**DFARS Case 2018-D009**

**(S) Postaward Debriefings**

**Final Rule**

**PART 212—ACQUISITION OF COMMERCIAL ITEMS**

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**SUBPART 212.3—SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS**

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**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

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(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items. If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at [~~https://www.acquisition.gov~~](https://www.acquisition.gov)**[*https://www.sam.gov*]**, the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

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(vi) *Part 215—Contracting by Negotiation.*

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**[(F) Use the provision at 252.215-7016, Notification to Offerors—Postaward Debriefings, as prescribed in 215.570, to comply with section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).**

**(vii) *Part 216—Types of Contracts.* Use the clause at 252.216-7010, Postaward Debriefings for Task Orders and Delivery Orders, as prescribed in 216.506-70(b), to comply with section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).]**

***[Redesignate paragraphs (vii) through (xviii) as (viii) through (xix)]***

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**PART 215—CONTRACTING BY NEGOTIATION**

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**SUBPART 215.5—PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS, PROTESTS, AND MISTAKES**

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**215.506 Postaward debriefing of offerors.**

**[(b) Notwithstanding FAR 15.506(b), when requested by a successful or unsuccessful offeror, a written or oral debriefing is required for contract awards valued at $10 million or more (section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91)).**

**(d) In addition to the requirements of FAR 15.506(d), the minimum debriefing information shall include the following:**

**(i) For award of a contract in excess of $10 million and not in excess of $100 million with a small business or nontraditional defense contractor, an option for the small business or nontraditional defense contractor to request disclosure of the agency’s written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.**

**(ii) For award of a contract in excess of $100 million, disclosure of the agency’s written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.]**

**\* \* \* \* \***

**[215.506-70 Opportunity for follow-up questions.**

**When providing a required postaward debriefing to successful and unsuccessful offerors, contracting officers shall—**

**(a) Provide an opportunity to submit additional written questions related to the required debriefing not later than 2 business days after receiving the postaward debriefing;**

**(b) Respond in writing to timely submitted additional questions within 5 business days after receipt of the questions; and**

**(c) Not consider the postaward debriefing to be concluded until the later of—**

**(1) The date that the postaward debriefing is delivered, orally or in writing; or**

**(2) If additional written questions related to the debriefing are timely received, the date the agency delivers its written response.**

**215.570 Solicitation provision.**

**Use the provision at 252.215-7016, Notification to Offerors—Postaward Debriefings, in competitive negotiated solicitations for contract awards valued at $10 million or more, including solicitations using FAR part 12 procedures for the acquisition of commercial items.]**

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**PART 216—TYPES OF CONTRACTS**

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**SUBPART 216.5—INDEFINITE-DELIVERY CONTRACTS**

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**216.505 Ordering.**

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(b) *Orders under multiple-award contracts.*

(1) *Fair opportunity.*  \* \* \*

(2) *Exceptions to the fair opportunity process*. For an order exceeding the simplified acquisition threshold, that is a follow-on to an order previously issued for the same supply or service based on a justification for an exception to fair opportunity citing the authority at FAR 16.505(b)(2)(i)(B) or (C), follow the procedures at PGI 216.505(b)(2).

**[(6) *Postaward notices and debriefing of awardees for orders exceeding $6 million.* In addition to the notice required at FAR 16.505(b)(6), a written or oral postaward debriefing of successful and unsuccessful awardees is required for task orders and delivery orders valued at $10 million or more (section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91)).**

**(ii) Follow the procedures at 215.506 and 215.506-70 when providing the postaward debriefing to successful and unsuccessful awardees for task orders or delivery orders valued at $10 million or more.]**

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**216.506 Solicitation provisions and contract clauses.**

~~(S-70) Use the provisions at 252.215-7007, Notice of Intent to Resolicit, and 252.215-7008, Only One Offer, as prescribed at 215.371-6 and 215.408(3), respectively.~~

**[216.506-70 Additional solicitation provisions and contract clause.**

**(a) Use the provisions at 252.215-7007, Notice of Intent to Resolicit, and 252.215-7008, Only One Offer, as prescribed at 215.371-6 and 215.408(3), respectively.**

**(b) Use the clause at 252.216-7010, Postaward Debriefings for Task Orders and Delivery Orders, in competitive negotiated solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when a multiple-award contract is contemplated and task orders or delivery orders placed under the contract may be valued at $10 million or more.]**

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**PART 233—PROTESTS, DISPUTES, AND APPEALS**

**SUBPART 233.1—PROTESTS**

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**233.102 General.**

If the Government exercises the authority provided in [239.7305](https://www.acq.osd.mil/dpap/dars/dfars/html/current/239_73.htm#239.7305)(d) to limit disclosure of information, no action undertaken by the Government under such authority shall be subject to review in a bid protest before the Government Accountability Office **[(GAO)]** or in any Federal court (see subpart [239.73](https://www.acq.osd.mil/dpap/dars/dfars/html/current/239_73.htm)).

