LEGAL STATUS

This site displays a prototype of a “Web 2.0” version of the daily Federal Register. It is not an official legal edition of the Federal Register, and does not replace the official print version or the official electronic version on GPO’s govinfo.gov.

The documents posted on this site are XML renditions of published Federal Register documents. Each document posted on the site includes a link to the corresponding official PDF file on govinfo.gov. This prototype edition of the daily Federal Register on FederalRegister.gov will remain an unofficial informational resource until the Administrative Committee of the Federal Register (ACFR) issues a regulation granting it official legal status. For complete information about, and access to, our official publications and services, go to About the Federal Register on NARA's archives.gov.

The OFR/GPO partnership is committed to presenting accurate and reliable regulatory information on FederalRegister.gov with the objective of establishing the XML-based Federal Register as an ACFR-sanctioned publication in the future. While every effort has been made to ensure that the material on FederalRegister.gov is accurately displayed, consistent with the official SGML-based PDF version on govinfo.gov, those relying on it for legal research should verify their results against an official edition of the Federal Register. Until the ACFR grants it official status, the XML rendition of the daily Federal Register on FederalRegister.gov does not provide legal notice to the public or judicial notice to the courts.

LEGAL STATUS

Federal Acquisition Regulation: Clarification of System for Award Management Preaward Registration Requirements

A Rule by the Defense Department, the General Services Administration, and the National Aeronautics and Space Administration on 11/12/2024

PUBLISHED CONTENT - DOCUMENT DETAILS

Agencies: Department of DefenseGeneral Services Administration National Aeronautics and Space Administration
Agency/Docket Numbers: FAC 2025-01, FAR Case 2023-018Item IIDocket No. FAR-2023-0018 Sequence No. 1
CFR: 48 CFR 52
Document Citation: 89 FR 89472
Document Number: 2024-26062
Document Type: Rule
Pages: 89472-89475 (4 pages)
Publication Date: 11/12/2024
RIN: 9000-AO66

PUBLISHED DOCUMENT: 2024-26062 (89 FR 89472)

DOCUMENT HEADINGS

Department of Defense
General Services Administration
National Aeronautics and Space Administration
48 CFR Part 52
[FAC 2025-01, FAR Case 2023-018; Item II; Docket No. FAR-2023-0018; Sequence No. 1]
RIN 9000-AO66

AGENCY:

Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION:

Interim rule.

SUMMARY:

DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to clarify System for Award Management preaward registration requirements.

DATES:

Effective date: November 12, 2024.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before January 13, 2025, to be considered in the formation of the final rule.

ADDRESSES:

Submit comments in response to FAC 2025-01, FAR Case 2023-018 to the Federal eRulemaking portal at *https://www.regulations.gov (https://www.regulations.gov)* by searching for “FAR Case 2023-018”. Select the link “Comment Now” that corresponds with “FAR Case 2023-018”. Follow the instructions provided on the “Comment Now” screen.

Please include your name, company name (if any), and "FAR Case 2023-018" on your attached document. If your comment cannot be submitted using *https://www.regulations.gov (https://www.regulations.gov),* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite "FAR Case 2023-018" in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov (https://www.regulations.gov),* including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq (https://www.regulations.gov/faq)*). To confirm receipt of your comment(s), please check *https://www.regulations.gov (https://www.regulations.gov),* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT:

For clarification of content, contact Mr. Benjamin Collins, Procurement Analyst, at 850-826-0058 or by email at *benjamin.collins@gsa.gov (mailto:benjamin.collins@gsa.gov).* For information pertaining to status or publication schedules, or alternative instructions for submitting comments if *https://www.regulations.gov (https://www.regulations.gov)* cannot be used, contact the Regulatory Secretariat Division at 202-501-4755 or *GSARegSec@gsa.gov (mailto:GSARegSec@gsa.gov).* Please cite FAC 2025-01, FAR Case 2023-018.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the solicitation provision at FAR 52.204-7, System for Award Management, to clarify the System for Award Management (SAM) preaward registration requirements in paragraph (b)(1) of the provision. DoD, GSA, and NASA published a final rule in the **Federal Register** at 83 FR 48691 (/citation/83-FR-48691) on September 26, 2018, to update instructions for registration in SAM and correct an inconsistency involving timing of registration. One of the updates to the provision at FAR 52.204-7, System for Award Management, (🗋 print page 89473) included language that has been construed in some cases as levying a requirement for offerors to maintain a continuous, uninterrupted,

registration during the entirety of the preaward process. This interim rule clarifies that the offeror must be registered at time of offer submission and at time of contract award, but would not be required to be registered at every moment in between those two points.

