

# So Your Proposal Lost—Now What? Understanding Debriefings

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Whenever a government contracting opportunity is competed, there are winners and losers. The winners see their proposals accepted and reap the fruits of an award. The losers, meanwhile, are often left scratching their heads, wondering what they did wrong and if there is anything they can do to change the procuring agency's mind. For years, the only option available to many disappointed offerors was to file a bid protest in the hopes the administrative challenge would offer some insight as to why the offerors' proposals were rejected.

In the mid-1990s, this "shot in the dark" solution changed with the introduction of mandatory debriefings. Now offerors in certain procurements can request an opportunity to hear from the agency directly as to why a contract award decision came out the way it did. This provides contractors valuable information they can use to learn how to write more successful proposals in the future and allows the contractors the opportunity to identify potential grounds for challenging an award to their competitors. As to this latter point, availing oneself of the mandatory debriefing process also extends the deadlines to file a timely protest in the Government Accountability Office (GAO) and to file a protest entitled to an automatic stay of the awarded contract's performance under the Competition in Contracting Act (CICA).

But debriefings are not without their traps for the unwary. The Federal Acquisition Regulation (FAR) sets forth specific rules as to when and how a debriefing must be requested, as well as when and how the aforementioned deadline extensions are triggered. These rules continue to evolve, with the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 representing a significant example of recent changes to the debriefing process. Failure to abide by the regulatory

scheme governing debriefings could mean not only losing the right to be debriefed but forfeiting rights to protest and obtain an automatic stay of performance.

This article provides an overview of the law governing debriefings, including the changes made by the NDAA for FY 2018. This article also contains debriefing tips throughout, offering guidance on what counsel and contractors should do to get the most out of debriefings, as well as cautioning them against what they should avoid doing, particularly when it comes to actions that may jeopardize protest rights.

## Statutory Background on Mandatory Debriefings

The history of mandatory debriefings begins with the Federal Acquisition Streamlining Act (FASA) of 1994.<sup>1</sup> As part of congressional efforts to "inject[] some mandatory 'sunshine' into the procurement process,"<sup>2</sup> section 1014 (amending 10 U.S.C. § 2305(b)) and section 1064 (amending 41 U.S.C. § 235b, now 41 U.S.C. § 3704) of FASA gave unsuccessful offerors in a negotiated procurement the right to request a debriefing after an award made on the basis of competitive proposals.<sup>3</sup> Provided that debriefing request is timely received, the procuring agency is then obligated to ensure that the unsuccessful offeror is "debriefed and furnished the basis for the selection decision and contract award."<sup>4</sup>

In making the debriefing process mandatory, Congress sought to achieve two purposes. First, Congress hoped to reduce the number of costly bid protests filed for the mere purpose of obtaining information about why a proposal was rejected, allowing unsuccessful offerors the opportunity to obtain this information from the agency directly outside of the bid protest context.<sup>5</sup> Second, Congress intended mandatory debriefings to provide a means by which losing offerors could gain insight into "how those offerors can improve their chances for success in future procurements."<sup>6</sup> Commentators have noted that "[t]his second purpose is particularly important because both the agency and the offeror are benefitted by helping companies become better competitors."<sup>7</sup>

Subsequently, the right to request a mandatory debriefing was extended to offerors excluded from the competitive range or otherwise excluded from the competition before award by section 4104 of the Clinger-Cohen Act of 1996, which further amended 10 U.S.C. § 2305(b) and 41 U.S.C. § 235b (now 41 U.S.C. § 3705) to include a provision on pre-award debriefings.<sup>8</sup> The statutory reforms enacted by FASA and the Clinger-Cohen Act in the mid-1990s continue to govern the mandatory debriefing process today and now are implemented at FAR 15.505 and 15.506.

