

DEBRIEFING LANGUAGE

Guidance to Procuring Agency:

State Finance Law §163(9)(c), as amended by Section 3 of Chapter 137 of the Laws of 2008, requires that:

A state agency shall, upon request, provide a debriefing to any unsuccessful offerer that responded to a request for proposal or an invitation for bids, regarding the reasons that the proposal or bid submitted by the unsuccessful offerer was not selected for an award. The opportunity for an unsuccessful offerer to seek a debriefing shall be stated in the solicitation, which shall provide a reasonable time for requesting a debriefing.

It is clear under this statute that an Agency must inform an unsuccessful proposer/bidder of the deficiencies in its own proposal/bid. It is not clear whether an agency is required to provide information at a debriefing concerning the winning proposal. However, an agency is not generally prohibited from doing so. Therefore, as part of a debriefing an Agency may release any information concerning the winning proposal, except where the release of such information is prohibited by other laws (for example an Agency may not disclose personal information, such as personal tax returns).

Caution should be used when releasing information that may be withheld under FOIL, such as trade secrets or information which will impede contract negotiations.

Where an Agency has found a proposal/bid non-responsive, it is best practice to provide notice of such determination (and an opportunity for a debriefing) to the vendor early in the process in order to allow the vendor an opportunity to attempt to refute such a finding. This may avoid any delays that may otherwise occur further along in the procurement process.

Debriefings are intended to make the procurement process open and transparent and to help the vendor community become more viable competitors for New York State goods and services. When conducting a debriefing, agencies should be prepared to review, at a minimum, the strengths and weaknesses of a vendor's proposal and to provide information as to the relative ranking of that vendor's proposal in each of the major evaluation categories as provided for in the solicitation document. Typically such a debriefing would include information as to the ranking of the vendor's proposal in both the technical and cost components of the evaluation and an identification of any areas in the proposal which the agency found to be deficient.

Procuring agencies are advised, if a debriefing was requested by an unsuccessful proposer/bidder but the procuring Agency has not yet provided it, OSC will withhold its approval of the contract until the debriefing request has been responded to.

Sample Language for Solicitation Notice:

A debriefing is available to any entity that submitted a proposal or bid in response to a solicitation ("*Bidder*"). A Bidder will be accorded fair and equal treatment with respect to its opportunity for debriefing.

Debriefing shall be requested in writing by the unsuccessful Bidder within [*designate number of days*] business days of the [ADD STATE AGENCY NAME] [*Choose appropriate option:*]
[*notifying the unsuccessful Bidders that another vendor was selected*]
[*publicly releasing the identity of the purported winner of the competition (such as through posting on the internet at a specific web address disclosed below)*].

An unsuccessful Bidder's written request for a debriefing shall be submitted to: [ADD AGENCY-SPECIFIC INFORMATION]

The debriefing shall be scheduled within [*designate number of days*] business days of receipt of written request by the [ADD STATE AGENCY NAME] or as soon after that time as practicable under the circumstances.