

PUBLIC NOTICE IN CONTRACTING ACTIONS

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The official public medium for providing notice of contracting actions by federal agencies is the FedBizOpps.gov website, which has been designated by statute and regulation as the government-wide point of entry (“GPE”). 15 U.S.C. § 637(e); 41 U.S.C. § 416; Federal Acquisition Regulation (“FAR”) §§ 2.101, 5.101(a)(1), 5.201(d). The use of the FedbizOpps website enables agencies to meet the notice requirement for full and open competition in the Competition in Contracting Act of 1984 by using a well-recognized and well-accepted website. Sometimes agencies will announce the contracting action in the GPE, but provide a link to a document, such as a solicitation, which is located in another website

Several agencies provide notices of contracting actions on other, publicly accessible websites, like the Department of Interior’s FedConnect.net, or the Department of Defense’s DefenseLink.mil. In two separate protests, the Government Accountability Office addressed the FAR requirements for notice on Fedbizopps.gov, *Phoenix Environmental Design, Inc.* B-412403, March 7, 2016, and *WorldWide Lang. Resources, Inc; SOS Int’l.Ltd.*, B-296993 et al, 2005 CPD ¶ 206.

The FAR provides that for proposed contract actions expected to exceed a value of \$15,000 but not expected to exceed \$25,000, notice can be given by displaying the notice in a “public place or by any appropriate electronic means.” FAR 5.101(a)(2). For contract actions expected to exceed \$25,000, the agency must use the only recognized government-wide point of entry—the GPE, or FedBizzOpps.gov website (located at www.fbo.gov). FAR 2.101 and 5.101(a)(1).

In *Phoenix Environmental*, the Department of Interior issued a Request For Quotations (“RFQ”) against a Federal Supply Schedule Contract for herbicides, and ultimately issued a purchase Order to Walking Point Farms, in the amount of \$22,634. When Walking Point notified Interior that it could not proceed with the order because more than 20 percent was for open-market (non-schedule) items, Interior canceled the order, and issued a service disabled veteran owned small business set aside for the same requirements. Notice of the award was posted on FedConnect.net, Interior’s publicly-accessible website, and listed the value of the purchase order as \$33,380, the same amount listed for the prior RFQ. The notice was not posted on FedBizOpps.gov. The agency ultimately issued a purchase order to Walking Point soon thereafter, in the amount of \$22,042.

Phoenix protested that the agency did not properly notify it of the cancellation of the first RFQ and the issuance of the second RFQ. The GAO denied the protest. In developing the protest, the contracting officer noted that the \$33,380 amount was inadvertently copied in the second RFQ, but the actual expected value of the second order was less than \$25,000. Accordingly, the agency was *not* required to post notice of the RFQ on FedBizOpps, but was permitted to use “any appropriate electronic means” (meaning something other than the GPE, which was FedConnect.net.)

In *WorldWide Lang. Resources, Inc.*, the Air Force posted notice of two sole source awards for bicultural advisors (\$10.7 million and \$35.5 million) on DefenseLink, but never posted it on the GPE. This failure to provide notice was protested six months after the award, when the protester first learned of it—and GAO agreed the protest was timely.

The Air Force argued that DefenseLink had provided constructive notice to the protester, but GAO refused to recognize anything other than FedBizOpps for notices of awards of that magnitude. GAO said:

In this case, the Air Force did not publish its intent to enter into a sole-source contract . . . nor did it provide notice of the award on FedBizOpps; rather, the Air Force announced the December award solely on DefenseLink. While the agency maintains that DefenseLink is “as widely known as FedBizOpps and as eagerly perused,” [] DefenseLink has not been designated by statute or regulation as an official public medium for providing notice of contracting actions. As a consequence [] we do not treat posting on DefenseLink as giving rise to constructive notice. Moreover, we note that the agency was required to provide notice of the award on FedBizOpps, [pursuant to sect. 5.301(a)] but failed to do so.

So the takeaway from these two cases is that the FAR requirement for posting on FedBizOpps for contract actions over \$25,000, will be strictly construed by the GAO, unless there has been a mistake in the government estimate making the procurement under \$25,000—in which case DefenseLink or FedConnect.net would meet the FAR requirements for “any appropriate electronic means.”