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## The Debriefing Process: Notice and Making the Request

### Pre-award

The pre-award debriefing process begins when an offeror in a negotiated procurement receives notification of its exclusion from the competitive range or its elimination otherwise from the competition before award. The FAR requires that this notification be given “promptly” after exclusion or elimination, and that it “state the basis for the determination and that a proposal revision will not be considered.”<sup>9</sup> Additional notice requirements apply when a pre-award selection is made in a small business set-aside.<sup>10</sup>

Upon receipt of such notice, the unsuccessful offeror may request a pre-award debriefing by submitting a written request to the contracting officer within three days.<sup>11</sup> If the offeror does not submit its request for a debriefing within three days, the agency need not give the offeror either a pre-award or post-award debriefing<sup>12</sup> and the deadline for filing a protest in the GAO is not tolled pending the receipt of a subsequent post-award required debriefing.<sup>13</sup>

**Debriefing Tip #1: Always request a debriefing, even if you won the award.** *For a disappointed offeror, a debriefing can provide valuable information for a potential protest. For an awardee, a debriefing can provide insight as to whether the agency’s source selection decision may be vulnerable to a potential protest and, to this end, provide an opportunity to offer support to the agency if a protest is filed. But even beyond the protest context, debriefings allow for the chance to obtain information that could be used to improve future proposals, educate the agency about products and services, and solidify relationships with the agency.*<sup>14</sup>

The FAR specifies that “[o]fferors are entitled to no more than one debriefing for each proposal.”<sup>15</sup> Consequently, offerors are permitted to delay a debriefing requested pre-award until after an award has been made.<sup>16</sup> But offerors beware—FAR 15.503(a)(2) states that “[d]ebriefings delayed pursuant [to an offeror’s request] could affect the timeliness of any protest filed subsequent to the debriefing.” This means that an offeror cannot bring a protest ground post-award about which it would have learned during a pre-award debriefing had it not chosen to delay the debriefing. For instance, if an offeror requests that a pre-award debriefing be delayed until after award but discovers during the post-award debriefing that the agency excluded its proposal from the competitive range on the basis of an improper evaluation, then the offeror would be time-barred from raising that protest ground before the GAO.<sup>17</sup>

**Debriefing Tip #2: Do not delay a debriefing you requested pre-award until after an award has been made.** *Although it provides offerors the option to defer a debriefing requested pre-award until after award, the FAR clearly warns that making this election could affect the timeliness of any protest*

*filed subsequent to the debriefing. Accordingly, a pre-award debriefing should not be deferred until after award lest you risk having the post-award protest become untimely with respect to facts that would have been learned during a pre-award debriefing.*<sup>18</sup>

In addition, the contracting officer may delay a pre-award debriefing until after award “if, for compelling reasons, it is not in the best interests of the Government to conduct a debriefing at that [pre-award] time.”<sup>19</sup> A pre-award debriefing delayed by the contracting officer—unlike a pre-award debriefing delayed at the request of an offeror—does not affect the timeliness of any protest ground (with the exception of those based upon alleged solicitation improprieties) filed subsequent to the debriefing.<sup>20</sup>

Provided the debriefing is not delayed by the contracting officer or at the request of the offeror, a timely requested pre-award debriefing must be held “as soon as practicable. . . .”<sup>21</sup> Pre-award debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.<sup>22</sup> The contracting officer normally should chair any pre-award debriefing session held, with the individuals who conducted the evaluations providing support.<sup>23</sup>

### Post-award

Post-award debriefings are allowed and, when requested, required for all negotiated procurements and for task or delivery order procurements exceeding \$6 million.<sup>24</sup> For Department of Defense (DOD) procurements, the NDAA for FY 2018 requires, when requested, a debriefing for “all contract awards and task or delivery orders” valued at \$10 million or higher.<sup>25</sup>

Like the pre-award debriefing process, the post-award debriefing process begins when an unsuccessful offeror receives notification of award. This notice must be provided within three days after the date of contract award to each offeror whose proposal was in the competitive range but was not selected for award or who had not previously received a pre-award notice of exclusion from the competitive range or of elimination otherwise from the competition.<sup>26</sup> The notice must provide (i) the number of offerors solicited; (ii) the number of proposals received; (iii) the name and address of each offeror receiving an award; (iv) the items, quantities, and any stated unit prices of each award (or, if the number of items or other factors makes doing so impracticable at that time, the total contract price); and (v) the reason(s) the offeror’s proposal was not accepted.<sup>27</sup>

