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# Decision

**Matter of:** TLS Joint Venture, LLC

**File:** B-422275

**Date:** April 1, 2024

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## DIGEST

Protest is sustained where the solicitation incorporated Federal Acquisition Regulation provision 52.204-7 and required compliance with all applicable regulations for offerors to be eligible for award, and the record demonstrated that the awardee's registration in the System for Award Management lapsed between the close of the solicitation period and award of the contract.

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## DECISION

TLS Joint Venture, LLC, of Grovetown, Georgia, protests the award of a contract to Silas Frazier Realty, LLC (SFR), of Atlanta, Georgia, under request for proposals (RFP) No. N0016723R0014, issued by the Department of the Navy, Naval Sea Systems Command, for custodial services. TLS argues that SFR was ineligible for award because its registration in the System for Award Management (SAM) lapsed prior to award.

We sustain the protest.

## BACKGROUND

On August 7, 2023, the Navy issued the RFP to procure custodial services at the Naval Surface Warfare Center, Carderock Division in West Bethesda, Maryland. Agency Report (AR) Tab C, RFP at 20. The RFP contemplated the award of a fixed-price contract to be performed over a 1-year base period and four 1-year option periods. *Id.*

Award would be made on a lowest-priced, technically acceptable basis, considering technical, corporate experience, past performance, and price factors. *Id.* at 106.

The RFP advised that the technical, corporate experience, and past performance factors would be evaluated on a pass or fail basis. RFP at 107. Proposed prices would be evaluated for balance and reasonableness. *Id.* at 108.

The RFP also incorporated Federal Acquisition Regulation (FAR) provision 52.204-7, System for Award Management. RFP at 100. As part of the evaluation criteria, the RFP advised that offerors must comply with all material aspects of the solicitation, including regulatory requirements, to be considered eligible for award. *Id.* at 106.

Prior to the September 15 close of the solicitation period, six offerors, including TLS and SFR, submitted proposals. Contracting Officer's Statement (COS) at 2. On November 27, after conducting its preliminary evaluation of proposals, the Navy reviewed and noted that SFR's SAM registration was "Active" through December 11, 2023. *Id.*

On December 19, the Navy finalized its evaluation, and determined that SFR's proposal was technically acceptable and proposed the lowest price. COS at 2. The Navy again reviewed SFR's SAM registration and noted that the firm's status was "Active" as of December 12, 2023. *Id.*

On December 26, the Navy awarded the contract to SFR at a price of \$4,991,620, and notified TLS, the second-low offeror, that its proposal was unsuccessful. COS at 2. On December 29, TLS filed this protest with our Office. *Id.*

## DISCUSSION

TLS argues that the agency unreasonably selected SFR for award because SFR's SAM registration had lapsed. Protest at 7. In making this argument, TLS first argues that FAR provision 52.204-7 requires an offeror to be continuously registered from the submission of its proposal, through contract award, and until final payment on any contract. *Id.* TLS contends that SFR did not maintain continuous registration in SAM between proposal submission and contract award because it did not successfully complete the renewal process prior to the expiration of its registration. Resp. to GAO Req. for Information at 11-12.

In response, the Navy contends that FAR provision 52.204-7 does not impose a requirement that an offeror maintain its SAM registration between the close of the solicitation period and award of the contract. Memorandum of Law (MOL) at 4-6. Additionally, the Navy contends that SFR's registration never lapsed because SFR

submitted its renewal information before the expiration of its registration.<sup>1</sup> See Navy Resp. to GAO Req. for Information at 2-3.

In resolving this protest, we initially examine whether FAR provision 52.204-7 requires an offeror to be continuously registered in SAM between proposal submission and the award of any contract. For convenience, we refer to this interim phase as the “evaluation period.” After interpreting the provision, we examine whether SFR’s SAM registration expired and was then reactivated (*i.e.*, lapsed).

#### Interpretation of FAR provision 52.204-7

As noted, TLS argues that FAR provision 52.204-7 requires a contractor to maintain continuous registration in SAM during the evaluation period. The Navy responds that the provision does not require continuous registration, but rather only requires a firm to be registered at the time of proposal submission and when any contract is awarded.

