

INACTIVE SAM REGISTRATION AT TIME OF BID SUBMISSION IS AN IMMATERIAL AND CURABLE DEFECT

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Although the Federal Acquisition Regulation (“FAR”) requires that bidders be registered in the government’s System for Award Management (“SAM”) at the time of bid submission, the Government Accountability Office (“GAO”) has clearly stated that a lack of a current SAM registration constitutes an immaterial defect and can be corrected. This point was recently made in *Vietnam-Australia Environment Joint Stock Co.*, (VINAUSEN), B-420821, July 15, 2022.

The U.S. Agency for International Development issued an invitation for bids (“IFB”) for construction services in Vietnam. This was a FAR Part 14 sealed bid procurement. The IFB incorporated FAR 52.204-7, “System for Award Management,” which requires in part that bidders be registered in SAM at the time of submitting a bid. FAR 52.204-7(b)(1).

Vina was the apparent low bidder and was awarded the contract, but VINAUSEN protested that Vina’s SAM registration had expired on the day bids were submitted. The agency responded that the contracting officer had allowed Vina to correct this immaterial defect, and that Vina’s bid was therefore considered for award.

The GAO denied the protest, but recognized that the solicitation required bidders to be registered in SAM at the time of bid submission. However, GAO noted that it had consistently stated that an inactive SAM registration at the time of bid submission constituted an immaterial defect because that requirement was not material to the bid itself and does not impact the material obligations of the bidder. Rather, it is a matter concerning the bidder’s responsibility.

FAR 14.405 provides that if a bid contains a minor informality or irregularity, the contracting officer shall either give the bidder an opportunity to cure the deficiency or waive the deficiency, whichever is to the advantage of the government. So US AID was required to either allow Vina to correct the defect or waive it, which the agency did. Vina’s registration in SAM was reactivated 11 days before it was awarded the contract. GAO dismissed the protest.

Takeaway. Keep your SAM registration current before, during offer submission, and after award. This will prevent any protests—even though they may not be sustained. Maintaining your information and SAM is a relatively easy process.

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