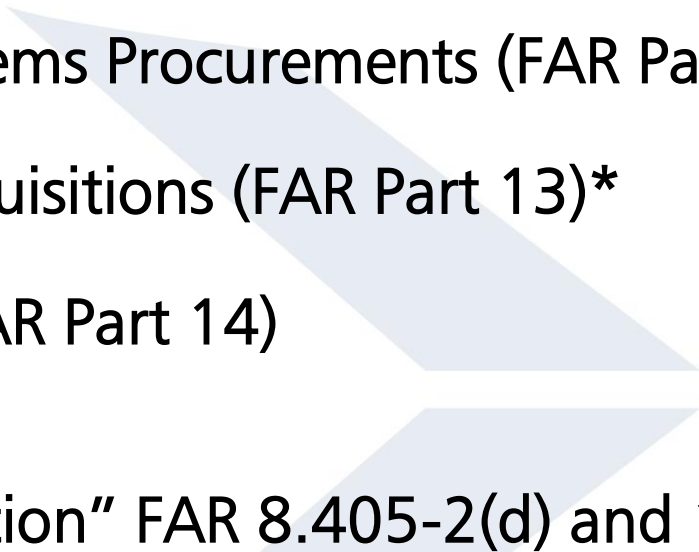
WHEN IS A DEBRIEFING REQUIRED?



- > FAR Part 15 Procurements
 - > FAR Part 16 Task or Delivery Orders
 - > . . . But only if you request it within 3 days!
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WHEN IS A DEBRIEFING NOT REQUIRED?

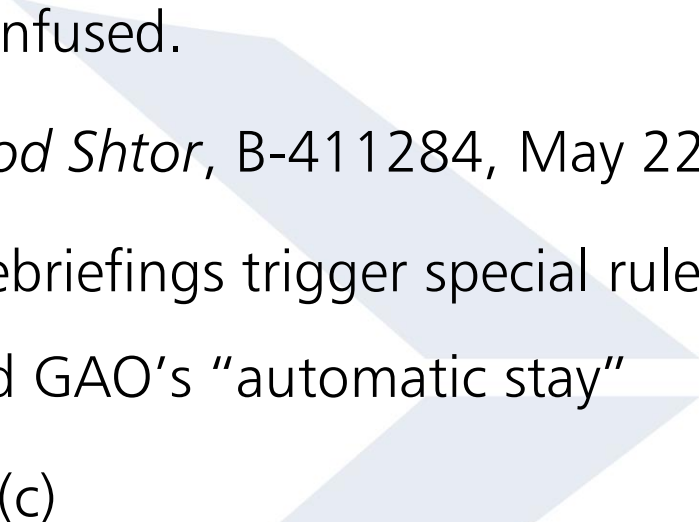


- > GSA Schedule (FAR Part 8)*
 - > Commercial Items Procurements (FAR Part 12)
 - > Simplified Acquisitions (FAR Part 13)*
 - > Sealed Bids (FAR Part 14)
- * "Brief Explanation" FAR 8.405-2(d) and 13.106-3(d)
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DEBRIEFING BASICS



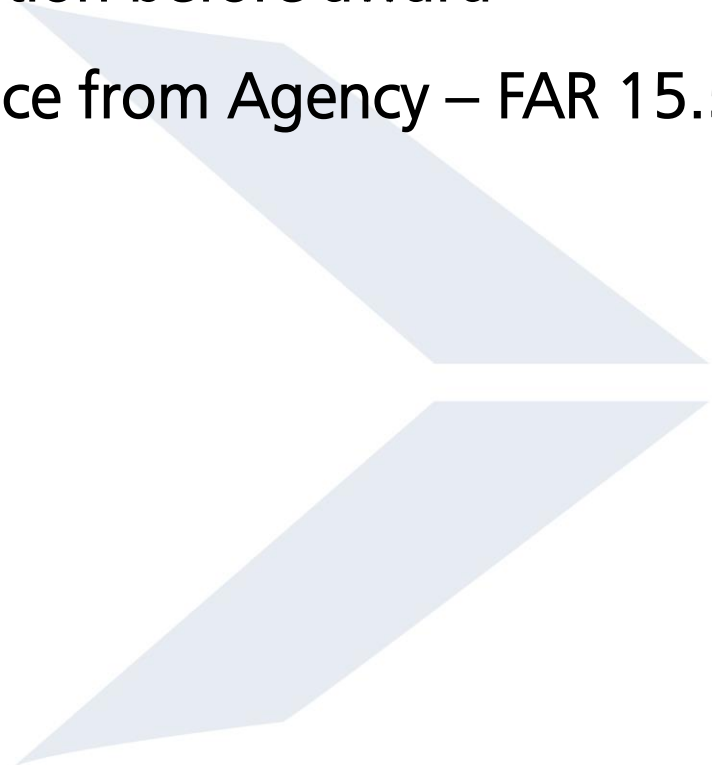
> “Debriefing or “Brief Explanation?”