Where parties disagree as to the interpretation of a regulation, our analysis begins with the language of the disputed provision. *Coast to Coast Computer Products*, B-419624.2, June 28, 2021, 2021 CPD ¶ 237 at 10; *accord ASG Sols. Corp. d/b/a American Sys. Grp.*, B-420743, Aug. 10, 2022, 2022 CPD ¶ 211 at 3. If the regulation has a plain and unambiguous meaning, the inquiry ends with that plain meaning. *Coast to Coast Computer Products, supra*. Further, it is a fundamental canon of interpretation that words contained with the regulation, unless otherwise defined, will be interpreted consistent with their ordinary, contemporary, common meaning. See *ESCO Marine, Inc.*, B-401438, Sept. 4, 2009, 2009 CPD ¶ 234 at 5; *accord Curtin Maritime Corp.*, B-417175.2, Mar. 29, 2019, 2019 CPD ¶ 117 at 9.

After reviewing the regulation, we agree with TLS that FAR provision 52.204-7 plainly and unambiguously requires offerors to maintain their SAM registrations during the evaluation period. The provision provides the following:

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

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<sup>1</sup> The Navy also argues that our Office should dismiss the allegation because it concerns the contracting officer’s responsibility determination, and GAO does not generally review protests challenging such determinations under 4 C.F.R. § 21.5. Req. for Dismissal at 3-4. We disagree with the agency’s argument. 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. *CGS-ASP Sec. JV, LLC*, B-420497, Feb. 18, 2022, 2022 CPD ¶ 39 at 3 (explaining that the question of when a firm is required to have an active SAM registration in the context of an acquisition using negotiated procedures is governed by the terms of the solicitation and is not a matter of responsibility). Accordingly, we decline to dismiss the protest on the basis asserted by the agency.

performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

FAR provision 52.204-7(b)(1) (emphasis added).

When interpreting this provision, we note that the ordinary and common meaning of the phrase, “[a]n Offeror is *required* to be registered in SAM,” provides simply that offerors must be registered in SAM. Similarly, the phrase, “shall continue to be registered until time of award,” mandates that the registration continue until the time of award. Thus, based on the plain, ordinary meaning of the text, we interpret the provision as requiring an offeror to maintain SAM registration throughout the evaluation period.<sup>2</sup> Further, we think adopting the agency’s position and interpreting the phrase as not requiring continuous registration throughout the evaluation period would render the phrase “shall continue to be registered until time of award” as superfluous. See *J. Caye Premier Dining, Inc.*, B-421890, Nov. 2, 2023, 2023 CPD ¶ 244 at 5 (“It is a cardinal principle of statutory construction that a statute ought to be construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”).

Additionally, while the agency may argue that the regulatory history does not favor such interpretation, we are unpersuaded. Significantly, the Navy fails to demonstrate that, by itself, the text of FAR provision 52.204-7 is ambiguous. See MOL at 5-6. This is an important distinction because we rely on regulatory history as an interpretive aid only when the regulation is ambiguous.<sup>3</sup> *Coast to Coast Computer Products, supra*.

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<sup>2</sup> The U.S. Court of Federal Claims has recently determined that the plain language of FAR provision 52.204-7 requires offerors to maintain their SAM registrations without lapses during the solicitation period. See, e.g., *Myriddian, LLC v. United States*, 165 Fed. Cl. 650 (2023).

<sup>3</sup> As reference, the agency explains that FAR provision 52.204-7 was amended in 2018 to include the phrase “shall continue to be registered until time of award.” MOL at 5-6. The agency explains that the prior version of the provision only required offerors to acknowledge that they needed to be registered in SAM prior to award. *Id.* The agency then points to part of the regulatory history where the FAR council explained that the revision “does not create a new requirement for offerors,” but rather “[clarifies] for offerors the required timing of the SAM registration, i.e., when should offerors register in SAM.” *Id.* (citing 83 Fed. Reg. 48691, 48692 (Sept. 26, 2018)).