II. Discussion and Analysis

Prior to the issuance of the September 26, 2018 rule, the FAR required registration in SAM at contract award in some instances (*e.g.,* FAR 4.1102 and 52.204-7) and at the point of offer submission in others (*e.g.,* FAR 52.204-8). The rule aimed to correct these inconsistencies.

FAR 52.204-7(b)(1) was changed from "By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance . . ." to "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, during performance . . . ."

The predominant FAR text changes centered on ensuring offerors understood registration was required at the point of offer submission versus contract award—as that was the earliest point for assessing compliance.

This particular change has proven to be pivotal in recent bid protest decisions by the Government Accountability Office (GAO) (*e.g.,* TLS Joint Venture, LLC, B-422275, April 1, 2024) and the United States Court of Federal Claims (COFC) (*e.g., Myriddian, LLC* v. *The United States*, 165 Fed. Cl. 650 (May 23, 2023)). While the nature of the procurements and associated remedies varied, the decisions were uniform in highlighting FAR 52.204-7(b)(1) as requiring an offeror to be registered at the point of offer submission and maintain that registration through contract award.

While this continuous, active, registration is the anticipated normal state expected of offerors and contractors conducting business via Federal contract, the Government is now directing that the minimum preaward registration compliance is at the points of offer submission (prior to offer evaluation) and contract award (prior to contract execution).

Other FAR references (*e.g.,* FAR 32.1110(a)(1), FAR 52.204-13) allude to a contractor being required to "maintain" registration; however, this is "during contract performance, and through final payment", which is after contract award. This requirement reflects the need

to maintain SAM registration to support contract execution, namely to ensure payments can be mechanized. No other FAR text carries the "continuous" preaward registration language. This rule also updates the provision at FAR 52.204-7, System for Award Management, to remove references to registration requirements applicable after contract award (*i.e.,* "during contract performance, and through final payment"). A pointer to FAR clause 52.204-13, System for Award Management Maintenance, has been added in the provision, however, to ensure offerors do not mistakenly perceive the removal of the language as a removal of the requirement if awarded a contract.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule amends the provision at FAR 52.204-7, System for Award Management. However, this rule does not impose any new requirements on contracts at or below the SAT, for commercial products (including COTS items), or for commercial services. The provision continues to apply to acquisitions at or below the SAT, acquisitions for commercial products (including COTS items), and commercial services.

IV. Expected Impact of the Rule

Offerors are required to be registered in SAM to participate in the Federal marketplace, with some exceptions listed in FAR 4.1102. Registration in SAM will be required upon submission of an offer or quote and at the time of the award as a result of this rule, which amends FAR 52.204-7(b)(1). Offerors will continue to be required to register in SAM to participate in the Federal marketplace. There is no increase in burden.

This rule makes clear that a lapse in registration that occurs after offer submission and is corrected before contract award will not render an offeror ineligible for award under FAR 52.204-7(b)(1). The view that such a lapse makes an offeror ineligible has resulted in loss of resources for otherwise successful small business offerors (*e.g.,* time and costs of litigation, lost income) and the Government (*e.g.,* loss of best-value provider, delays in mission execution via intended contract solution).

Ambiguity regarding the perceived intent at FAR 52.204-7(b)(1) has led to disparate agency interpretations and uncertainty in the acquisition community. In practice, contracting officers, in the preaward environment, generally verify registration status of

offerors at the points of offer submission and contract award and not the time between those two points. Contracting officers typically do this registration review as part of a broader responsibility and qualification review in SAM (*e.g.,* reviewing the entity's status for possible debarment, suspension, proposed debarment, or other Governmentwide exclusion).

While the provision at FAR 52.204-7 speaks to offeror responsibilities and does not impose a requirement on agencies to confirm an offeror has been registered at any and all moments between offer submission and award, the recent COFC and GAO decisions make it clear that failure to do so imperils the award decision.

