



FEB 12 2020

Acquisition Letter MV-20-04

MEMORANDUM FOR GSA LEASE CONTRACTING OFFICERS

FROM: JEFFREY A. KOSES *Jeffrey A. Koses*
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: Lease Offeror Registration in the System for Award Management (SAM)

1. Purpose.

This acquisition letter (AL) tailors requirements for lease procurements related to the timing of when offerors are required to have an active registration in the System for Award Management (SAM) from prior to offer submission to prior to award.

2. Background.

The System for Award Management acts as a common source for vendor data. Having a common data source increases efficiency, reduces costs, and reduces risks both for Government and Industry. For example, SAM validated vendor information is used by agency finance offices to facilitate paperless payments through electronic funds transfer. SAM helps ensure Federal agencies are dealing with responsible industry partners who are in compliance with numerous federal requirements. SAM helps Federal contractors reduce the administrative costs of doing business with the Federal Government by reducing the number of common data submittals.

Ensuring timely SAM registration is so important that in October 2018 the FAR was amended to require SAM registration at the time of offer submission rather than prior to award. See FAR Case 2015-005¹. However, this change does not align well with the needs of GSA's real property leasing program.

Unlike other Federal contractors, it is common for entities seeking Federal leases to form new corporate entities with each new lease offer. As such, these new entities are not normally registered in SAM. Requiring pre-registration in SAM before offer submission has significant potential to reduce competition in leasing acquisition. Provided that Leasing Contracting Officers ensure SAM registration takes place prior to award, the impact of reduced competition is greater than the benefit of earlier SAM registration.

In light of the need to ensure effective competition, this acquisition letter establishes a GSA specific version of the SAM clause, for use in real property leases. This GSA specific version

¹ See 83 FR 48691.

permits an offer to be submitted prior to SAM registration, provided that the offeror is registered prior to award.

Although lease acquisitions² are not subject to the Federal Acquisition Regulation (FAR), GSA has adopted many FAR provisions and clauses. GSAM 570.701 directs lease contracting officers (LCOs) to use certain "provisions or clauses that are substantially the same as the FAR" including FAR provision 52.204-7 *System for Award Management*.

This Acquisition Letter establishes a new GSAM provision, 552.270-33 *System for Award Management - Leasing*. Otherwise substantially the same, the new provision permits the SAM registration to occur after the offer is submitted as long as it occurs prior to award.

3. Effective Date.

This AL is effective immediately and remains in effect until rescinded or incorporated into the GSAM.

4. Applicability.

This AL only applies to lease procurements, including those procured through a GSA lease delegation. This AL applies to new, replacing, succeeding, and superseding leases.

Effective immediately, Lease Contracting Officers may accept new offers from prospective lessors, provided that they ensure SAM Registration prior to award.

5. Requirements.

The National Office of Leasing shall update standard templates, including RLP no later than April 1, 2020, to insert the new provision in Attachment A in lieu of FAR 52.204-7 *System for Award Management*.

LCOs may begin using the new provision in Attachment A immediately.

6. Point of Contact.

Any questions regarding the content of this AL may be directed to Mr. Marten D. Wallace, Sr., Senior Procurement Analyst, General Services Acquisition Policy Division, by phone at 202-969-7736 or by email at gsarpolicy@gsa.gov.

Attachments

Attachment A – New Provision Text

Attachment B – PBS Leasing Business Case

² "Lease acquisition" means the acquiring, by lease, of an interest in improved real property for use by the Government, whether the space already exists or must be constructed. (GSAM Part 570.102 Definitions)

**Attachment A
New Provision Text**

Insert the following provision in solicitations for leasehold interests in real property. Use Alternate I of the provision for procurements not providing for full and open competition due to unusual or compelling urgency.

552.270-33 System for Award Management - Leasing.

SYSTEM FOR AWARD MANAGEMENT - LEASING (DATE)

(a) Definitions. As used in this provision—

“Electronic Funds Transfer (EFT) indicator means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

“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 EFT 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 (see subpart 4.14) 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 a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b)

(1) An Offeror is required to be registered in SAM prior to award, and shall continue to be registered during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror’s name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in the SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at www.sam.gov for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

- (1) Company legal business name.**
- (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.**
- (3) Company physical street address, city, state, and Zip Code.**
- (4) Company mailing address, city, state and Zip Code (if separate from physical).**
- (5) Company telephone number.**
- (6) Date the company was started.**
- (7) Number of employees at your location.**
- (8) Chief executive officer/key manager.**
- (9) Line of business (industry).**
- (10) Company headquarters name and address (reporting relationship within your entity).**

(d) If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See <https://www.sam.gov> for information on registration.

(End of provision)

Alternate I (DATE). As prescribed above, substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) An Offeror is required to be registered in SAM as soon as possible. If registration is not possible when submitting an offer or quotation, the awardee shall be registered in SAM in accordance with the requirements of clause 52.204-13, System for Award Management Maintenance.

