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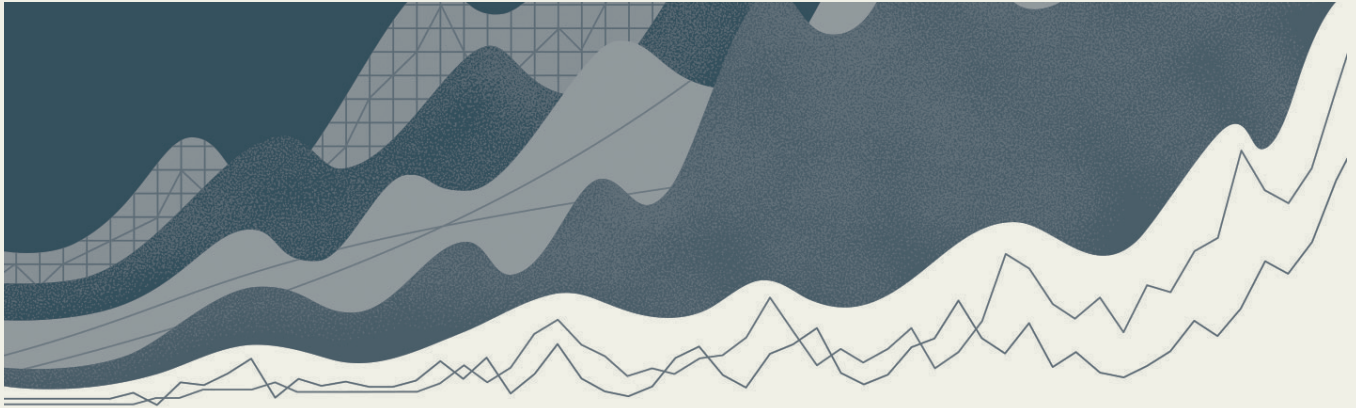
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# FAR Council Clarifies SAM Registration Rule

Offerors no longer have to be continuously registered in the System for Award Management (SAM), but it remains unclear whether the requirement to be registered applies at the time of initial or final proposals.

BY STEPHEN L. BACON

Every government contractor's worst nightmare is having its proposal eliminated due to a seemingly trivial administrative matter that was inadvertently overlooked. During the past several years, many companies have faced this harsh reality because they allowed their registration in the System for Award Management (SAM) to lapse between the time of their proposal submission and contract award.

These companies had defeat snatched from the jaws of victory because they failed to comply with a standard *Federal Acquisition Regulation (FAR)* clause codified at FAR 52.204-7(b)(1). In bid protest decisions, the Government Accountability Office (GAO) and the U.S. Court of Federal Claims (COFC) have ruled that this solicitation provision required offerors to continuously maintain their SAM registration between the time of offer submission and contract award.

In response to these decisions, the FAR Council took the unusual step of issuing an Interim Rule late last year to remove the continuous registration requirement.<sup>1</sup> The Interim Rule, which is effective as of November 12, 2024, clarifies FAR 52.204-7(b)(1) to state that offerors are “required to be registered in SAM when submitting an offer or quotation and at time of award,” but not during the entire pre-award period.<sup>2</sup>

This clarification is helpful for contractors and should reduce the amount of bid protest litigation involving compliance with this requirement. But questions remain regarding how the amended SAM registration requirement will be interpreted going forward and what the consequences will be for noncompliance. Indeed, the forums that adjudicate protests have issued conflicting opinions as to whether the requirement to be registered “when submitting an offer” applies at the time of initial proposals or final proposals.

### Background

Before 2018, FAR 52.204-7(b)(1) required offerors to be registered in the SAM “prior to award.”<sup>3</sup> The FAR Council issued a Final Rule in 2018 that was intended “to clarify for offerors the required timing of SAM registration” and specifically, whether registration was required at the time of offer submission, the time of award, or both.<sup>4</sup>

The FAR Council addressed this issue by amending FAR 52.204-7(b)(1) to state: “An Offeror is required to be registered in SAM when submitting an offer or quotation, and *shall continue to be registered* until time of award...”<sup>5</sup> The FAR Council had not previously required

continuous registration, and the Final Rule did not explain the rationale behind this specific aspect of the amendment.

In 2023, the COFC ruled in *Myriddian, LLC v. United States* that “an offeror’s SAM registration may not have an interruption or lapse under the plain meaning of FAR 52.204-7.”<sup>6</sup> In that case, the awardee had allowed its registration to lapse for a period of 17 days between the submission of its proposal and the government’s award. The COFC concluded that this lapse rendered the awardee ineligible and the government could not waive FAR 52.204-7’s unambiguous requirement to maintain continuous registration.

Less than a year after *Myriddian* was

decided, GAO adopted the COFC’s strict interpretation of FAR 52.204-7 in the protest of *TLS Joint Venture, LLC*.<sup>7</sup> GAO sustained the protest and recommended termination of the awardee’s contract based upon a finding that its SAM registration had lapsed for a mere 24 hours during the pre-award period.