In summary, this rule is expected to mitigate the risk of more litigation and mission delays.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094 (/executive-order/14094)) and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (/executive-order/13563) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866 (/executive-order/12866), Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this rule does not meet the definition in 5 U.S.C. 804(2) (https://www.govinfo.gov/link/uscode/5/804).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility (🗋 print page 89474) Act, 5 U.S.C. 601-612 (https://www.govinfo.gov/link/uscode/5/601),

because this rule makes a minor change in SAM registration requirements for offerors. This change will help small businesses stay eligible for contract awards. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are amending the FAR to clarify System for Award Management preaward registration requirements. This interim rule changes the provision at FAR 52.204-7, System for Award Management, to clarify that an offeror must be registered at time of offer submission and at time of contract award, but would not be required to be registered at every moment in between those two points. The current language has led to interpretations that have disrupted Government procurements and resulted in lost business opportunities for some companies, including small businesses.

This interim rule addresses registration requirements for offerors in SAM. The implementation of SAM, which combined the functional capabilities of numerous legacy systems, was in response to the E-Government Act of 2002 (Pub. L. 107-347 (https://www.govinfo.gov/link/plaw/107/public/347)) to improve the management and promotion of electronic Government services and processes. Promulgation of the FAR is authorized by 40 U.S.C. 121(c) (https://www.govinfo.gov/link/uscode/40/121); 10 U.S.C. chapter 4 (https://www.govinfo.gov/link/uscode/10/401) and 10 U.S.C. chapter 137 (https://www.govinfo.gov/link/uscode/10/13701) legacy provisions (see 10 U.S.C. 3016 (https://www.govinfo.gov/link/uscode/10/3016)); and 51 U.S.C. 20113 (https://www.govinfo.gov/link/uscode/51/20113).

This rule applies to entities, including small entities, that submit offers to the Federal Government for acquisitions that exceed the micro-purchase threshold. As of the end of calendar year 2023, of the 486,551 active registrants in SAM for “all awards,” 356,528 (73 percent) represented their size as small for their primary North American Industry Classification System code. It is estimated that not more than half of those small entities will submit an offer in a given year.

This rule does not introduce any new reporting or recordkeeping requirements. Small entities that do business with the Federal Government are already familiar with SAM registration requirements. The burden to provide the information required by the provision at FAR 52.204-7, System for Award Management, is covered by OMB Control Number 9000-0189, Certain Federal Acquisition Regulation Part 4 Requirements: FAR Sections

Affected: 52.204-3, 52.204-6, 52.204-7, 52.204-12 thru 52.204-15, 52.204-20, 52.204-23, 52.212-1(j), 52.212-3(b), and 52.212-3(l). However, no changes to this information collection requirement are made by this interim rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no available alternatives to the interim rule to accomplish the desired objective. The changes in this rule help preserve the Government's intent for SAM preaward registration requirements and protect offerors from unintended consequences of momentary lapses in registration. Thus, it is not possible, or desirable, to exempt small entities from coverage of the rule.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this interim rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610 (https://www.govinfo.gov/link/uscode/5/610). Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (https://www.govinfo.gov/link/uscode/5/610) (FAR Case 2023-018), in correspondence.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501-3521 (https://www.govinfo.gov/link/uscode/44/3501)) applies to the information collection described in this rule; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000-0189, Certain Federal Acquisition Regulation Part 4 Requirements: FAR Sections Affected: 52.204-3, 52.204-6, 52.204-7, 52.204-12 thru 52.204-15, 52.204-20, 52.204-23, 52.212-1(j), 52.212-3(b), and 52.212-3(l).

IX. Determination To Issue an Immediately Effective Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule effective immediately without prior opportunity for public comment, see 41 U.S.C. 1707(d) (https://www.govinfo.gov/link/uscode/41/1707). This action is necessary to protect contractors and the Federal Government from the costs and delays of bid protest litigation associated with the provision at FAR 52.204-7, System for Award Management.