**Attachment B
PBS Leasing Business Case**



GSA Public Buildings Service

January 27, 2020

MEMORANDUM FOR: JEFFREY A. KOSES
SENIOR PROCUREMENT
EXECUTIVE OFFICE OF
ACQUISITION POLICY (M1V)
OFFICE OF GOVERNMENTWIDE POLICY (OGP)

FROM: JOHN D. THOMAS
ACTING ASSISTANT
OFFICE OF LEASING
(PR)
PUBLIC BUILDINGS SERVICE (PBS)

DocuSigned by:
John D. Thomas
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ER

SUBJECT: Business Case in support of a class deviation for timing of a lease offeror's registration in the System for Award Management (SAM) in order to encourage competition and realize cost savings

1.0 NAME OF THE SERVICE REQUESTING THE CHANGE

GSA, Public Buildings Service (PBS) is requesting this class deviation.

2.0 RATIONALE SUPPORTING THE NEED

2.1 DESCRIPTION OF THE PROBLEM OR MATTER TO BE ADDRESSED

PBS Office of Leasing requests a class deviation to deviate from the requirement under FAR 4.1102 and 52.204-7, for an offeror's active registration in the System for Award Management (SAM) at the time of offer submission and instead require active SAM registration prior to award. This deviation will only apply to lease procurements, including those procured through a GSA lease delegation.

The purpose of this deviation is to allow PBS Office of Leasing to deviate from FAR

subpart 4.1102 and FAR clause 52.204-7, which currently require offerors to be registered in SAM at the time of offer submission. The deviation would allow offerors up until the point of lease award to obtain an active SAM registration. The registration timing imposed by the current FAR language is not appropriate for lease procurements and creates a barrier to competition, as further described herein.

This action is requested in accordance with FAR 1.4, Deviations from the FAR, specifically FAR 1.401(a), as well as GSAM 501.404, Class Deviations.

The proposed effective date of the class deviation is January 31, 2020, to remain in effect until rescinded or incorporated into the GSAM.

2.2 DISCUSSION OF THE BENEFIT TO THE AGENCY AND/OR ORGANIZATION

Prior to October 2018, the FAR allowed offerors up until the point of contract award to be actively registered in SAM. Lease contracting officers (LCOs) could consider offers from entities that were not yet registered, as long as that entity registered by the time of award. If the otherwise successful offeror was not registered at the time of lease award, the LCO was to proceed to the next offeror, as long as that entity was registered in SAM, and so on. Under the prior wording of the FAR, LCOs could address the need for SAM registration as part of their clarifications and/or discussions with the offeror. This also allowed offerors the necessary time to successfully complete all of the steps required to register in the SAM application.

Effective October 2018, FAR 4.1102 and 52.204-7 were revised via FAR Case 2015-005 to require SAM registration at the time of offer submission. The purpose of this change, which was not based on statute, was to address inconsistencies within FAR regarding the registration of timing. The PBS Office of Leasing subsequently updated their lease procurement documents to reflect these changes. Since implementing these changes, the PBS Office of Leasing has received expressions of concern from both within the PBS leasing community as well as from the private sector. For example, at the 2019 National Federal Development Association (NFDA) Conference, held on November 13, 2019, this was raised as a topic of concern, and the feedback from developers was that this would negatively impact competition.

Both groups expressed concern that this would negatively impact competition, as offerors may not be able to timely register in SAM and thus be deemed ineligible for award. These concerns have validity based on past projects where offerors have experienced delays completing their SAM registration, due to various issues, including changes in the registration process, CAGE code validation by Defense Logistics Agency (DLA), and problems with the application itself.

Offerors frequently expressed their frustration to regional GSA Leasing personnel

about the difficulties they have experienced with the SAM registration process. It should also be noted that it is common practice in real estate transactions for an offeror to form a separate entity (LLCs) for each building under their control. Therefore, owners with multiple buildings in their portfolio may have to create a separate SAM registration for every building they wish to submit for the Government's consideration.

PBS has a strategic priority to save taxpayer dollars by shaping demand for and improving execution of leases. This priority is implemented through the PBS Lease Cost Avoidance Plan with a goal of saving \$4.7 billion dollars by Fiscal Year 2023. In order to timely replace these leases at the lowest possible pricing, PBS needs to allow for consideration of as many offers as possible, and not reject competitively-priced proposals which could otherwise meet the Government's requirements except for a lack of active SAM registration at the time of initial offer submission. The change requested in this Class Deviation is crucial to PBS achieving maximum competition for lease procurements and achieving success in replacing our expiring leases at cost savings to the taxpayer and achieving our Lease Cost Avoidance goals.

The requested FAR and GSAM deviation will remove the requirement for offerors to have an active SAM registration when submitting offers and instead allow offers up until the time of award to obtain an active SAM registration. This change will prevent the disqualification of offerors solely on the basis of lack of SAM registration and allows the LCO to engage in clarifications and/or discussions with these offerors, including the need to obtain SAM registration.

In response to these concerns and to minimize negative consequences to competition, PBS Office of Leasing is requesting a Class Deviation to revert back to prior language under FAR 52.204-7, requiring active SAM registration prior to award.