The agency argued that the awardee complied with the continuous registration requirement by submitting its renewal information in SAM prior to the expiration date. But GAO rejected this contention because “registration” in SAM is only achieved under FAR 52.204-7 after the offeror enters all mandatory information, completes its representations and certifications, the government

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validates mandatory data fields, and the government marks the record as “Active.”<sup>8</sup> The awardee failed to meet the continuous registration requirement because it did not complete this entire sequence prior to the expiration of its existing registration.

Moreover, GAO noted that an offeror’s lapse in registration could not be cured because it “does not constitute part of the agency’s responsibility determination.”<sup>9</sup> GAO’s holding in this regard conflicted with its prior rulings that a failure to be registered in SAM was a matter of responsibility and that this “minor informality” is potentially waivable.<sup>10</sup>

*Myriddian and TLS Joint Venture* opened the floodgates to many other

bid protest challenges involving SAM registration lapses.<sup>11</sup> This spike in bid protest activity during the last two years caused the FAR Council to reexamine and ultimately amend the SAM registration requirement to clarify its original intent.

**Interim Rule Eliminates Continuous Registration Requirement**

The FAR Council issued the Interim Rule “to mitigate the risk of more litigation and mission delays” caused by what it viewed as an “unintended interpretation” of FAR 52.204-7(b)(1)’s requirement.<sup>12</sup> According to the FAR Council, “[t]he 2018 rule’s purpose was clarifying in nature and not intended to introduce new

requirements with such severe ramifications for offerors.”<sup>13</sup>

It concluded that the surge in bid protests surrounding the continuous registration requirement “represents an unwitting barrier to entry and significant disruption to the industrial base and the Federal agencies they support, which warrants immediate action.”<sup>14</sup> The Interim Rule expressed concern that small businesses in particular are likely to be impacted by “temporary lapses in registration often for minor and technical reasons.”<sup>15</sup>

As amended by the Interim Rule, FAR 52.204-7(b)(1) now states that “[a]n Offeror is required to be registered in SAM when submitting an offer or quotation and at the time of award.”<sup>16</sup> The FAR Council removed the language requiring continuous registration through an immediately effective Interim Rule because, in its view, the amended provision “simply clarifies pre-award registration requirements” that it had intended to adopt in 2018.<sup>17</sup>

**What “Offer” Is Relevant?**

The removal of the continuous registration requirement should reduce the amount of litigation. But it is likely that bid protests involving compliance with FAR 52.204-7(b)(1) will continue to persist despite the Interim Rule changes.

Notably, the precise timing of the requirement to be registered “when submitting an offer or quotation” remains a contested issue without a clear legal answer. That is because bid protest decisions have adopted diverging views on whether the offeror’s initial proposal or final proposal is the relevant “offer” for purposes of FAR 52.204-7(b)(1).

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In *Hanford Tank Disposition Alliance, LLC v. United States*, Judge Horn of the COFC held that “only revised final offers are the proposals” that must be considered to determine compliance.<sup>18</sup> Under this interpretation, an offeror’s registration status at the time of an earlier offer is not relevant because such offers are superseded by the final proposal revision, which is the only offer that may form the basis for award.<sup>19</sup>

In January 2025, GAO adopted this interpretation in deciding the protest of *UNICA-BPA JV, LLC*.<sup>20</sup> There, the protester was eliminated from the competition because it was not registered in SAM at the time of its initial offer. GAO concluded, however, that the protester complied with FAR 52.204-7(b)(1) and should not have been deemed ineligible because it was registered at the time of its final proposal revision, which “extinguished” the validity of its initial proposal.<sup>21</sup>

But Judge Davis of the COFC espoused an interpretation of FAR 52.204-7(b)(1) that is contrary to the opinions in *Handford Tank* and *UNICA-BPA*. In *Zolon PCS II, LLC v. United States*, Judge Davis ruled that “the relevant triggering event for purposes of the SAM registration requirement” was the date of the *initial* proposals.<sup>22</sup> Even though those proposals “may have expired” due to subsequent revisions, Judge Davis held that “[a]n expired offer is still ‘an offer’ within the meaning of the regulation.”<sup>23</sup>

Judge Davis reached this conclusion in part because the registration requirement applies “when submitting *an* offer,” not only when submitting “*the* offer” that forms the basis for award.<sup>24</sup> The opinion in *Zolon* also notes that requiring registration at the time of the initial proposal

is consistent with the intent of FAR 52.204-7, which encourages offerors to register “immediately upon receipt of this solicitation.”<sup>25</sup>

The decisions in *Hanford Tank*, *Zolon* and *UNICA-BPA* involved solicitations that interpreted the pre-Interim Rule version of FAR 52.204-7(b)(1) that contained the recently removed continuous registration requirement. However, the amended version of FAR 52.204-7(b)(1) retains the requirement to be registered “when submitting an offer” and does not specify what offer or offers are relevant for determining compliance. Thus, bid protests challenging the timing of an offeror’s compliance with FAR 52.204-7(b)(1) are likely to continue.