**[233.104 Protests to GAO.**

**(c) *Protests after award.* (1) In lieu of the time periods in FAR 33.104(c)(1), contracting officers shall immediately suspend performance or terminate the awarded contract, task order, or delivery order upon notice from the GAO of a protest filed within the time periods listed in paragraphs (c)(1)(A) through (D) of this section, whichever is later, except as provided in FAR 33.104(c)(2) and (3)—**

**(A) Within 10 days after the date of contract award;**

**(B) Within 10 days after the date a task order or delivery order is issued, where the value exceeds $25 million (10 U.S.C. 2304c(e));**

**(C) Within 5 days after a debriefing date offered to the protestor under a timely debriefing request in accordance with FAR 15.506 regardless of whether the protestor rejected the offered debriefing date, unless an earlier debriefing date is negotiated as a result; or**

**(D) Within 5 days after a postaward debriefing under FAR 15.506 is concluded in accordance with 215.506-70(b).]**

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**233.171 Reporting requirement for protests of solicitations or awards.**

Follow the procedures at [PGI 233.171](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI233_1.htm#233.1) for reporting information on protests involving the same contract award or proposed award that have been filed at both the ~~Government Accountability Office~~**[GAO]** and the United States Court of Federal Claims.

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**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES**

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**[252.215-7016 Notification to Offerors—Postaward Debriefings.**

**As prescribed in 215.570, use the following provision:**

**NOTIFICATION TO OFFERORS—POSTAWARD DEBRIEFINGS**

**(MAR 2022)**

**(a) *Definition*. As used in this provision—**

**“Nontraditional defense contractor” means an entity that is not currently performing and has not performed any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section, for at least the 1-year period preceding the solicitation of sources by DoD for the procurement (10 U.S.C. 2302(9)).**

**(b) *Postaward debriefing.***

**(1) Upon timely request, the Government will provide a written or oral postaward debriefing to successful or unsuccessful offerors for contract awards valued at $10 million or more, while protecting the confidential and proprietary information of other offerors. The request is considered timely if received within 3 days of notification of contract award.**

**(2) When required, the minimum postaward debriefing information will include the following:**

**(i) For contracts in excess of $10 million and not in excess of $100 million with a small business or nontraditional defense contractor, an option for the small business or nontraditional defense contractor to request disclosure of the agency’s written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.**

**(ii) For contracts in excess of $100 million, disclosure of the agency’s written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.**

**(3) If a required postaward debriefing is provided—**

**(i) The debriefed Offeror may submit additional written questions related to the debriefing not later than 2 business days after the date of the debriefing;**

**(ii) The agency will respond in writing to timely submitted additional questions within 5 business days after receipt by the contracting officer; and**

**(iii) The postaward debriefing will not be considered to be concluded until the later of—**

**(A) The date that the postaward debriefing is delivered, orally or in writing; or**

**(B) If additional written questions related to the debriefing are timely received, the date the agency delivers its written response.**

**(c) *Contract performance.* The Government may suspend performance of or terminate the awarded contract upon notice from the Government Accountability Office of a protest filed within the time periods listed in paragraphs (c)(1) through (3) of this provision, whichever is later:**

**(1) Within 10 days after the date of contract award.**

**(2) Within 5 days after a debriefing date offered to the protestor under a timely debriefing request in accordance with Federal Acquisition Regulation (FAR) 15.506 unless an earlier debriefing date is negotiated as a result.**

**(3) Within 5 days after a postaward debriefing under FAR 15.506 is concluded in accordance with Defense Federal Acquisition Regulation Supplement 215.506-70(b).**

**(End of provision)**

**252.216-7010 Postaward Debriefings for Task Orders and Delivery Orders.**

**As prescribed at 216.506-70(b), use the following clause:**

**POSTAWARD DEBRIEFINGS FOR TASK ORDERS AND DELIVERY ORDERS (MAR 2022)**

**(a) *Postaward debriefing.***

**(1) Upon timely request, the Government will provide a written or oral postaward debriefing for task orders or delivery orders valued at $10 million or more to the Contractor, regardless of whether the Contractor’s offer for the task order or delivery order was successful or unsuccessful, while protecting the confidential and proprietary information of other contractors. The request is considered timely if received within 3 days of notification of task order or delivery order award.**

**(2) If a required postaward debriefing is provided—**

**(i) The debriefed Contractor may submit additional written questions related to the required and provided debriefing within 2 business days after the date of the debriefing;**

**(ii) The agency will respond in writing to timely submitted additional questions within 5 business days after receipt; and**

**(iii) The postaward debriefing will not be considered to be concluded until the later of—**

**(A) The date that the postaward debriefing is delivered, orally or in writing; or**

**(B) If additional written questions related to the debriefing are timely received, the date the agency delivers its written response.**

**(b) *Task order or delivery order performance.* The Government may suspend performance of or terminate the awarded task order or delivery order upon notice from the Government Accountability Office of a protest filed within the time periods listed in paragraphs (b)(1) through (3) of this clause, whichever is later:**

**(1) Within 10 days after the date a task order or delivery order is issued, where the value exceeds $25 million (10 U.S.C. 2304c(e)).**

**(2) Within 5 days after a debriefing date offered to the protestor under a timely debriefing request in accordance with Federal Acquisition Regulation (FAR) 15.506 unless an earlier debriefing date is negotiated as a result.**

**(3) Within 5 days after a postaward debriefing under FAR 15.506 is concluded in accordance with Defense Federal Acquisition Regulation Supplement 215.506-70(b).**

**(End of clause)]**