

CONSTRUCTIVE NOTICE OF AWARD

Copyright 2022 Richard D. Lieberman, Consultant & Retired Attorney

Should you read the Governmentwide point of entry (“GPE”) every day? Of course, if you have an offer pending. The GPE is considered constructive notice to contractors and offerors.

The GPE is located at <https://www.sam.gov>, and is the “single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations and associated information can be accessed electronically by the public.” FAR 2.101. Kolb Grading found out the consequences of consulting social media about a pending offer, rather than reading the GPE. *Kolb Grading, LLC*. B-420310.2, Dec. 8, 2021.

Kolb submitted its offer electronically for construction of canals and a maintenance road in Florida on time on August 17, 2021 to the Army Corps of Engineers. The agency awarded the contract to Phillips & Jordan, Inc. on September 23, 2021, and posted notice of award on the GPE (SAM.gov, which then was beta.SAM.gov), which has been expressly designated by statute and regulation as the official public medium for providing notice of contracting actions by federal agencies.

Kolb learned of the award on October 7, 2021 from social media and requested on October 11, 2022 that the contracting officer provide it with the notice of award. On October 12, 2021, Kolb was notified by the contracting officer that the agency never received a proposal from Kolb.

On October 21, 2021, Kolb submitted a protest to the Government Accountability Office (“GAO”), alleging that the agency improperly failed to consider its proposal.

GAO noted that its bid protest rules contained strict timeliness rules, and a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 days after a protester knew, *or should have known* (emphasis added) of the basis for protest, whichever is earlier. 4 CFR § 21.2(a)(2). Kolb had constructive knowledge on September 28, 2021 from the beta.SAM.gov award notice. Because Kolb delayed for 13 days in its request for additional information, the GAO found that this showed a lack of diligent pursuit, and was untimely (more than 10 days after the constructive notice). GAO therefore dismissed Kolb’s protest.

Takeaway. Protests must be filed within 10 days of when you knew or should have known of the grounds. All offerors should conduct a daily review of SAM.gov to ensure there is no constructive notice of an award—especially in situations where the offeror has received no notice from the government and no confirmation that its electronic offer has been received. The case does not mention an electronic receipt, but if an offeror does not receive one, the offeror should request confirmation of receipt from the agency.