



FED GOV CON
Webinar Wednesdays
2019 Series

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Debriefings: What You Can and Cannot Ask

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- The FAR requires the agency to provide responses to “reasonable” questions raised by the debriefed offer regarding “whether source selection procedures in the solicitation, applicable regulations and other applicable authorities were followed”
- Issue regarding timing of questions when an offeror receives a written debriefing
 - Important for GAO protests and CICA stay
- Title of webinar a misnomer; question is not what you can ask but what the agency will tell you

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- FAR contains a list of the information the agency must provide during a required pre-award and post-award debriefing
- Information typically includes information regarding the agency's evaluation of the debriefed offeror's proposal
 - Identification of significant weaknesses or deficiencies in offeror proposal
 - Overall “evaluated cost or price” of offeror proposal
 - Technical and past performance ratings
 - But agency won't provide names of agency personnel that provide past performance references
 - Ranking, if one developed by the agency
 - Summary of rationale for award

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- Agencies typically will NOT provide information regarding the agency's evaluation of other offerors' proposals except for:
 - Overall "evaluated price or cost" of awardee's proposal
 - Technical ratings of awardee's proposal
- FAR prohibits agency from:
 - Point by point comparison of debriefed offeror's proposal with the proposals submitted by other offerors
 - Disclosing trade secrets, confidential, proprietary or financial information
- Restrictions above make it very hard for agency to provide a summary of the rationale for contract award in a "best value" procurement

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- DoD agencies also will provide (redacted) copy of source selection memorandum if
 - Debriefed offeror is a small business and the value of the procurement is between \$10 and \$100 million
 - To all offerors if procurement valued above \$100 million

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- A debriefed offeror generally can ask an agency any question regarding the agency's evaluation of its proposal
- A debriefed offeror generally can ask an agency any question regarding the procurement process
 - Were all proposals submitted on time?
 - Did the agency develop a ranking of proposals?
 - Were there any agency communications with offerors after submission of final proposal revisions?

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- Questions a debriefed offeror should ask about the agency's evaluation of its proposal:
 - What were the significant strengths, strengths or weaknesses the agency identified in its proposal?
 - What were the ratings or scores for each technical evaluation factor or subfactor?
 - Were any adjustments made to the proposed price or estimated costs? If so, what were they?
 - Did the agency consider its proposed pricing reasonable? Why?
 - Did the agency consider its estimated costs realistic? Why?
 - How many past performance references did the agency receive?
 - What other sources, if any, did the agency consult in evaluating past performance?
 - Did the agency consider all past performance references submitted "recent" as that term was defined in the solicitation?

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- Questions a debriefed offeror should ask about the agency's evaluation of its proposal, *cont.:*
 - Did the agency consider all past performance references submitted “relevant” as that term was defined in the solicitation?
 - Did the agency consider the past performance of any proposed subcontractors or joint venture partners?
 - Did the evaluators reach a consensus regarding the technical and past performance ratings of the debriefing offeror's proposal? Were there any dissenting opinions?
 - What could have the debriefed offeror done differently to increase its chances for a contract award?

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- Questions a debriefed offeror should ask about the agency's conduct of the procurement:
 - How many offers did the agency receive?
 - Did the agency establish a competitive range?
 - Were any offerors excluded from the competitive range or from the procurement?
 - What communications did the agency have with each offeror during the evaluation process?
 - How many evaluators rated/scored the proposals?
 - What were the backgrounds of the evaluators?
 - Were any evaluators replaced?

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- Questions a debriefed offeror should ask about the agency’s conduct of the procurement, *cont.*:
 - Did the evaluators know the identity of the offerors who submitted the proposals the evaluators reviewed?
 - Did the agency develop an Independent Government Cost Estimate?
 - How did the agency develop the IGCE?
 - How did the agency determine offerors’ proposed prices were reasonable?
 - How did the agency determine offerors’ estimated costs were realistic?
 - Who was the SSA?
 - Did the SSA read offeror proposals?
 - Did the SSA adopt the recommendations of the evaluators?
 - Did the SSA conduct a cost/technical tradeoff?
 - Did the SSA consider the proposals “technically equal”

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- Questions a debriefed offeror should ask about the agency’s evaluation of the awardee’s proposal:
 - How did the agency rate/score the awardee’s proposal under the technical and past performance factors and subfactors?
 - Did the agency make any adjustments to the awardee’s proposed price/estimated costs?
 - Did the agency identify any significant weaknesses or deficiencies in the awardee’s proposal?
 - Did the agency find the awardee “responsible”?
 - Did the agency confirm that the awardee or its proposed personnel had the requisite licenses, permits, certifications, educational background or qualifications?

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• **Best Practices:**

- Always to ask for a debriefing (even if you are the awardee)
- Always to ask questions
- Avoid arguing the substance of the agency's technical or past performance evaluation
- Ask for a (redacted) copy of the agency's evaluation documents and the agency's source selection decision
- Ask your lawyer for assistance in developing questions
- Leave your lawyer at home



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