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# DOD EXTENDS POST-AWARD DEBRIEFING RIGHTS

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On March 22, 2018 the Department of Defense ("DoD") issued a memorandum that augments FAR 15.506 "Postaward debriefing of offerors", at least as relates to unsuccessful offerors. Arising out of a requirement in the 2018 National Defense Authorization Act, and while not changing the FAR explicitly, as relates to the DoD, additional debriefing steps are now afforded unsuccessful offerors. This is a positive step as it should provide disappointer offerors access to additional information and data to inform them not only on why they did not win but also to assist in their election whether to pursue a bid protest.

Effective immediately, contracting officers are now required to include in their debriefing (whether oral (face-to-face or telephonic) or written) information to unsuccessful offerors (as distinguished from awardees or successful offerors) on the unsuccessful offeror's ability to submit questions related to that debriefing within two (2) business days of receiving that debriefing. The agency shall then respond to those questions in writing within five (5) business days of receipt of those timely submitted questions. If this option is elected by the disappointed offeror, then the debriefing is not considered concluded until the written answers/responses are provided. This would act to extend the time in which an offeror has to file a bid protest for the additional period of time.

Note that if the agency responds to the questions in a lesser period of time, then the time to protest triggers from that date.

The memorandum also reinforces and expands on FAR 33.104(c)'s requirement that contract performance be suspended or contract award terminated upon receipt of a protest filed with the GAO within:

a. ten days of the date of contact award;

b. five days from the debriefing date offered to the protester under a timely debriefing request (a debriefing must be requested under FAR 15.506(a)(1) within three days after receipt of contract award notification), if no additional questions are submitted or

c. five days after the Government delivers its written responses to the additional questions submitted by an unsuccessful offeror, whichever is the latest.

This is an expansion of the CICA automatic stay, but note that it does not apply to agency-level or U.S. Court of Federal Claims protests which are not covered by that stay.

This should be seen as a positive step. Not only does it allow disappointed offerors the ability to submit questions and obtain answers (which may or may not be sufficient in their content) but it provides

additional time to evaluate the award decision and make a decision whether to pursue one's bid protest rights. Given the short time frames (as discussed above) to file a protest, every day helps.
Key to note is that:

1. These additional steps are limited to DoD agencies/branches only, not civilian;
2. Offerors must meet these deadlines strictly to preserve their protest rights; and
3. Offerors should understand and educate their personnel on the debriefing (and protest) timelines and a checklist in place to make sure that you meet these timing and submission requirements.

The memorandum can be found at: https://www.acq.osd.mil/dpap/policy/policyvault/USA000563-18-DPAP.pdf