

To Protest or Not to Protest? A Tough Decision

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What is a Protest?

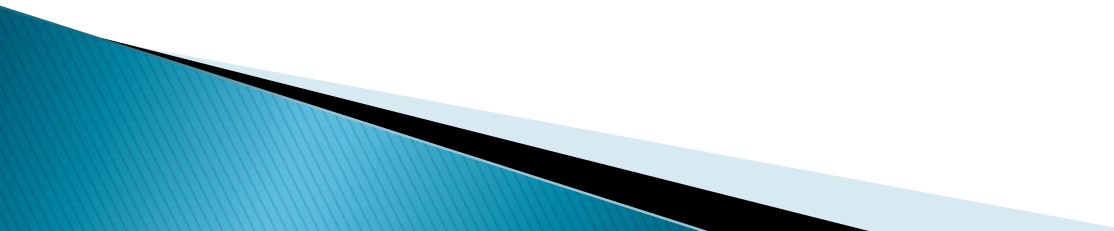
- ▶ An objection to a government procurement action.
 - GAO (Government Accountability Office)
 - COFC (Court of Federal Claims)
 - Agency-Level
- ▶ Small Business Protests



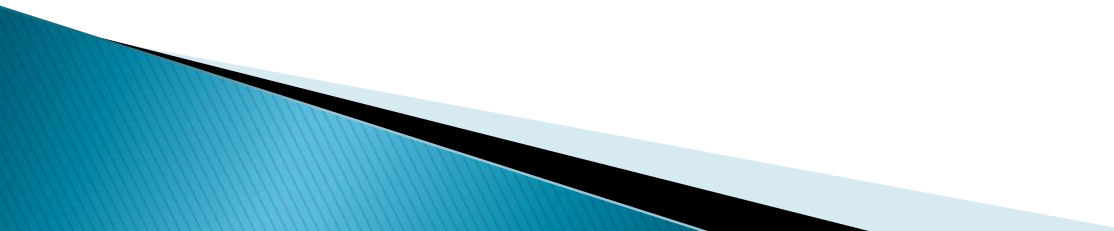
“This is America. Anyone is free to protest about anything they want.”
–Nikki Haley



Questions We Will Ask

- ▶ Who can file?
 - ▶ Where can you file?
 - ▶ When can you file?
 - ▶ What did you file?
 - ▶ Why did you file?
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What Does the Government Do About Protests

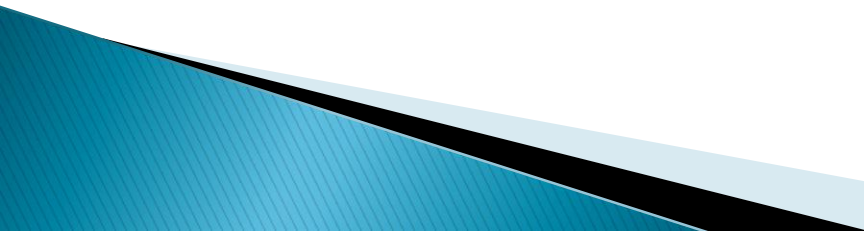
- ▶ Prevention
 - ▶ “Follow the Recipe”
 - ▶ Information is Key
 - ▶ Ensure Fairness
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Debriefings

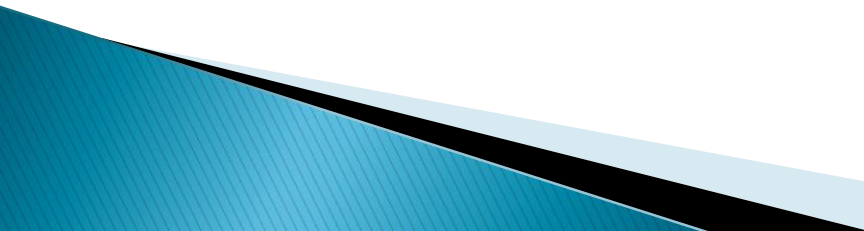
- ▶ Serve two purposes:
 - Provide information to allow for improvement for future procurements
 - Provide information to allow for an informed decision about whether to protest
- ▶ Whether to file is a business decision

What Do You Get With a Debriefing?