Although we need not interpret the regulatory history in our resolution of the protest, we note that the FAR council explained that contractors would complete a one-time registration in SAM, and then complete an annual renewal. 83 Fed. Reg. 48691, 48692-94 (Sept. 26, 2018). In this way, we disagree with the agency’s interpretation of the regulatory history because the FAR council also explained that the regulation effectively requires contractors to maintain active registration at all times and did not contemplate a system where offerors would register when submitting their proposal and then re-register when selected for award.

The agency also argues that monitoring SAM registrations for compliance is onerous and that therefore we should excuse such duty. See MOL at 6. We do not find this argument provides us with a basis to sustain the protest. Our role in resolving protests is to review whether a procurement action constitutes a violation of a procurement statute or regulation; our Office does not weigh the burdens and benefits of a particular procurement regulation. See *Computer Cite*, B-412162.3, July 15, 2016, 2016 CPD ¶ 186 at 4.

#### Whether SFR's Registration Lapsed

Because we determine that FAR provision 52.204-7 requires offerors to maintain continuous SAM registration during the evaluation period, we now address the parties' second dispute--that is, whether SFR did, in fact, maintain continuous SAM registration.

TLS argues that SFR's registration lapsed because, although SFR submitted its renewal information in SAM prior to the expiration of its existing registration, the government did not complete its review of mandatory information or mark SFR's record as "Active" prior to expiration. Resp. to GAO Req. for Information at 11-12. The Navy responds that SFR's registration did not lapse because the firm submitted its renewal information prior to the expiration of its registration. See Navy Resp. to GAO Req. for Information at 2-3.

As relevant to this allegation, FAR provision 52.204-7 includes the following definition:

*Registered in the System for Award Management (SAM)* means that --

- (1) The Offeror has entered all mandatory information, including the unique entity identifier and the [Electronic Funds Transfer] indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 . . . into SAM;
- (2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;
- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as part of the SAM registration process; and
- (4) The Government has marked the record "Active."

FAR provision 52.204-7(a). Thus, both the offeror and the government have actions to undertake in order for the offeror to be considered registered in SAM. The offeror must

enter all mandatory information and complete the representations and certifications, and the government must validate all information and mark the offeror's record as "Active." Until that sequence is complete, the contractor is not registered in SAM.

Regarding SFR's registration, the Navy provided two profiles recording SFR's SAM registration. One profile contains SFR's registration as of November 27, 2023. AR, Tab E, SFR-SAM Profile, Nov. 27, 2023, at 1. This profile shows that SFR's SAM registration had an "Expiration Date" of December 11, 2023. *Id.* The other profile contains SFR's registration as of December 21, 2023. AR, Tab F, SFR SAM Profile, Dec. 21, 2023, at 1. This profile shows that SFR's SAM registration had an "Activation Date" of December 12, 2023. *Id.* Additionally, TLS provided a copy of SFR's representations and certifications, showing that they expired at 9:34 A.M. on December 11, 2023.<sup>4</sup> Protest, exh. C, SFR Former Certifications and Representations at 1.

Since the profiles were unclear, GAO requested the General Services Administration's (GSA) views on the process for a firm to obtain SAM registration because that agency manages SAM.<sup>5</sup> GAO asked that GSA explain how it processes a contractor's request to renew its registration generally, and details regarding SFR's registration in particular.

In explaining how the renewal process functions, GSA explained that a contractor's SAM registration expires within one year of when it last submitted any registration information. GSA Resp. to GAO Req. for Information at 2; *see also* FAR 4.1201(b)(1) ("[R]epresentations and certifications are effective until one year from date of submission or update to SAM."). To avoid a contractor's registration expiring, GSA sends regular emails reminding it to renew its registration by confirming or revising any information prior to the expiration date. *Id.*

After a contractor submits its renewed registration, GSA and other agencies must review and verify the information. GSA Resp. to GAO Req. for Information at 2. GSA sends the contractor's registration to the Internal Revenue Service (IRS) for the IRS to verify the contractor's taxpayer identified number. *Id.* Each day, GSA manually sends all received registrations to the IRS in a single transmission. *Id.*

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<sup>4</sup> All references are to Eastern Time.