- Don’t be confused.
 - See *Gorod Shtor*, B-411284, May 22, 2015
 - Required Debriefings trigger special rules for timing of bid protests and GAO’s “automatic stay”
 - FAR 33.104(c)
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PRE-AWARD DEBRIEFINGS

PRE-AWARD DEBRIEFINGS



- > Contractors excluded from the competitive range/competition before award
 - > "Prompt" Notice from Agency – FAR 15.503(a)
- 

PRE-AWARD DEBRIEFINGS



> Request within 3 calendar days – FAR 15.505(a)(1)

> Weekend notice?

(See *Golight, Inc.*, B-401866, 2009 CPD ¶ 184)

> Right to delay Pre-Award Debriefing

- FAR 15.505(a)(2)

- Don't do it!!!

PRE-AWARD DEBRIEFINGS – TIMING

> When?

> Agency refusal?

> FAR 15.505(b)

PRE-AWARD DEBRIEFINGS – FORMAT

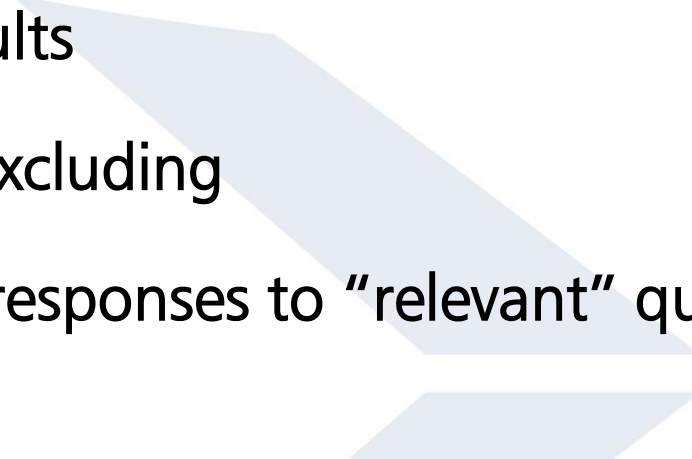
- > Oral?
- > Written?
- > Other?
- > FAR 15.505(c)



PRE-AWARD DEBRIEFINGS – REQUIRED CONTENT

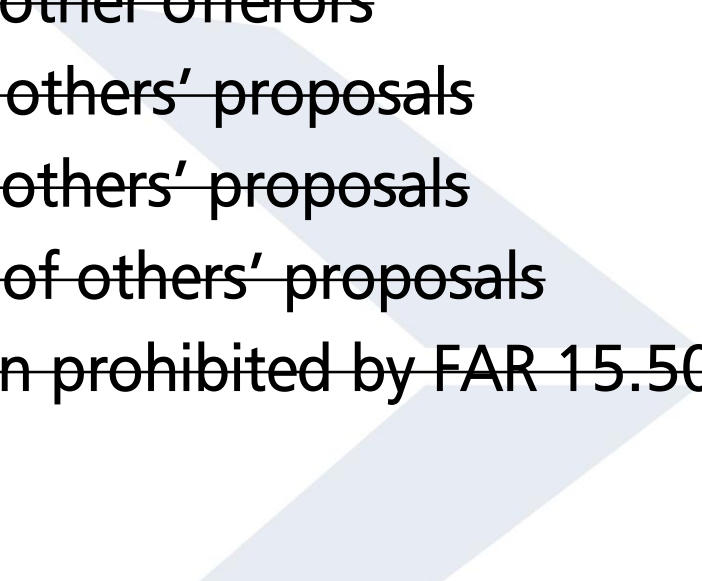


Minimum Requirements

- > Evaluation results
 - > Rationale for excluding
 - > “Reasonable” responses to “relevant” questions
 - > FAR 15.505(e)
- 