As the foregoing illustrates, the FAR permits certain pricing information of an offeror to be disclosed to its competitors—most notably, an offeror’s “stated unit prices. . . .”<sup>28</sup> However, FAR 15.503(b)(1)(v) cautions that “[i]n no event shall an offeror’s cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.” As discussed below, a similar prohibition exists at FAR 15.506(e),

which governs the disclosure of information during a post-award debriefing. The purpose of these regulations is to ensure that the procuring agency complies with Exemption 4 of the Freedom of Information Act (FOIA), which prohibits from public disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential,”<sup>29</sup> notwithstanding the “mandatory ‘sunshine’”<sup>30</sup> otherwise required by the debriefing process. Thus, even with unit pricing information, the FAR does not give agencies carte blanche to disclose; instead, such information may be disclosed “only insofar as it does not consist of trade secrets, confidential business information or is otherwise exempt from disclosure under the FOIA, Exemption 4.”<sup>31</sup>

Upon receiving a post-award notice, the unsuccessful offeror must submit a written request for a debriefing to the agency within three days.<sup>32</sup> Although untimely debriefing requests may be accommodated, FAR 15.506(a)(4)(ii) makes clear that an accommodation “does not automatically extend the deadlines for filing protests.”

**Debriefing Tip #3: Submit a written request for a debriefing as soon as offerors are notified of the award decision.** Offerors have only three days after receipt of notice to request in writing a required debriefing. Even though an agency may honor a late request, doing so will not toll the time period for filing a protest in the GAO.<sup>33</sup>

To the maximum extent practicable, the debriefing should occur within five days after the agency’s receipt of the written request.<sup>34</sup> As with pre-award debriefings, the contracting officer normally should chair any post-award debriefing session held, with the individuals who conducted the evaluations providing support.<sup>35</sup>

## The Debriefing Process: Scope of Information to Be Provided

### Pre-award

During a pre-award debriefing, an unsuccessful offeror is entitled to receive, at a minimum: (1) the agency’s evaluation of significant elements in the offeror’s proposal; (2) a summary of the rationale for eliminating the offeror from the competition; and (3) reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.<sup>36</sup> If, however, a pre-award debriefing was delayed until the time for post-award debriefings, either at the offeror’s request or by the contracting officer, then the debriefing must include the information normally provided during a post-award debriefing, as discussed below.<sup>37</sup>

**Debriefing Tip #4: Be prepared for the debriefing with written questions.** The FAR requires agencies to provide reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable

regulations, and other applicable authorities were followed, so offerors should come to the debriefing with a list of questions in hand.<sup>38</sup>

FAR 15.505(f) prohibits the following categories of information from being disclosed during a pre-award debriefing: (1) the number of offerors, (2) the identity of other offerors, (3) the content of other offerors’ proposals, (4) the ranking of other offerors, (5) the evaluation of other offerors, and (6) any of the information prohibited in FAR 15.506(e).<sup>39</sup> As discussed below, the information listed in FAR 15.506(e) is prohibited from disclosure by the FOIA and the statutory prohibition against the release of proposals not set forth or incorporated in a government contract. The remaining categories in FAR 15.505(f) encompass bid or proposal information (FAR 15.505(f)(3))<sup>40</sup> and source selection information (SSI) (FAR 15.505(f)(1), (2), (4), and (5)),<sup>41</sup> which the Procurement Integrity Act (PIA) prohibits from being disclosed “before the award of a Federal agency procurement contract to which the information relates.”<sup>42</sup>

### Post-award

A post-award debriefing must include, at a minimum, (1) the government’s evaluation of the significant weaknesses or deficiencies in the offeror’s proposal, if applicable; (2) the overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror; (3) the overall ranking of all offerors, when any ranking was developed by the agency during the source selection; (4) a summary of the rationale for award; (5) for acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and (6) reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.<sup>43</sup>

**Debriefing Tip #5: Pay close attention to the agency’s presentation; refrain from interrupting.** If a proposal was not selected, then that will not change during the debriefing. Rather than trying to convince the agency it was wrong, use the debriefing as a chance to obtain as much relevant information as possible from the agency. Refrain from interrupting the agency during its presentation. Instead, wait to engage in a dialogue until the agency has had an opportunity to say everything it wanted to say. Take detailed notes of what the agency presents so that it can be recalled accurately in the event the decision is made to protest. If the debriefing is in writing, careful reading is, of course, critical.<sup>44</sup>

