

PRACTICE POINTERS FOR SUCCESSFULLY DEFENDING PROTESTS:

The Perspective of Intervenor's Counsel

- I. Introduction
- II. Preventing Protests in the First Place – Debriefings
 - A. FAR § 15.506: Identifies the minimum amount of information that may be disclosed during a debriefing:
 - 1. Significant weaknesses or deficiencies in debriefed offeror's proposal
 - 2. Past performance information concerning debriefed offeror
 - 3. Overall evaluated cost or price of successful offeror and debriefed offeror
 - 4. Overall technical rating of successful offeror and debriefed offeror
 - 5. Overall ranking of all offerors if such a ranking was developed during the source selection
 - 6. Summary of the rationale for award (e.g., while you submitted a strong proposal, the awardee scored slightly higher under the Technical and Past Performance factors)
 - B. Additional information that may be disclosed to debriefed offerors:
 - 1. Rankings (e.g., adjectival, color, point scores) for the debriefed offeror and the awardee for all evaluation factors and subfactors
 - 2. Any weaknesses in debriefed offeror's proposal (but explain that such weaknesses were not considered significant and did not play any role in the source selection)
 - 3. Redacted copy of the source selection decision document

- C. Do not disclose the following information:
1. Discussion of the specific features of the awardee's proposal that the agency found to be most advantageous (e.g., the awardee received a higher score than you under the Technical factor because it offered X, Y, and Z).
 2. Point-by-point comparison of the debriefed offeror's proposal with that of the awardee (e.g., you proposed X but the awardee proposed Y).
 3. Financial, technical, or past performance information concerning the awardee
- D. Strategy Tips:
1. Encourage awardee to seek a debriefing, and
 2. Debrief the awardee first
 - a. Dress rehearsal for unsuccessful offeror debriefings
 - b. Resolve disclosure issues before purportedly sensitive information is released to unsuccessful offerors

III. Preparing the Agency Report

- A. Immediate summary dismissal requests (even if partial)
1. Put protester on the defensive from the onset
 2. Potential areas:
 - a. Timeliness
 - b. Not an interested party
 - c. Affirmative responsibility determination
 - d. Speculative (SAIC)
 - e. No jurisdiction (e.g., delivery orders under ID/IQ contract)

- B. Limited document production – only produce relevant documents, not entire contract file
 - 1. Substantially reduces the likelihood of supplemental protests
 - 2. GAO does not care if you conducted a “perfect” procurement
- C. Intervenor’s counsel – a potentially key resource (especially in cases where there is a protective order)
 - 1. Very experienced
 - 2. Part of protest defense team
 - 3. Especially helpful in providing factual basis for responding to challenges concerning awardee’s proposal
- D. Produce all relevant documents in their entirety
- E. Early document production