PRE-AWARD DEBRIEFINGS – PROHIBITED CONTENT

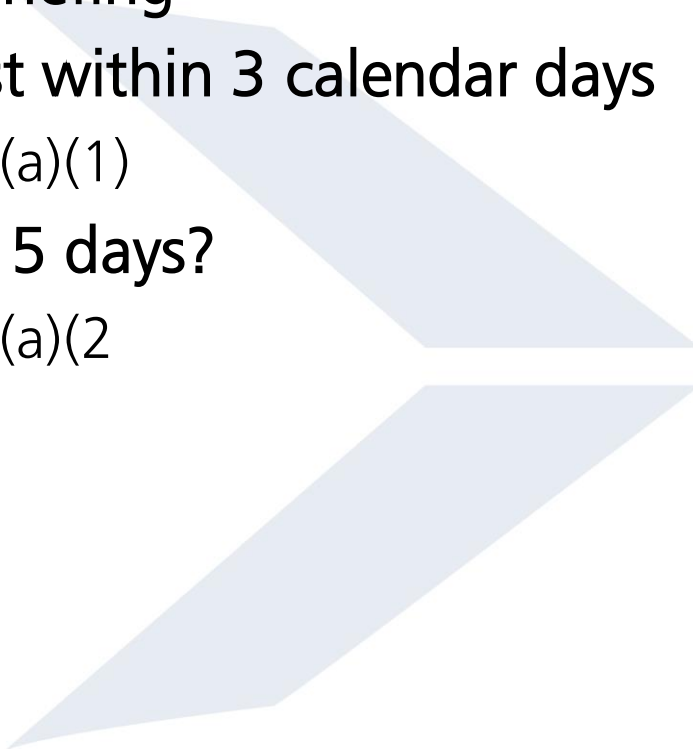


- ~~The number of offerors~~
 - ~~The identity of other offerors~~
 - ~~The content of others' proposals~~
 - ~~The ranking of others' proposals~~
 - ~~The evaluation of others' proposals~~
 - ~~Any information prohibited by FAR 15.506(c)~~
- > FAR 15.505(f)
- 

POST-AWARD DEBRIEFINGS

POST-AWARD DEBRIEFINGS – TIMING



- > Awardees and any losing contractor who has not had a pre-award debriefing
 - > Written request within 3 calendar days
 - FAR 15.506(a)(1)
 - > When? Within 5 days?
 - FAR 15.506(a)(2)
- 

POST-AWARD DEBRIEFINGS FORMAT

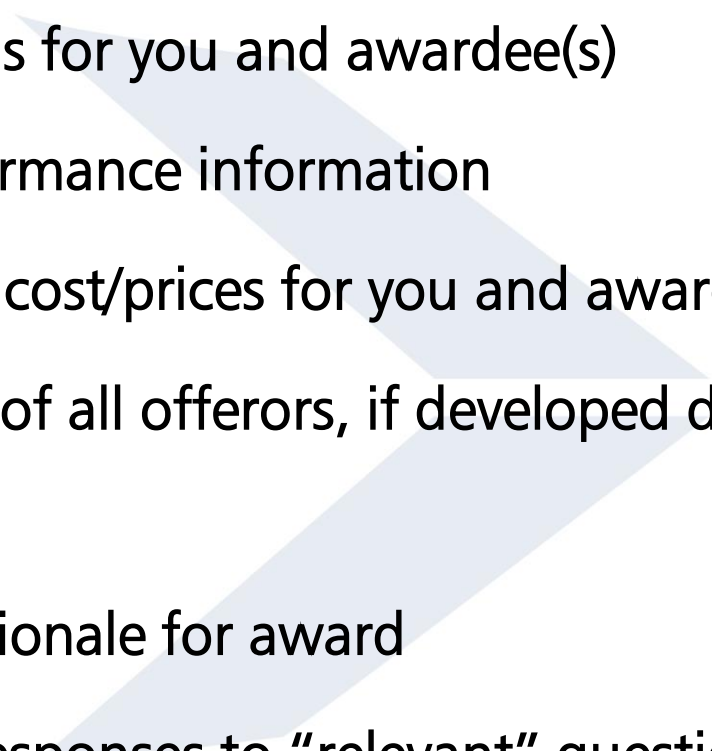


- > Oral
- > In writing
- > Other method
- > FAR 15.506(b)