In addition, for DOD procurements, the NDAA for FY 2018 requires, in the case of a contract award in excess of \$100 million, the disclosure of the agency’s written source selection award determination, redacted to protect the confidential and proprietary information of

other offerors for the contract award.<sup>45</sup> A small business or nontraditional contractor has the option to request such a disclosure in the case of a contract award between \$10 million and \$100 million.<sup>46</sup> The statute clarifies that both unsuccessful and winning offerors are entitled to such a disclosure.<sup>47</sup>

**Debriefing Tip #6: Ask for a redacted copy of the source selection decision.** Redacted copies are now required for certain DOD procurements. However, even when not required, some contracting officers may agree to furnish a redacted copy of the source selection decision. Thus, it never hurts to ask for one.<sup>48</sup>

As the foregoing demonstrates, the scope of information required to be disclosed during a debriefing is broader post-award than it is pre-award. Specifically, unlike during a pre-award debriefing, SSI such as the ranking of offerors and certain information pertaining to the evaluation of offerors is required to be disclosed during a post-award debriefing.<sup>49</sup> This is allowed because the PIA's prohibition against disclosing SSI does not extend post-award.<sup>50</sup>

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## Whether a debriefing is required has important consequences for an unsuccessful offeror's protest rights.

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Nonetheless, an offeror receiving a post-award debriefing is not entitled to point-by-point comparisons of its proposal with those of other offerors.<sup>51</sup> Additionally, FAR 15.506(e) prohibits the disclosure of (1) information prohibited from disclosure by FAR 24.202, which protects proposals not set forth or incorporated by reference in a government contract, and (2) information exempt from release under Exemption 4 of the FOIA, including (a) trade secrets; (b) privileged or confidential manufacturing processes and techniques; (c) commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and (d) the names of individuals providing reference information about an offeror's past performance. The FAR protects this information from disclosure post-award because, unlike the PIA and its protection of SSI, the protections afforded by the FOIA and the statutory prohibition against the release of proposals continue even once a government contract is awarded.<sup>52</sup>

**Debriefing Tip #7: Understand what information can, and what information cannot, be disclosed during the debriefing.** Stay current with the FAR's agency disclosure requirements to ensure that all the information to which you are entitled is provided during the debriefing. Conversely, it is equally important to know what information the agency is prohibited from disclosing. Due to the statutory prohibition against the release of SSI before award, offerors should not expect information concerning rankings or the evaluation of other offerors' proposals during a pre-award debriefing, but it is important to make sure that such information is included as part of a post-award debriefing. In no event are agencies permitted to release information exempt from disclosure under the FOIA, so do not try to pry for information on competitors' trade secrets, cost breakdowns, profits, indirect cost rates, or other confidential business information during the debriefing.<sup>53</sup>

### When a Debriefing Is Not Required

As discussed above, debriefings (when timely requested) are required for negotiated procurements and certain task or delivery order procurements. Conversely, a debriefing generally is not required in commercial item procurements,<sup>54</sup> Federal Supply Schedule (FSS) procurements,<sup>55</sup> simplified acquisition procurements,<sup>56</sup> or sealed bid acquisitions.<sup>57</sup> Nonetheless, for FSS and simplified acquisition procurements, the FAR does require the agency to give "a brief explanation of the basis for the award decision" if requested on an award based on factors other than price alone.<sup>58</sup> However, a "brief explanation" is not the same thing as a required debriefing. A "brief explanation" will almost always be written (not oral) and will not extend the deadlines for filing a timely protest and for obtaining an automatic stay under the CICA.<sup>59</sup> Similarly, even if an agency agrees to provide a debriefing in a competition for which one is not required, that debriefing will not extend the filing deadlines.<sup>60</sup>

**Debriefing Tip #8: Do not assume that all debriefings extend the filing deadlines.** Only required debriefings trigger the rules for extending the deadlines for filing a timely protest at the GAO and for filing a protest entitled to the CICA stay. FSS, commercial item, and simplified acquisition procurements generally do not require debriefings. Although FSS and simplified acquisition procurements allow a "brief explanation" of the basis for award, offerors in these procurements should be aware that receiving such an explanation does not extend their deadlines for filing a protest and obtaining the automatic stay.<sup>61</sup>

