

PRATT'S GOVERNMENT CONTRACTING LAW REPORT

VOLUME 10

NUMBER 8

August 2024

Editor's Note: PPP Problems

Victoria Prussen Spears

239

The Paycheck Protection Program Today: Lessons Learned and What Lies Ahead

Llewelyn M. Engel, Sam Crockett Neel and Julian L. André

241

SAM (Registered) I Am: Contractors, Beware of Lapses in SAM Registration

Kara M. Sacilotto, Brian Walsh, George E. Petel and Vaibhavi Patria

246

**What the New Federal Artificial Intelligence Rules Mean For Government
Contractors**

Zohra Tejani

250

In the Courts

Steven A. Meyerowitz

255

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Library of Congress Card Number:

ISBN: 978-1-6328-2705-0 (print)

ISSN: 2688-7290

Cite this publication as:

[author name], [article title], [vol. no.] PRATT'S GOVERNMENT CONTRACTING LAW REPORT [page number] (LexisNexis A.S. Pratt)

Michelle E. Litteken, GAO Holds NASA Exceeded Its Discretion in Protest of FSS Task Order, 1 PRATT'S GOVERNMENT CONTRACTING LAW REPORT 30 (LexisNexis A.S. Pratt)

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POSTMASTER: Send address changes to *Pratt's Government Contracting Law Report*, LexisNexis Matthew Bender, 230 Park Ave. 7th Floor, New York NY 10169.

SAM (Registered) I Am: Contractors, Beware of Lapses in SAM Registration

By *Kara M. Sacilotto, Brian Walsh, George E. Petel and Vaibhavi Patria**

In this article, the authors examine a recent decision by the Government Accountability Office that offers the lesson that government contractors should give themselves plenty of time before their deadline to renew their System for Award Management registration if they have any pending awards or upcoming proposal submissions, especially because the system can take days (or even weeks) to display an active status.

The Government Accountability Office (GAO) has sustained¹ a disappointed offeror's protest alleging that a solicitation's inclusion of FAR 52.204-7 required the awardee to be found ineligible because its System for Award Management (SAM) registration temporarily lapsed for approximately 24 hours after its proposal submission but before award.

In *TLS Joint Venture, LLC*,² GAO extended last year's Court of Federal Claims (COFC) decision in *Myriddian, LLC v. United States*,³ which held that the plain language of FAR 52.204-7 required the agency to disqualify an awardee whose SAM registration lapsed pending award.

Moreover, GAO was unpersuaded by the agency's defense that FAR 52.204-7 did not require continuous registration and—even if it did—the awardee satisfied the requirement by submitting its renewal information in SAM prior to expiration of its existing registration. And, GAO found that there was competitive prejudice.

Now that GAO has joined COFC in finding that an awardee was ineligible for failure to maintain an active SAM registration continuing from proposal submission until award, contractors should be on high alert given the vagaries of the SAM registration and update process.

BACKGROUND

In *TLS*, GAO addressed the meaning of FAR 52.204-7 and the sequence of efforts necessary for a contractor to update their SAM registration. After asking the General Services Administration (GSA) to weigh in on the process and detailing the numerous steps to update a registration, GAO noted that the SAM

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¹ <https://www.gao.gov/products/b-422275#mt=e-report>.

² *TLS Joint Venture, LLC*, B-422275 (GAO April 1, 2024).

³ *Myriddian, LLC v. United States*, 165 Fed. Cl. 650 (COFC 2023).

registration of the awardee, SFR, expired at 9:34 a.m. on December 11, and that the Government did not activate the renewed registration until 9:48 a.m. on December 12. As a consequence, GAO found that the awardee did not comply with FAR 52.204-7.

FAR 52.204-7 was amended to clarify that an offeror is required to be registered in SAM at the time of proposal submission and that the offeror “shall continue to be registered until time of award”; the older version required only that offerors “be registered in the SAM database *prior to award*, during performance, and through final payment of any contract.” In *TLS*, the agency argued that the regulatory history of the change indicated that the FAR Council did not intend to “create new requirements for offerors” but to clarify the required timing for SAM registration. GAO rejected any reliance on this regulatory history, however, finding that the FAR provision was unambiguous by its terms.