3.0 DISCUSSION OF THE EFFECT, IF ANY, ON GSA'S INTERNAL OPERATING PROCEDURES:

3.1 ACQUISITION WORKFORCE

There are no anticipated workload impacts for GSA, its lease contracting officers (LCOs), leasing specialists, or project teams. LCOs (and their designees) would continue to follow existing processes to ensure SAM registration at the time of award. These processes, which are outlined under the Lease File Checklist, include confirmation of the entity's active SAM registration, foreign ownership check, receipt and review of the offeror's SAM online representations and certifications, and uploading these SAM representations and certifications (FAR report) into the electronic lease project file.

3.2 ANOTHER OFFICE WITHIN GSA

This deviation could benefit and be adopted by other offices whose procurements are not subject to the FAR (for example, Commercial Solutions Opening (CSO) procedures).

3.3 AUTOMATED SYSTEMS

There will be no impact to any of the automated systems used by PBS Leasing, including, but not limited to, G-REX, REXUS, and OA Tool.

4.0 DISCUSSION OF THE EFFECT ON CONTRACTORS OR OFFERORS

It is anticipated that this deviation will have a positive effect on offerors' ability to submit responsive lease proposals to the Government. Lessors have expressed frustration with the SAM registration process and have raised their concerns to the PBS Office of Leasing regarding the requirement for SAM registration at the time of offer submission.

GSA has a lease inventory of over 8,000 leases across the nation that represents approximately 190 million square feet. The rent dollars paid out for these 8,000 plus leases is \$5.6 billion dollars annually. Over the next five years, more than 4,000 of the 8,000 leases (representing more than 100 million square feet) in GSA's lease portfolio is set to expire and thus will need to be replaced by a follow on long term lease solution. In order to timely replace these leases at the lowest possible pricing, PBS needs to allow for consideration of as many offers as possible, and not reject competitively-priced proposals which could otherwise meet the Government's requirements except for a lack of active SAM registration at the time of initial offer submission. The change requested in this Class Deviation is crucial to PBS achieving maximum competition for lease procurements and achieving success in replacing our expiring leases at cost savings to the taxpayer and achieving our Lease Cost Avoidance goals.

5.0 ANALYSIS OF ALTERNATIVES, RISKS, AND RISK MITIGATION

Implementing this deviation will remove barriers to competition as represented by the current FAR language; through implementation of this deviation, the resulting increase in acceptable competitive offers will result in lower prices than if the current FAR language was allowed to remain in place.

6.0 DISCUSSION OF THE APPROACH TO BE USED TO IMPLEMENT AND MONITOR SUCCESS

The class deviation will be implemented on all new, new/replacing, succeeding, and superseding lease contracts, which are awarded and administered by regional

leasing divisions. Implementation of this class deviation will enable PBS to avoid the expected negative impact on the level of competition and, correspondingly, lease rental rates and procurement cycle time, for lease procurements. PBS monitors these through the following measures:

- Lease Cost Relative to Market (LCRM): an external measure to OMB. GSA will compare the Net Present Value (NPV) of GSA negotiated leases to the NPV of leases in the commercial real estate market. Market rates will be based on the GSA-produced Bullseye Report, which incorporates reliable real estate market data. GSA calculates total lease cost savings achieved on all new leases by comparing the aggregate NPV of the total cost of newly awarded leases to the aggregate NPV of the market rates for equivalent leased office space. To be included in this metric, a transaction must be primarily office space and in a major market. Currently about 40 percent of lease transactions are covered under this metric.
- Lease Cost Avoidance Plan (LCAP): an internal performance measure. This measure calculates the realized cost avoidance from lease transactions. Specifically, it identifies realized cost avoidance through negotiating leases below market costs, reductions in RSF and leased vacant space mitigation.
- Lease Replacement Value (LRV): an internal performance measure. This measure is designed to incentivize GSA to replace, in a timely manner, expiring leases that have a continuing space need with a long-term solution. Replacing leases timely, with long-term solutions, results in cost savings to the American taxpayer by reducing costly extensions and holdovers.

7.0 PROPOSED AMENDMENTS TO THE FAR OR THE GSAM IN LINE-IN LINE-OUT FORMAT

See Attachment A.

8.0 LISTING OF THE ORGANIZATION(S), IF ANY, THAT HAVE BEEN BRIEFED OR INVOLVED IN DRAFTING THE PROPOSED AMENDMENTS

None.

9.0 ATTACHMENTS

Attachment A – GSAR Deviation Line-In/Line-Out Text

10. CONCURRENCE AND APPROVALS

Statement of Legal Sufficiency

Counsel concurs that there is no legal barrier to proceeding with the proposed deviation.

DocuSigned by:
Gary F. Davis

Senior Assistant General Counsel

Date

DocuSigned by:
John D. Thomas

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Real Property Division (LR)

Approvals:

John D. Thomas
Acting Assistant Commissioner
PBS Office of Leasing
for Head of Contracting Activity

Date