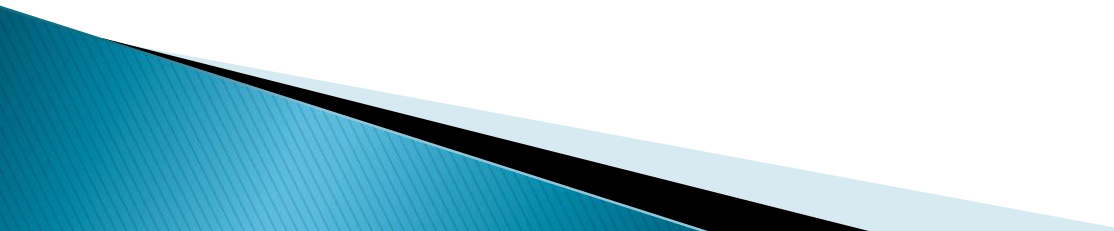
FAR 15.506 requires:

- ▶ Evaluation of significant weaknesses or deficiencies
 - ▶ Overall evaluated cost or price
 - ▶ Technical rating
 - ▶ Past performance information
 - ▶ Overall ranking of all offerors, if any
 - ▶ Summary of rationale for award
 - ▶ Reasonable responses related to the acquisition process
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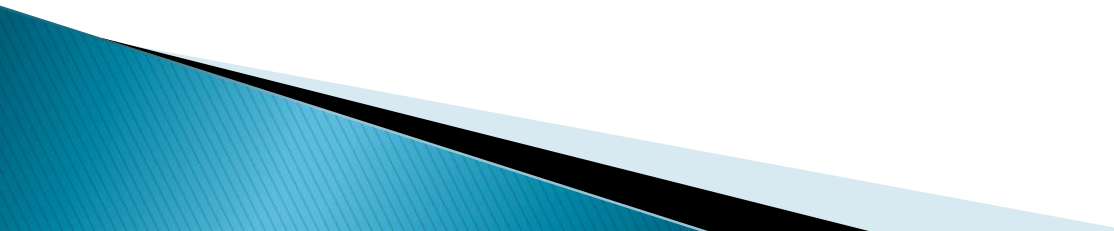
What Do You Get With a Debriefing? (Cont.)

- ▶ Information re: the evaluation of your proposal
 - ▶ No need to file “defensive” protests
 - ▶ Request must be received within 3 days after receipt of post-award notification
 - ▶ DOE-ORO provides thorough Post-Award notice and offers date to hold oral debrief
 - ▶ Information provided exceeds FAR requirements for debrief
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I Failed and You Filed

- ▶ “What did you file” and “why did you file”
 - ▶ Did the Government make a mistake?
 - ▶ Corrective Action?
 - ▶ Agency Goals
 - Do the right thing for the taxpayer
 - Fair treatment of offerors
 - ▶ Information is key
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How Will It Help Your Business?

- ▶ Matter of business and not emotion
 - ▶ Time and Expenses
 - GAO renders decision in 100 days
 - COFC decisions much longer deliberation time
 - Cost to retain counsel
 - ▶ No impact on Government's impression of the offeror
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Protest Resources and Reading

- ▶ Title 4 of the Code of Federal Regulations, Part 21 (<http://ecfr.gpoaccess.gov/>)
- ▶ GAO website (www.gao.gov)
- ▶ FAR, DEAR or other agency acquisition supplements (<http://farsite.hill.af.mil/>)
- ▶ Protest timeline (http://oamp.od.nih.gov/Division/DAPE/dape_doc/Protest-Timeline.pdf)

Protest Resources and Reading

- ▶ GAO FY 2011 Bid Protest Stats(<http://gcblog.wolterskluwerlb.com/gao-bid-protests>)
- ▶ Washington Technology article (<http://washingtontechnology.com/articles/2011/11/18/2011-bid-protests.aspx>)
- ▶ GovCon article (<http://www.governmentcontractslawblog.com/2009/01/articles/gao/so-you-lost-now-what-a-vacationers-guide-to-gao-bid-protests/>)

QUESTIONS?