POST-AWARD DEBRIEFINGS – REQUIRED CONTENT



- > Deficiencies and significant weaknesses in your proposal
 - > Technical ratings for you and awardee(s)
 - > Your past performance information
 - > Total evaluated cost/prices for you and awardee(s)
 - > Overall ranking of all offerors, if developed during source selection
 - > Summary of rationale for award
 - > “Reasonable” responses to “relevant” questions
 - > FAR 15.506(d)
- 

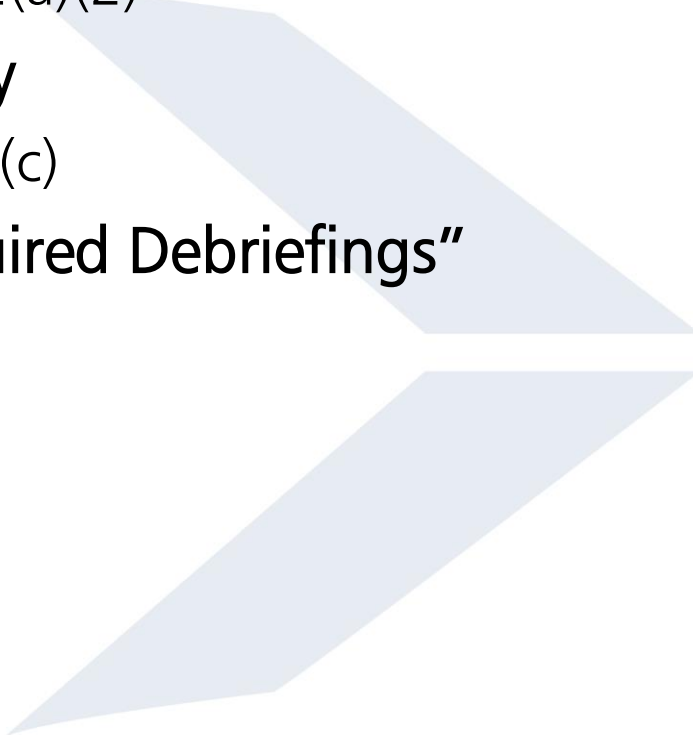
POST-AWARD DEBRIEFINGS – PROHIBITED CONTENT



- ~~Point-by-point comparison of your proposal with others~~
 - ~~FOIA Exemptions~~
- 

DEBRIEFING IMPACT ON BID PROTESTS



- > Timeliness of protest grounds
 - 4 CFR §21.2(a)(2)
 - > Automatic Stay
 - FAR 33.104(c)
 - > But only “Required Debriefings”
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PREPARATION, TIPS AND STRATEGIES FOR SUCCESS

DEBRIEFING PREPARATION

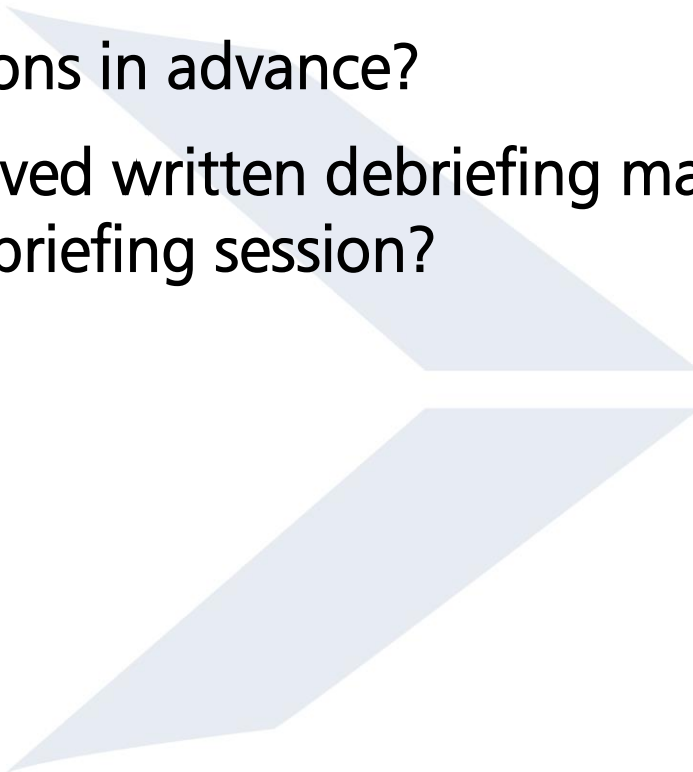


Your Debriefing Notebook Should Include:

