

CLIENT ALERT

When Does an Enhanced Debriefing End?

March 29, 2022

While there's no harm in gathering as much information as possible before filing a protest, would-be protesters must pay careful attention to GAO's timeliness regulations. In [K&K Industries, Inc., B-420422; B-420422.2, March 7, 2022](#), GAO highlighted the risk of attempting to unilaterally extend a debriefing beyond the Department of Defense (DOD) enhanced debriefing window.

Following contract award and a timely request for a debriefing, which included a request for a redacted copy of the Source Selection Decision Document (SSDD), the Army provided the protester (K&K) with an initial written debriefing on October 13, 2021. The debriefing stated:

Should you have any additional questions please submit them to the contracting officer no later than two days after receiving the redacted SSDD. If no further questions are asked after receipt of the SSDD, K&K Industries' written debriefing will conclude.

Following receipt of the SSDD on Friday, October 22, K&K submitted questions to the contracting officer the next business day. The Army responded to those questions on November 17, 2021, stating "[t]his concludes your written debriefing." K&K then submitted a second round of questions on November 19, 2021. The Agency responded to K&K's second round of questions on November 23, 2021, this time informing K&K that:

Any additional questions must be submitted by December 1, 2021. This concludes your written debriefing.

K&K sent the Army a third round of questions on November 24, 2021, which the Army responded to on December 13, 2021. The Army's final response informed K&K that "This concludes your written extended debriefing." Following the Army's final response, K&K filed a GAO protest on December 20, 2021.

The question for GAO was when did K&K's debriefing actually conclude? K&K believed that the Army's November 23 response "reopened" the debriefing and that K&K's protest clock did not start until it received the Army's December 13 final response. The Army maintained that its November 17 response – which stated, "[t]his concludes your written debriefing" – concluded the debriefing process.

GAO agreed with the Army. Acknowledging that in certain circumstances agency action may extend the time to file a protest by creating an ambiguity regarding whether a debriefing has concluded, GAO found the Army's statement, "[t]his concludes your written debriefing" to be "clear, unambiguous, and absolute." Once K&K received that response, it was on the clock to file.

GAO rejected K&K's argument that the third Army response retroactively created an ambiguity or otherwise reopened the debriefing. The third response did not change the fact that the Army's prior statement unambiguously confirmed that the debriefing was closed. Additionally, more than ten days had passed between the Army's second response on November 23 and its third response on December 13, so, in any event, K&K's 10-day window to file at GAO had run before it received the Army's final response.

Of note, K&K also filed a supplemental protest based on information first provided in the Agency Report. GAO's decision on the timeliness of the supplemental protest underscores a second fundamental timeliness concept: if an initial protest is untimely, supplemental protest grounds based upon information first produced in an agency report created in response to the untimely protest will also be untimely. In other words, protesters cannot use information provided in an agency report to retroactively make an untimely protest timely – to avoid dismissal, the initial protest must be timely. On this basis, GAO dismissed K&K's supplemental grounds of protest.

The decision emphasizes the importance of clarity regarding filing deadlines. Disappointed offerors should engage counsel early in the post-award procurement process to ensure that their protest rights are protected, particularly as it relates to the enhanced debriefing rules.

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