

ALERT

System for Award Management (SAM) Registration Due at Time of Offer, Not Award

October 3, 2018

WHAT: Contractors must be “Active” in the System for Award Management (SAM) at the time they submit an offer. The Federal Acquisition Regulation (FAR) Council has issued a final rule eliminating the inconsistency in the FAR between FAR 4.1102 and FAR 52.204-7(b)(1), which required contractors to be registered and “Active” in SAM before contract award, versus FAR 52.204-8, which required contractors to have completed their certifications in SAM (and therefore be registered and “Active”) at the time of their offer. Thus, whichever legal entity an offeror intends to perform the contract must have a completed SAM registration when they submit the offer.

WHEN: The final rule was issued September 26, 2018 and is effective October 26, 2018.

WHAT DOES IT MEAN FOR INDUSTRY: Contractors, especially those standing up new business units or legal entities (e.g. joint ventures) for a particular opportunity, need to ensure plenty of lead time to register their entity in SAM, as the effective grace period between offer and award under the prior FAR rules has been eliminated. The final rule states that contractors should leave 48-72 hours prior to the deadline for offers for registration. But in our experience, becoming “Active” in SAM takes far longer, even where an offeror has gathered the necessary information.

In June, we noted that the General Services Administration (GSA) had created a backlog in SAM registrations and updates by requiring a notarized affidavit for all Entity Administrators prior to completing SAM registration. GSA subsequently reversed course given the outcry from the contracting community, and now only requires that the notarized letter be filed within 60 days of the registration or update.

Authors

Tracye Winfrey Howard
Partner
202.719.7452
twhoward@wiley.law
George E. Petel
Partner
202.719.3759
gpetel@wiley.law

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Registrations, however, continue to be delayed during processing. For example, the Federal Service Desk (FSD) is still requiring new entities without an assigned Entity Administrator to first contact the FSD, and then submit a similar notarized letter to a Tier-3 FSD agent, before the SAM registration can progress past the initial registration screen.

Wiley Rein has experience helping contractors navigate SAM registrations and encourages companies to act as soon as possible to complete registrations before submitting offers from any entity.