### Post-Debriefing Protest Rights

Whether a debriefing is required has important consequences for an unsuccessful offeror's protest rights. Specifically, if a debriefing is required, then (except for protest grounds based upon alleged solicitation improprieties, which must be filed before the date for receipt of proposals) a protest must be brought before the GAO

within 10 days after the required debriefing is held.<sup>62</sup> Otherwise, protests must be brought within 10 days after the earlier of when the basis of protest is known or should have been known.<sup>63</sup> In the post-award context, this usually means within 10 days of when the award was made. Thus, by timely requesting a required post-award debriefing, a disappointed offeror can extend the deadline by which it needs to file a protest from 10 days after award to as many as 18 days after award.<sup>64</sup>

In addition, whether a debriefing is required affects the deadline by which a post-award protest must be filed to take advantage of the automatic stay of performance under the CICA. To obtain the CICA stay, a protest must be filed within 10 days after contract award or within five days of the first date offered to the protester for a required debriefing, whichever is later.<sup>65</sup> Accordingly, if the first date offered for a required debriefing is five days after a written request for a debriefing that was timely received three days after award, then the deadline for filing a protest to obtain the CICA stay would be extended to 13 days after award.<sup>66</sup>

But protesters beware—the rule for extending the deadline begins to run from the date offered for a required debriefing, not from the date when that debriefing actually takes place.<sup>67</sup> So if, for example, the first date offered for a required debriefing is only one day after a written request for a debriefing that was timely received three days after award, then the deadline for filing a protest to obtain the CICA stay would still be just 10 days after award because that is later than five days after the first date offered for the debriefing.<sup>68</sup> In this scenario, it would not matter that the actual debriefing may not occur until five days after when the written request was received.

**Debriefing Tip #9: Accept the first date the agency offers for debriefing.** Generally, to obtain a stay of performance under the CICA, a protest must be filed within 10 days of award or five days of the first date offered for the debriefing, whichever is later. A protest filed beyond this deadline will not trigger the automatic stay, even if the protest is timely filed with the GAO and within five days of when the debriefing actually occurred. Always accept the first date offered to allow your team adequate time to prepare a protest in time for the CICA stay.<sup>69</sup>

For DOD procurements, the NDAA for FY 2018 provides offerors with enhanced post-award debriefing rights, giving offerors an opportunity to submit additional questions related to the debriefing within two business days after when a requested and required debriefing is held on the date offered.<sup>70</sup> The agency then must respond to those questions in writing within five business days of receipt.<sup>71</sup> For purposes of the 10-day timeliness rule for filing protests at the GAO, a debriefing is considered concluded when the agency delivers its written responses to any additional questions submitted by the unsuccessful offeror.<sup>72</sup>

Similarly, the five-day period for obtaining the CICA stay begins to run once the government delivers its

written responses.<sup>73</sup> This means a protest of a DOD procurement could be timely filed in as many as 25 days after award,<sup>74</sup> and could be filed in time to obtain the CICA stay in as many as 20 days after award.<sup>75</sup> But offerors beware—the debriefing period is *not* extended if the contractor declines to take advantage of the DOD's post-award debriefing rights by not submitting any questions within two business days after a required debriefing.<sup>76</sup> Accordingly, a contractor that decides not to submit additional questions still must file its protest within five days after the date offered for a required debriefing (or 10 days from the date of award, whichever is later) to obtain the CICA stay.<sup>77</sup>

**Debriefing Tip #10: Take advantage of the enhanced post-award debriefing rights for DOD procurements.** Not only do they provide another opportunity to gain further insight into why a proposal lost, but the enhanced post-award debriefing rights in DOD procurements can give your team up to seven more business days to prepare a protest.<sup>78</sup>

## Conclusion

A debriefing represents a valuable opportunity to learn how the agency made its award decision, what can be done to make proposals better in the future, and whether there are grounds to challenge the award in a protest. But in order for contractors to fully avail themselves of this opportunity, they should know the ins and outs of requesting a debriefing, what can be disclosed, and how all of this affects their protest rights. Ideally, therefore, contractors and their counsel should consult immediately after an award decision is made to ensure a successful debriefing and avoid jeopardizing possible future protest rights. 

