

# DOD's final rule on enhanced post-award debriefings provides offerors clarity on automatic stay deadlines and access to agency's redacted source selection decisions

By Robyn N. Burrows, Esq., and Luke W. Meier, Esq., Blank Rome LLP\*

APRIL 14, 2022

The Department of Defense, or DoD, recently issued its final rule<sup>1</sup> amending the Defense Federal Acquisition Regulation Supplement, or DFARS, to provide offerors enhanced post-award debriefing rights. DoD has provided these enhanced debriefing procedures since 2018 through a FAR Class Deviation,<sup>2</sup> allowing offerors to submit additional questions after receiving the post-award debriefing.

Four years later, DoD's final rule clarifies when the clock for an automatic stay begins in an enhanced debriefing and provides greater transparency by allowing unsuccessful offerors in certain procurements access to the agency's redacted source selection decision.

We highlight below several key elements of the final rule.

## Access to redacted source selection decision document

The final rule requires DoD to provide the source selection decision document in certain circumstances, redacted to remove confidential and proprietary information of other offerors. For awards over \$100 million, DoD must *automatically* provide the source selection decision during the debriefing.

---

*DoD's final rule clarifies when the clock for an automatic stay begins in an enhanced debriefing.*

---

Small businesses and nontraditional defense contractors on procurements resulting in awards over \$10 million and up to \$100 million are also entitled to a copy of the decision but must *specifically request it* — the agency will not automatically provide it to offerors.

Successful offerors may also request a copy of the redacted source selection decision. The FAR already allows post-award debriefings for both successful and unsuccessful offerors, but awardees now have further incentive to request a debriefing, since it means obtaining a source selection decision that provides deeper insight

into how the government evaluated its proposal and weighed competing offers.

## If offeror submits no additional questions, five-day protest clock for CICA stay begins on debriefing date — final rule adopts Federal Circuit's NIKA decision

As many contractors have learned the hard way, you must beware of timeliness traps when navigating the enhanced debriefing process and protecting your protest rights. The final rule provides further clarity on some scenarios.

To obtain an automatic stay of performance under the Competition in Contracting Act ("CICA"), a protest must be filed within five days after the "debriefing date." The enhanced debriefing procedures allow disappointed bidders to submit additional questions within two business days after receiving the debriefing, and, if this is done, the debriefing period is not considered "closed" until the agency delivers its written responses.

However, it has thus far not been clear when the CICA clock starts to run if an offeror never submits questions — does it start at the end of the debriefing or the end of the two-day window?

---

*To obtain an automatic stay of performance under the Competition in Contracting Act, a protest must be filed within five days after the "debriefing date."*

---

The Court of Federal Claims in *NIKA Techs., Inc. v. United States*<sup>3</sup> held that the debriefing process included the two-day period to submit additional questions, but the Federal Circuit<sup>4</sup> later reversed this ruling, holding that the five-day period to file a protest begins on the debriefing date if no questions are submitted — not two days later.

In response to commenters requesting that the agency clarify the CICA timelines, the final rule adopted the Federal Circuit's interpretation, thereby removing any potential ambiguity.

## New DFARS clauses and scope of rule

The final rule creates two new DFARS clauses:

- 252.215-7016, Notification to Offerors – Postaward Debriefings (for competitive negotiated solicitations)
- 252.216-7010, Postaward Debriefings for Task Orders and Delivery Orders (for multiple-award contracts)
- The rule does not apply to contracts and subcontracts at or below the simplified acquisition threshold, but does apply to

contracts for the acquisition of commercial products, including commercially available off-the-shelf items, COTS, and the acquisition of commercial services.

### Notes

<sup>1</sup> <https://bit.ly/3O2P8yE>

<sup>2</sup> <https://bit.ly/3IGOoeL>

<sup>3</sup> <https://bit.ly/3utFb5n>

<sup>4</sup> <https://bit.ly/35bQbuD>

## About the authors



**Robyn N. Burrows (L)**, an associate at **Blank Rome LLP**, represents government contractors in courts and before the boards of contract appeals. She can be reached at [robyn.burrows@blankrome.com](mailto:robyn.burrows@blankrome.com). **Luke W. Meier (R)**, a partner at the firm, focuses on government procurement law, contract disputes and claims, bid protests, and False Claims Act litigation. He can be reached at [luke.meier@blankrome.com](mailto:luke.meier@blankrome.com). Both authors are based in Washington, D.C. This article was originally published April 4, 2022, on the firm's website. Republished with permission.

This article was published on Westlaw Today on April 14, 2022.

\* © 2022 Robyn N. Burrows, Esq., and Luke W. Meier, Esq., Blank Rome LLP

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered, however it may not necessarily have been prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional. For subscription information, please visit [legalsolutions.thomsonreuters.com](https://legalsolutions.thomsonreuters.com).