- > Any special access requirements for government facilities (in-person Debriefings)
- > FAR provisions
- > Excerpts of your proposal
- > A roster of government personnel and your personnel in attendance
- > Reasonable and "relevant" questions (submitted in advance, plus any additional questions)
- > Notice of Exclusion / Notice of Award
- > Blank pages for note-taking
- > RFP evaluation criteria

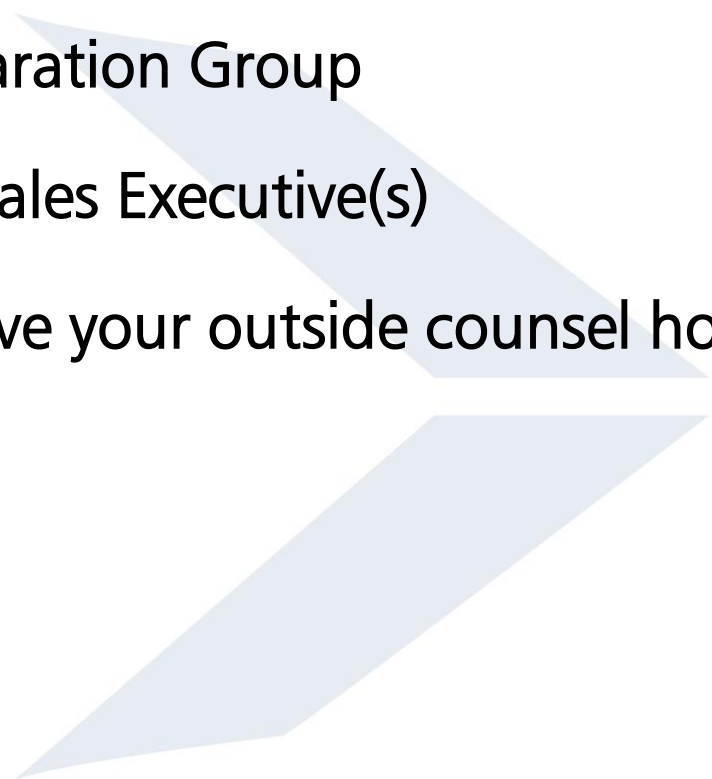
DEBRIEFING – STRATEGIES FOR SUCCESS



- > Request oral or written?
 - > Provide questions in advance?
 - > Have you received written debriefing materials in advance of debriefing session?
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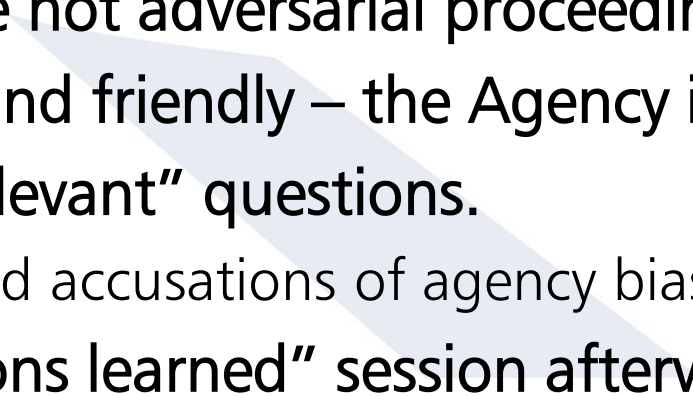
DEBRIEFING ATTENDEES