## Endnotes

1. Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. No. 103-355, 108 Stat. 3243.
2. 140 Cong. Rec. H9240-01, H9248 (1994) (statement of Rep. Michael L. Synar).
3. FASA §§ 1014, 1064.
4. *Id.* §§ 1014, 1604.
5. Statement of Rep. Synar, *supra* note 2; see also S. Rep. 103-258, 103d Cong., at 7 (1994).
6. S. Rep. 103-258, at 7.
7. Ralph C. Nash, *Dateline June 2016*, 30 NASH & CIBINIC REP. NL (June 2016).
8. National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, § 4104, 110 Stat. 186.
9. FAR 15.503(a)(1).
10. FAR 15.503(a)(2).
11. FAR 15.505(a)(1). “Day,” as used in FAR subpart 15.5, means a calendar day, but in computing any period of time contained in that subpart, if the last day is a Saturday, Sunday, or federal holiday, then the period extends to the next day that is not a Saturday, Sunday, or federal holiday. See FAR 15.501, 33.101.
12. FAR 15.505(a)(3).
13. 4 C.F.R. § 21.2(a)(2).
14. See Keith R. Szeliga, *Twelve Tips for a Successful Debriefing*, 4 PRATT’S GOV’T CONTRACTING L. REP. 385, 385 (LexisNexis A.S. Pratt Oct. 2018).
15. FAR 15.505(a)(3).