<sup>5</sup> GSA manages the integrated award environment (IAE), which facilitates the federal award processes in multiple online systems, including SAM. Integrated Award Environment, GSA, <https://www.gsa.gov/about-us/organization/federal-acquisition-service/technology-transformation-services/integrated-award-environment-iae> (last visited, Mar. 17, 2024); *see also Federal Contracting: Effort to Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed*, GAO, GAO-12-429 at 3 (explaining that the Office of Management and Budget directed GSA to manage the IAE).

Once the IRS completes its review and returns the contractor’s registration, GSA then sends it to the Defense Logistics Agency (DLA) for verification of the CAGE code. GSA Resp. to GAO Req. for Information at 2. Following DLA’s verification, it returns the registration to GSA. *Id.* GSA then processes the registration, and the contractor’s SAM profile will display an “Active” status. *Id.*

As for the details regarding SFR’s registration, GSA provided the following timeline of SFR’s registration status and renewal request:

<b>Registration Submitted by [SFR]</b>	2023-12-08, 15:01
<b>Out to IRS by SAM</b>	2023-12-11, (Unknown Time, Manual Process)
<b>Returned from IRS</b>	2023-12-12, 07:00
<b>Out to CAGE by SAM</b>	2023-12-12, 07:17
<b>Returned from CAGE</b>	2023-12-12, 09:24
<b>Processed and Activated by SAM</b>	2023-12-12, 09:48

GSA Resp. to GAO Req. for Information at 3.

Based on the record, we agree with TLS that SFR did not maintain continuous registration throughout the evaluation period. The record shows that SFR’s registration expired at 9:34 A.M. on December 11, and that the government did not verify the renewed registration until December 12. Further, the record shows that GSA did not activate SFR’s registration until 9:48 A.M. on December 12. Thus, we conclude that SFR’s registration lapsed during the evaluation period.

While the Navy argues that SFR’s registration did not lapse because SFR submitted its renewal registration on December 8, we are unpersuaded. Indeed, after SFR submitted its renewal registration, the firm received an automated message stating “[t]his registration record will remain in Submitted status until all external validations are complete. . . . You will get an email from SAM.gov when your registration passes these external validations and becomes Active.” Navy Resp. to GAO Req. for Information, exh. 1, Acknowledgment Letter of Registration Submission from SAM to SFR, Dec. 8, 2023, at 1.

Further, as TLS points out, the Navy’s position is inconsistent with the requirements under FAR provision 52.204-7 for being registered in SAM. See Resp. to GAO Req. for Information at 2-11, 16-17. Namely, the Navy’s position ignores the requirements that the government must verify the registration information and mark the contractor’s record as “Active.” See *id.* at 16-17. Both actions were not completed until after SFR’s registration had expired.

## COMPETITIVE PREJUDICE

As a final matter, we address whether TLS suffered competitive prejudice. Competitive prejudice is an essential element of every viable protest. *RemedyBiz, Inc.*, B-421196, Jan. 17, 2023, 2023 CPD ¶ 29 at 10. To demonstrate competitive prejudice, a protester must show that, but for the agency's action, it would have had a substantial chance for award. *Chugach Logistics & Facility Servs., JV, LLC*, B-421451.3, B-421451.4, Sept. 8, 2023, 2023 CPD ¶ 270 at 6.

Here, we 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. *Cf. RELX Inc.*, B-421597.2, B-421597.3, Nov. 17, 2023, 2023 CPD ¶ 262 at 4-5, n.2. The agency confirms that TLS is next in line for award. Navy Resp. to GAO Req. for Information at 3. Accordingly, we sustain the protest.

## RECOMMENDATION

Because we conclude that SFR did not maintain continuous registration in SAM between proposal submission and award of the contract as required by FAR provision 52.204-7, we recommend that the agency terminate for the convenience of the government the award to SFR for failing to comply with the terms of the solicitation and then make a new selection decision. We also recommend that the agency reimburse the protester its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

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General Counsel