## Conclusion

Given the uncertainty surrounding the relevant “offer” for purposes of FAR 52.204-7(b)(1), contractors should err on the side of caution and ensure that they register in SAM prior to submission of their *initial* proposals. This can be a challenge for new entrants to the federal market and newly formed joint venture entities that must be registered even if their members are separately registered in SAM.<sup>26</sup>

GAO’s decision in *TLS Joint Venture* underscores the need for contractors to allow sufficient time to complete *all parts* of the registration process sequence before proposals are due. This is critical to ensure compliance with FAR 52.204-7(b)

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(1), which has been deemed a mandatory, non-waivable requirement in recent bid protest decisions.

The view that compliance with FAR 52.204-7(b)(1) is non-waivable is potentially at odds with cases that have found that an agency is not required to eliminate an offeror that fails to comply with “immaterial” solicitation requirements that do not affect “price, quantity, quality, or delivery.”<sup>27</sup>

But the U.S. Court of Appeals for the Federal Circuit has not yet considered whether FAR 52.204-7(b)(1) reflects an “immaterial” requirement that can be waived by the agency. Until a clear legal answer emerges or the clause is amended to clarify the FAR Council’s intent, it is imperative for contractors to treat SAM registration as an essential solicitation requirement that must be satisfied to avoid the possibility of disqualification. **CM**

**Stephen L. Bacon** is a shareholder in the Washington, D.C. office of the law firm Rogers Joseph O’Donnell, where he represents government contractors in bid protests, claims, investigations, and suspension and debarment proceedings. He frequently litigates cases at the Court of Federal Claims, the Government Accountability Office, the Boards of Contract Appeals, and the Small Business Administration’s Office of Hearings and Appeals. He also provides advice and counsel to clients on a broad range of contractual and regulatory compliance issues that confront government contractors.

*The views expressed in this article are those of the author and do not necessarily reflect the views of Rogers Joseph O’Donnell or its clients. This article is for general information purposes and is not intended to be and should not be construed as legal advice.*

ENDNOTES

- 1 89 Fed. Reg. 89472, 89473–74 (Nov. 12, 2024).
- 2 Id. at 89475.
- 3 FAR 52.204-7 (Oct 2016).
- 4 83 Fed. Reg. 48691 (Sept. 26, 2018).
- 5 Id. at 48698; FAR 52.204-7 (Oct 2018).
- 6 Myriddian, LLC v. United States, 165 Fed. Cl.

# GAO’s decision in *TLS Joint Venture* underscores the need for contractors to allow sufficient time to complete *all parts* of the registration process sequence before proposals are due.

- 650, 656 (2023).
- 7 TLS Joint Venture, LLC, B-422275, Apr. 1, 2024 CPD ¶ 74.
- 8 Id. at 5-6.
- 9 Id. at 3, n.1.
- 10 See, e.g., Continuity Global Solutions-Secure Me WLL Security, JV, B-419875, Aug. 12, 2021, 2021 CPD ¶ 281 at 3; Master Pavement Line Corp., B-419111, Dec. 16, 2020, 2020 CPD ¶ 404 at 5; Phoenix Envt’l Design, Inc., B-418473, May 20, 2020, 2020 CPD ¶ 173 at 3.
- 11 Hanford Tank Disposition Alliance, LLC v. United States, Case No. 23-683C, 2023 WL 5167489 (Jun. 30, 2023); Independent Rough Terrain Center v. United States, 172 Fed. Cl. 250 (2024); Thalle/Nicholson Joint Venture v. United States, 164 Fed. Cl. 224 (2023); Zolon PCS II, LLC v. United States, 172 Fed. Cl. 742 (2024); VivSoft Technologies, LLC, B-421561.15, B-421561.17, Apr. 11, 2024, 2024 CDP ¶ 94.
- 12 89 Fed. Reg. 89472, 89473 (Nov. 12, 2024).
- 13 Id. at 89474.
- 14 Id.
- 15 Id.
- 16 Id. at 89475 \* (codifying FAR 52.204-7 (Nov 2024)).
- 17 Id.
- 18 Handford Tank, 173 Fed. Cl. at 318.
- 19 Id. at 319 (citing FAR 2.101).
- 20 UNICA-BPA JV, LLC, B-422580.3, Jan. 8, 2025, 2025 CPD ¶ 165.
- 21 Id.
- 22 Zolon, 172 Fed. Cl. at 753–54.
- 23 Id. at 753.
- 24 Id. at 752–53.
- 25 Id. (citing FAR 52.204-7(d)).
- 26 Prak Industries, LLC, B-422517, Jul. 17, 2024, 2024 CPD ¶ 165.
- 27 See, e.g., Oak Grove Technologies, LLC v. United States, 116 F.4th 1364, 1379 (Fed. Cir. 2024).