16. FAR 15.505(a)(2).
17. See *United Int'l Investigative Servs., Inc.*, B-286327, Oct. 25, 2000, 2000 CPD ¶ 173; see also 4 C.F.R. § 21.2(a)(2).
18. See Szeliga, *supra* note 14, at 386.
19. FAR 15.505(b).
20. See *United Int'l Investigative Servs., Inc.*, B-286327, *supra* note 17; see also 41 U.S.C. § 3705(c); 4 C.F.R. § 21.2(a)(2).
21. FAR 15.505(b).
22. FAR 15.505(c).
23. FAR 15.505(d).
24. FAR 15.506(a)(1), 16.505(b)(1)(iv)(E), (6). Although FAR 16.505 gives offerors the right to request a required debriefing post-award in task or delivery order procurements over \$6 million, no similar right is given for pre-award debriefings in these procurements. See *NTT DATA Servs. Fed. Gov't, Inc.*, B-416123 et al., June 20, 2018, 2018 CPD ¶ 215 (there was no need for agency to have provided protester contemporaneous notice of its elimination from further consideration in task order acquisition under FAR part 16.5, or afford it opportunity to request debriefing at that time, because those procedural requirements are not found in FAR 16.505).
25. National Defense Authorization Act for Fiscal Year 2018 (NDAA for FY 2018), Pub. L. No. 115-91, § 818(a)(2), 131 Stat. 1283, 1463 (2017); see also Defense Federal Acquisition Regulation Supplement: Postaward Debriefings (DFARS Case 2018-D009), 86 Fed. Reg. 27,354-03, 27,355, 27,357 (proposed May 20, 2021) (to be codified at DFARS 215.505(b)(6), 215.506(b)).
26. FAR 15.503(b)(1); see *supra* note 11 regarding FAR subpart 15.5's definition of "day" and the computation of periods of time contained in that subpart.
27. FAR 15.503(b)(1).
28. FAR 15.503(b)(1)(iv).
29. 5 U.S.C. § 552(b)(4). In addition, trade secrets are protected from disclosure by the Trade Secrets Act, which makes it a criminal offense for a government officer or employee to disclose without authorization trade secret information received during the course of his or her office or employment. 18 U.S.C. § 1905.
30. Statement of Rep. Synar, *supra* note 2.
31. *MCI Worldcom, Inc. v. Gen. Servs. Admin.*, 163 F. Supp. 2d 28, 34-35 (D.D.C. 2001).
32. FAR 15.506(a)(1); see *supra* note 11 regarding FAR subpart 15.5's definition of "day" and the computation of periods of time contained in that subpart.
33. See Szeliga, *supra* note 14, at 386.
34. FAR 15.506(a)(2); see *supra* note 11 regarding FAR subpart 15.5's definition of "day" and the computation of periods of time contained in that subpart.
35. FAR 15.506(c).
36. FAR 15.505(e).
37. FAR 15.505(a)(2), (b).
38. See Szeliga, *supra* note 14, at 387.
39. FAR 15.505(f).
40. See 41 U.S.C. § 2101(2).
41. See *id.* § 2101(7)(E), (H) (defining "source selection information" as including "[t]echnical evaluations of proposals" and "[r]ankings of bids, proposals, or competitors"); FAR 2.101 (same). Although information pertaining to the number or identity of offerors is not enumerated specifically as an example of SSI in the statute, the Procurement Integrity Act (PIA) permits such information to be marked as SSI "based on a case-by-case determination by the head of the agency, the head's designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates." 41 U.S.C. § 2101(7)(J); see, e.g., *Genex Corp. v. United States*, 58 Fed. Cl. 634, 638 (2003) (noting that contracting officer had declined request for information concerning identity or number of offerors on basis that that information was SSI that could not be revealed).
42. 41 U.S.C. § 2102(a)(1).
43. FAR 15.506(d).
44. See Szeliga, *supra* note 14, at 388.
45. NDAA for FY 2018, Pub. L. No. 115-91, § 818(a)(1), 131 Stat. 1283, 1463 (2017); see also Defense Federal Acquisition Regulation Supplement: Postaward Debriefings (DFARS Case 2018-D009), 86 Fed. Reg. 27,354-03, 27,355, 27,357 (proposed May 20, 2021) (to be codified at DFARS 215.506(d)).
46. NDAA for FY 2018, § 818(a)(1), 131 Stat. at 1463; see also Defense Federal Acquisition Regulation Supplement: Postaward Debriefings, 86 Fed. Reg. at 27,355, 27,357 (to be codified at DFARS 215.506(d)).
47. NDAA for FY 2018, § 818(a)(3), 131 Stat. at 1463.
48. See Szeliga, *supra* note 14, at 388.
49. FAR 15.506(d)(2), (3).
50. See 41 U.S.C. § 2102(a)(1); *Omega World, Inc. v. United States*, 82 Fed. Cl. 452, 466-68 (2008) (no PIA violation where disclosure occurred after award).
51. FAR 15.506(e).
52. See 5 U.S.C. § 552(b)(3), (4); 10 U.S.C. § 2305(g); 41 U.S.C. § 4702(b); see also *MCI Worldcom, Inc. v. Gen. Servs. Admin.*, 163 F. Supp. 2d 28, 34-35 (D.D.C. 2001).
53. See Szeliga, *supra* note 14, at 386-87.
54. FAR pt. 12.
55. FAR pt. 8.
56. FAR pt. 13.
57. FAR pt. 14.
58. FAR 8.405-2(d), 13.106-3(d).
59. 31 U.S.C. § 3553(d)(3)(A), (d)(4); see *Sys. Plus, Inc. v. United States*, 68 Fed. Cl. 206, 207-11 (2005) (post-award protest not timely filed for CICA stay where protest was filed more than 10 days after award and only "brief explanation," not debriefing, was required in FSS procurement); *Gorod Shtor*, B-411284, May 22, 2015, 2015 CPD ¶ 162 (dismissing as untimely protest of simplified acquisition procurement filed more than 10 days after basis for protest was known when all agency was required to provide protester after award was "brief explanation").
60. See *Microgenics Corp.*, B-419470, 2021 WL 494646 (Comp. Gen. Feb. 2, 2021); *Centerra Integrated Facilities Servs., LLC*, B-418628, Apr. 23, 2020, 2020 CPD ¶ 155.
61. See Szeliga, *supra* note 14, at 385-86.
62. 4 C.F.R. § 21.2(a)(2). "Day," as used in the Bid Protest Regulations, means a calendar day, but in computing any period of time contained in the Bid Protest Regulations, if the last day is a Saturday, Sunday, or federal holiday, then the period extends to the next day that is not a Saturday, Sunday, or federal holiday. See 4 C.F.R. § 21.0(d).
63. 4 C.F.R. § 21.2(a)(2); see *supra* note 62 regarding the Bid Protest Regulations' definition of "day" and the computation of periods of time contained in the Bid Protest Regulations.
64. If a written request for a debriefing is timely received on the third day after award, FAR 15.506(a)(1), and if the debriefing is held five days after receipt of the request, FAR 15.506(a)(2), then the 10-day deadline under 4 C.F.R. § 21.2(a)(2) begins to run on the eighth day after award—i.e., the deadline to file a protest at the GAO is 18 days after award. This assumes that the 18th day is not a Saturday, Sunday, or federal holiday, in which case the period extends to the next day that is not a Saturday, Sunday, or federal holiday. 4 C.F.R. § 21.0(d).
65. 31 U.S.C. § 3553(d)(3)(A), (4)(A); FAR 33.104(c)(1). In computing the period of time required to obtain the CICA stay, if the last day is a Saturday, Sunday, or federal holiday, then the period extends to the next day that is not a Saturday, Sunday, or federal holiday. 4 C.F.R. § 21.0(d).
66. Again, this assumes that the 13th day is not a Saturday, Sunday, or federal holiday. See *supra* note 65.
67. See 31 U.S.C. § 3553(d)(3)(A), (4)(A); FAR 33.104(c)(1).
68. In this example, the first date offered for a required debriefing