- > Business Development Group
 - > Proposal Preparation Group
 - > Government Sales Executive(s)
 - > In general, leave your outside counsel home.
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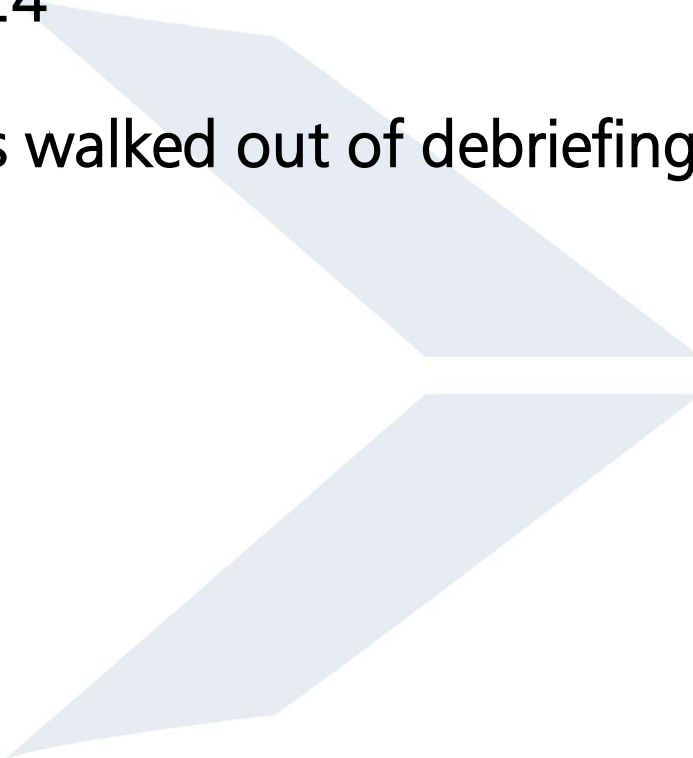
DEBRIEFING – CONDUCT AND “TONE”



- > Be professional.
 - > Debriefings are not adversarial proceedings!
 - > Be courteous and friendly – the Agency is your customer.
 - > Don't ask “irrelevant” questions.
 - Unsupported accusations of agency bias or misconduct
 - > Conduct “lessons learned” session afterwards.
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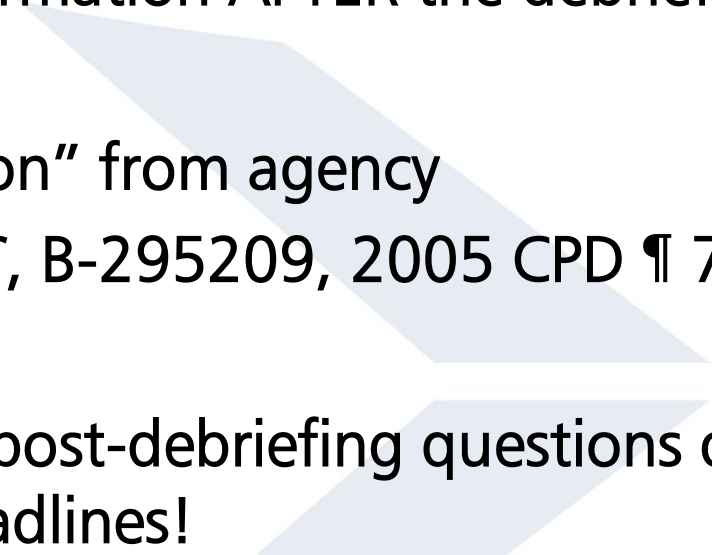
TIPS – STAY FOR THE ENTIRE DEBRIEFING



- > *Franz Rubenbauer Raumausstatter, B-290317.3, et al., 2002 CPD ¶ 124*
 - > Two protestors walked out of debriefing
- 

WHEN DOES THE DEBRIEFING END?



- > Contractors sometimes send requests for clarifications or additional information AFTER the debriefing session.
 - > “Clear indication” from agency
(See *New SI, LLC*, B-295209, 2005 CPD ¶ 71)
 - > Simply asking post-debriefing questions does not extend bid protest deadlines!
- 

ERRORS APPEARING ONLY IN THE DEBRIEFING MATERIALS?



> Not a valid protest ground



PROTESTING INADEQUATE DEBRIEFINGS?

> Not a valid protest ground



INADEQUATE DEBRIEFINGS: BACK TO THE FUTURE

INADEQUATE DEBRIEFINGS – BACK TO THE FUTURE



> Inadequate debriefings

- What remedy?
- What forum?

> Ralph C. Nash & John Cibinic, Debriefing: Tell it Like It Is, Nash & Cibinic Rep. ¶ 43, July 1990

> 2017?



MYTHBUSTERS



> Myth No. 1:

- “Companies do not really use the information provided in a debriefing to improve their work.”

> Myth No. 2:

- “Debriefings always lead to protests.”

> Myth No. 3:

- “All debriefings should be completed in writing.”

> Jan. 5, 2017, OFPP Memorandum, “‘Myth-busting 3’ Further Improving Industry Communication with Effective Debriefings”

QUESTIONS?

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DEBRIEFINGS GUIDE & ADDITIONAL RESOURCES

<http://www.williamsmullen.com/industry/government-contracts>

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