**Extended Debriefings**

**What is an Extended Debriefing**?

In an effort to dissuade unsuccessful offerors from filing protests (particularly where they file solely as a means to get government documents), the Air Force is conducting a pilot program in which Contracting Officers will be encouraged to use extended debriefings in appropriate cases. As a general rule, standard debriefings provided pursuant to FAR § 15.505 and FAR § 15.506 often do not provide unsuccessful offerors with enough information to ascertain whether their proposal was properly evaluated by the government. While a standard debriefing may provide limited feedback on strengths, weaknesses, and deficiencies in a proposal, it does not generally provide a cohesive explanation for rationale underlying the Government’s evaluation conclusions and contract award decision.[[1]](#footnote-1) This leaves unsuccessful offerors very frustrated and may cause them to speculate as to why they were eliminated from a competitive range or did not otherwise receive contract award. Often, these unsuccessful offerors will submit a protest simply as a fishing expedition—to obtain Government documents that set forth the rationale for the award. Extended debriefings may be a solution to this problem under the right circumstances. Extended debriefings offer a transparent debriefing process whereby the Government provides an unsuccessful offeror’s outside counsel[[2]](#footnote-2) with information that is otherwise protected to fully explain the Government’s decision, either to eliminate an offeror from the competitive range or to award to another offeror. Most of the time, the bulk of this information is that which the protester would receive pursuant to a GAO protective order in a bid protest. By putting the discovery cart before the horse—that is by offering up the agency record before a GAO bid protest can be filed—an offeror’s outside counsel is provided with enough information from which to ascertain that the evaluation process was fair and impartial and, consequently, can communicate to the unsuccessful offeror that the award decision is rationally based. Thus far, it has been the Air Force’s experience that extended debriefings frequently result in the offeror’s counsel dissuading the offeror from filing a protest.

**How does an Extended Debriefing work?**

To determine whether an extended debriefing should be offered, the first step is to call AF/JAQ and discuss whether the case is appropriate for an extended debriefing. If AF/JAQ agrees that an extended debriefing is appropriate, the next step is to have the parties execute an Extended Debriefing Agreement (EDA). The EDA contains a standard Confidentiality and Nondisclosure Agreement (CNA), which is similar to the protective order used by the GAO. The EDA permits outside counsel to review core selection decision documents and source selection sensitive information that the Air Force is not otherwise permitted to disclose during a standard debriefing. It is important to make sure that the awardee consents to the extended debriefing[[3]](#footnote-3) and, if possible, to have the awardee’s outside counsel participate.

After disclosing the documents to outside counsel under the EDA, the next step of an extended debriefing entails having the Air Force invite the unsuccessful offeror’s counsel to participate in a Questions & Answers (Q&A) session. The Q&A session is almost always led by the Contracting Officer, but any other personnel involved in the evaluation process, including the Source-Selection Authority, or members of the technical evaluation team, are encouraged to participate, as their knowledge and presence enables a more robust discussion of the issues.

Extended debriefings are not appropriate for all procurements. Air Force counsel and contracting staff will work together to ascertain when an extended debriefing should be performed in a specific case. Key factors to be considered by the Contracting Officer include: 1) whether the Air Force has a rationally-based and well-documented source-selection decision[[4]](#footnote-4); 2) whether the Source-Selection Authority (SSA) approves of using an extended debriefing; 3) whether the unsuccessful offeror is receptive to an extended debriefing; and 4) whether the Government is able to provide sufficient information to the unsuccessful offeror without destroying the competitive advantage of the remaining offerors (i.e. not disclose trade secrets or proprietary information crucial to other proposals that those offerors do not wish to be passed to a competitor)[[5]](#footnote-5).

**Why Pursue an Extended Debriefing?**

There are three simple reasons to pursue an extended debriefing: 1) avoid protest litigation 2) avoid mission disruption; and 3) become better prepared, in the event that protest litigation proves to be unavoidable

While some may believe that providing more information to an unsuccessful offeror increases the likelihood of a protest, the Air Force has had numerous proven successes that demonstrate otherwise. Even where an unsuccessful offeror elects to submit a protest following an extended debriefing, the Air Force has found itself better poised to defend against that protest. Moreover, preparing for an extended debriefing enables the Contracting Officer, source selection team and their Air Force counsel to re-examine the decision-making process and ascertain if any critical mistakes exist. The extended debriefing also limits a protester’s ability to speculate about why it did not receive award because the protestor’s outside counsel has been given all the relevant facts during the extended debriefing. The extended debriefing frequently narrows the issues that can be protested.

In many cases, using an extended debriefing provides a win-win benefit for both the Air Force and an unsuccessful offeror. Through this “facts are facts” transparent process, the unsuccessful offeror is provided reassurance that its proposal was treated fairly and properly evaluated. The extended debriefing also provides for more efficient resolution of potential protest issues in a much shorter time frame than if the protester had proceeded to litigate at either the GAO or COFC. In turn, the Air Force reaps huge rewards by avoiding protracted litigation and mission disruption—and by securing the protester’s confidence in the source selection evaluation and contract award process.

For additional information, please contact Ms. Christy Barry, AF/JAQ, at (240) 612-6710.

1. The GAO has said: “The primary function of a debriefing is not to defend or justify selection decisions, but to provide unsuccessful offerors with information that would assist them in improving their future proposals.” AWD Tech., Inc., Comp. Gen. Dec. B-250081.2, 93-1 CPD ¶ 83, at 6, n.2, Feb. 1, 1993. [↑](#footnote-ref-1)
2. For purposes of this informational pamphlet, “outside counsel” is defined here as counsel who are either employed in a law firm or solo practitioners and are licensed members of at least one bar association, either state or jurisdictional (i.e. such as the District of Columbia or U.S. territorial jurisdiction, such as Puerto Rico, the Virgin Islands, etc.) [↑](#footnote-ref-2)
3. The awardee’s consent is necessary in order to avoid violations of the Trade Secrets Act or any prohibited disclosure of the awardee’s proprietary or protected information. [↑](#footnote-ref-3)
4. E.g. a competitive range determination or contract award decision. [↑](#footnote-ref-4)
5. A Mandatory Procedure establishing specific criteria for conducting an extended debriefing is forthcoming. [↑](#footnote-ref-5)