is four days after award (three days plus one day). Five days after this date is nine days after award, assuming the ninth day is not a Saturday, Sunday, or federal holiday. See *supra* note 65. Because it is later, the deadline would be 10 days after award. See 31 U.S.C. § 3553(d)(3)(A), (4)(A); FAR 33.104(c)(1).

69. See Szeliga, *supra* note 14, at 386.

70. NDAA for FY 2018, Pub. L. No. 115-91, § 818(b), 131 Stat. 1283, 1463–64 (2017); Class Deviation 2018-O0011, Mar. 22, 2018, available at <https://www.acq.osd.mil/dpap/policy/policyvault/USA000563-18-DPAP.pdf>; see also Defense Federal Acquisition Regulation Supplement: Postaward Debriefings (DFARS Case 2018-D009), 86 Fed. Reg. 27,354-03, 27,355, 27,357–58 (proposed May 20, 2021) (to be codified at DFARS 215.506(S-70), 233.104(c)(1)).

71. 10 U.S.C. § 2305(b)(5)(C).

72. *Id.*

73. 31 U.S.C. § 3553(d)(4)(B).

74. Assume a written request for a debriefing is timely received on the third day after award, FAR 15.506(a)(1), and the debriefing is held five days after receipt of the request. FAR 15.506(a)(2). Three days, plus five days, plus two days (date additional questions submitted), plus five days (date responses to questions received), equals 15 days, meaning the 10-day deadline to file a timely protest begins to run on the 15th day after award—i.e., the deadline to file a protest at the GAO is 25 days after award, assuming that day is not a Saturday, Sunday, or federal holiday. See *supra* note

64. For the sake of simplicity, the foregoing assumes the two business days by which additional questions are due and the five business days by which the agency's responses to those questions are due fall on calendar days. In reality, the deadline for filing a protest can be extended even further given that business days exclude weekends and holidays.

75. Using the same assumptions as in *supra* note 74, the five-day deadline to file a protest to obtain the CICA stay begins to run on the same day—i.e., the 15th day after award. This means the deadline to file to obtain the CICA stay is 20 days after award.

76. See *NIKA Techs., Inc. v. United States*, 987 F.3d 1025, 1028–29 (Fed. Cir. 2021).

77. *Id.* While the GAO's 10-day period for filing protests was not at issue in *NIKA*, the Federal Circuit's holding—that “when there are no additional questions submitted, . . . the debriefing period is not held open”—indicates a similar rule would apply to the deadline for filing a timely protest at the GAO. See *id.* at 1029 (interpreting 10 U.S.C. § 2305(b)(5)(C)). Accordingly, offerors that do not submit additional questions within the two-day period should take care to file any protest grounds (other than those based upon alleged solicitation improprieties, which must be filed before the deadline for proposals) with the GAO within 10 days after the debriefing is held to ensure their protest grounds are timely. See 4 C.F.R. § 21.2(a)(2).

78. See Szeliga, *supra* note 14, at 388.