DoD, GSA, and NASA attempted to clarify the timing requirements for registration in SAM through a final rule in the **Federal Register** at 83 FR 48691 (/citation/83-FR-48691) on September 26, 2018. Prior to the aforementioned rule the provision at 52.204-7 stated an offeror needed to be registered "prior to award" whereas other areas of the FAR required offerors to be registered with the submission of the offer and at the time of award. The 2018 rule was intended to clarify that "prior to award" meant both at the time of offer submission and at award.

Since the rule was issued, however, post-award bid protests have increasingly focused on temporary lapses in registration, between offer submission and contract award, by the apparently successful offeror. The May 23, 2023, Myriddian, LLC v. United States decision perpetuated an interpretation that the 2018 rule introduced a new requirement for absolutely uninterrupted, continuous, registration during the entirety of the preaward period with failure to do so rendering an offeror ineligible for award. After the Myriddian decision, bid protests have continued to be filed on lapses of registration (see, *e.g.,Hanford Tank Disposition Alliance, LLC* v. *United States* (June 23, 2023); *Independent Rough Terrain Center, LLC* v. *United States* (July 1, 2024); TLS Joint Venture, LLC, B-422275 (April 1, 2024); VivSoft Technologies, LLC, B-421561.15, B-421561.17 (April 11, 2024); *Zolon PSC II, LLC* v. *United States* (August 2024)). The 2018 rule's purpose was clarifying in nature and not intended to introduce new requirements with such severe ramifications for offerors.

The unintended interpretation applied in recent bid protest decisions represents an unwitting barrier to entry and significant disruption to the industrial base and the Federal agencies they support, which warrants immediate action. If left unclarified, perpetuation of this interpretation will:

(1) Introduce significant risk of lost income for contractors, particularly small businesses, due to temporary lapses in registration often for minor and technical reasons;

(2) Put agencies at unnecessary high risk for the cost and delay of protests if award is made to an offeror that had a temporary lapse in registration between offer submission and award;

(3) Cause undue confusion and frustration for small businesses working through registration renewals and attempting to win Federal contracts;

(4) Cause undue confusion and frustration for contracting officers attempting to verify compliance with the registration requirement; and

(5) Unnecessarily complicate the ability of the Government to meet its mission needs with best-value solutions.

Issuing an immediately effective interim rule will allow the Government to issue, in a timely manner, the needed clarification to accurately preserve preaward registration requirements for offerors while also eliminating unintended litigation risks presented to contractors and their agency customers, (🗋 print page 89475) which divert resources, deny business earned income, and hamper mission success. This rule simply clarifies preaward registration requirements, so there is little risk the interim rule will impose a requirement on the public on which they have not already had the opportunity to comment. However, pursuant to 41 U.S.C. 1707 (https://www.govinfo.gov/link/uscode/41/1707) and FAR 1.501-3(b), the Department of Defense, General Services Administration, and National Aeronautics and Space Administration will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 52 (https://www.ecfr.gov/current/title-48/part-52)

- Government procurement

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 (https://www.ecfr.gov/current/title-48/part-52) as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 (https://www.ecfr.gov/current/title-48/part-52) continues to read as follows:

Authority: **40 U.S.C. 121(c) (https://www.govinfo.gov/link/uscode/40/121); 10 U.S.C. chapter 4 (https://www.govinfo.gov/link/uscode/10/401) and 10 U.S.C. chapter 137 (https://www.govinfo.gov/link/uscode/10/13701) legacy provisions (see 10 U.S.C. 3016 (https://www.govinfo.gov/link/uscode/10/3016)); and 51 U.S.C. 20113 (https://www.govinfo.gov/link/uscode/51/20113).**

2. Amend section 52.204-7 by revising the date of the provision and paragraph (b)(1) to read as follows:

52.204-7 System for Award Management.

★ ★ ★ ★ ★

SYSTEM FOR AWARD MANAGEMENT (NOV 2024)

★ ★ ★ ★ ★

(b)(1) An Offeror is required to be registered in SAM when submitting an offer or quotation and at time of award (see FAR clause 52.204-13, System for Award Management Maintenance, for the requirement to maintain SAM registration during performance and through final payment).

★ ★ ★ ★ ★

[FR Doc. 2024-26062 (/d/2024-26062) Filed 11-8-24; 8:45 am]

BILLING CODE 6820-EP-P

PUBLISHED DOCUMENT: 2024-26062 (89 FR 89472)