Taking a step further, GAO turned to the definition of what it means to be “registered” in SAM and held that FAR 52.204-7 is satisfied only when offerors enter all mandatory information, complete all representations and certifications, receive validation from the Government, and the Government has marked the record as “active.” Thus, GAO cautioned that “until that sequence is complete, the contractor is not registered in SAM.”

GAO found this error rose to the level of competitive prejudice: “[W]e conclude that, but for the agency’s failure to identify SFR as ineligible for award under the terms of the RFP, TLS would have had a substantial chance for award as one of the offerors remaining in the competitive field.” TLS was also next in line for award.

OTHER DECISIONS

TLS comes after GAO’s 2021 decision in *Continuity Global Solutions-Secure Me WLL Security, JV*.⁴ There, an offeror that was not registered in SAM and deemed ineligible argued that the agency was “required” to waive the “minor informality.” GAO stated that “because registration—or failure to register—in SAM does not affect a firm’s obligation to perform in accordance with the terms of the solicitation, compliance with the registration requirement is not a matter of responsiveness, but rather a matter of responsibility” and “in a negotiated procurement, information to be used in determining responsibility could be submitted up until the time of award and an agency properly may provide an offeror with an opportunity to submit the information prior to award.” GAO denied the protest and upheld an agency’s disqualification because the agency

⁴ *Continuity Global Solutions-Secure Me WLL Security, JV*, B-419875 (GAO 2021).

had, in fact, provided the offeror an opportunity to cure by demonstrating its active status, and the offeror could not.

In *TLS*, GAO does not cite to or even mention its 2021 decision. Rather, in a footnote, it cites to *CGS-ASP Security JV LLC*, decided in 2022,⁵ and states: “A challenge that an offeror did not comply with a mandatory solicitation requirement, such as FAR provision 52.204-7, does not constitute part of the agency’s responsibility determination.”

GAO also did not cite to or mention its 2020 decision in *Phoenix Env’tl Design, Inc.*,⁶ where it held that “[w]ith respect to allegations that an offeror’s SAM registration is inaccurate or incomplete, our Office has generally recognized that minor informalities related to SAM (or its predecessor systems) registration generally do not undermine the validity of the award and are waivable by the agency without prejudice to other offerors. . . . We have found no prejudicial error in such cases largely because an awardee’s registration status does not implicate the terms of its proposal, and there is nothing to suggest that another offeror would have altered its proposal to its competitive advantage in response to a relaxed SAM registration requirement.”

Regardless of whether an offeror’s SAM registration ultimately pertains to its responsibility—which agencies can raise with an offeror without holding discussions—or its responsiveness to a solicitation’s requirements, unless and until the FAR Council amends FAR 52.204-7, COFC and apparently now GAO will strictly apply the requirements for SAM registration when the solicitation incorporates the current version of FAR 52.204-7.

Contractors should take note. The SAM registration and update process includes numerous governmental steps, some of which are manual, such as sending the record to the Internal Revenue Service for verification of the contractor taxpayer identification number. The Defense Logistics Agency must also verify the contractor’s CAGE code, and once all of these steps are completed, GSA must process the application and mark the registration as “active.” Under the best of circumstances, as shown in *TLS*’s registration timeline, this can take several days. Unfortunately, however, the process can experience delays at any point and take even weeks for a registration to be updated. As a final observation, while it may not have changed the outcome, the awardee did not intervene in the GAO protest. Contractors may also wish to take note of the non-intervention here as a “lesson learned.”

⁵ *CGS-ASP Security JV LLC*, B-420497 (GAO 2022).

⁶ *Phoenix Env’tl Design, Inc.*, B-418473 (GAO 2020).

WHAT THIS MEANS FOR INDUSTRY

The *TLS* decision serves as another cautionary tale for contractors to take seriously what appears to be a minor ministerial task. Both GAO and the COFC have found that the current language in FAR 52.204-7 mandates severe impacts on contractors having SAM registration issues, even where government processing delays are the cause. *TLS* offers the lesson that contractors should give themselves plenty of time before their deadline to renew their SAM registration if they have any pending awards or upcoming proposal submissions, especially because the system can take days (or even weeks) to display an active status.