



GENERAL SERVICES ADMINISTRATION

48 CFR Parts 552 and 570

[GSAR Case 2020-G512; Docket No. 2024-0010; Sequence No. 1]

RIN: 3090-AK22

**General Services Administration Acquisition Regulation; SAM
Representation for Leases**

AGENCY: Office of Acquisition Policy, General Services
Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA is proposing to amend the General Services
Administration Acquisition Regulation (GSAR) to remove the
requirement for lease offerors to have an active System for
Award Management (SAM) registration when submitting offers
and instead allow offers up until the time of award to
obtain an active SAM registration.

DATES: Interested parties should submit written comments to
the Regulatory Secretariat Division at the address shown
below on or before **[Insert date 60 days after date of
publication in the FEDERAL REGISTER]** to be considered in
the formation of the final rule.

ADDRESSES: Submit comments in response to GSAR Case 2020-
G512 to <https://www.regulations.gov> via the Federal
eRulemaking portal by searching for "GSAR Case 2020-G512".
Select the link "Comment Now" that corresponds with GSAR
Case 2020-G512. Follow the instructions provided at the

"Comment Now" screen. Please include your name, company name (if any), and "GSAR Case 2020-G512" on your attached document. If your comment cannot be submitted using <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 GSAR Case 2020-G512, in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Michaela Mastroianni, Procurement Analyst, or Ms. Amy Lara, Procurement Analyst, at gsarpolicy@gsa.gov or 816-926-7172. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at GSARegSec@gsa.gov or 202-501-4755. Please cite GSAR Case 2020-G512.

SUPPLEMENTARY INFORMATION:

I. Background

GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to create a SAM registration provision specific for the acquisitions of

leasehold interests in real property. This proposed provision was prompted by the implementation of FAR Case 2015-005 (see 83 FR 48691), which clarified the timing of registration in the System for Award Management (SAM). Effective October 2018, this FAR case implemented the requirement for an offeror to be registered in SAM prior to the submission of an offer as opposed to the offerer being registered prior to award as was previously followed before the FAR change. While leasing of real property is not subject to the FAR, GSA prescribed FAR clause 52.204-7 in solicitations for the lease of real property. It found this FAR amendment had a significant effect on prospective GSA lessors.

On February 12, 2020, GSA issued a deviation to the updated FAR clause to permit the completion of SAM representation for leases prior to award instead of prior to offer for leasing companies. GSA would therefore only require the apparent awardee to complete the SAM registration. This proposed change would codify this provision in the GSAR.

II. Discussion and Analysis

Upon the implementation of FAR Case 2015-005, GSA found the change problematic for the use in real property leases. Due to the nature of real property leases, this change created a negative impact on competition. 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. This becomes burdensome for property owners and becomes a deterrent for property owners to submit offers to the Government. Additionally, this could disqualify an offeror from competition solely based on the lack of SAM registration. This decreases competition and does not promote maximum competition to realize the best value or cost savings to the Government.

While the representation is important for FAR based acquisition, the leasing of real property is not based on the FAR. The protections that SAM registration representations provide to the Government will still be assured by requiring this SAM representation prior to award but in a way more tailored to the lessor community.

This proposed provision will have a positive effect on the Government and the lessor community as it decreases the burden ultimately leading to increased competition whilst still ensuring SAM registration. Therefore, this rule proposes to use GSAR 552.270-35 in lieu of FAR 52.204-7.

III. Expected Impact of the Rule

This rule is not expected to have a significant impact to Government or industry. This rule will reduce the burden on leasing companies by allowing offerors to complete SAM

representation for leases prior to award instead of prior to offer. Completing SAM representations prior to offer for each property is time consuming for a leasing company and burdensome to effective competition. This will streamline the process and encourage competition, which will benefit the Government.

IV. Executive Orders 12866, 13563 and 14904

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all 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 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 ([Modernizing Regulatory Review](#)) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. OIRA has determined this rule not to be a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of

small entities within the meaning of the Regulatory Flexibility Act, 5 U.S. 601, et seq. because it reduces the burden on small business entities by allowing offerors to complete SAM representation for leases prior to award instead of prior to offer and does not implement new or changed requirements. However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared consistent with 5 U.S.C. 603.

The Regulatory Secretariat will submit a copy of the Initial Regulatory Flexibility Analysis (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. GSA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

GSA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (GSAR Case 2020-G512) in correspondence.

The analysis is summarized as follows:

The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to permit the completion of the System for Award Management (SAM) representations at award instead of at offer for lease procurements.

GSAR coverage does not currently include internal policy and guidance issued in other forms such as Procurement Instructional Bulletins (PIBs). This internal guidance has never been fully vetted to the regulatory level for analysis. This rule proposes to incorporate existing policy and guidance regarding SAM registration for leases into the GSAR.

The objective of the proposed rule is to amend the GSAR to amend Part 552, Solicitation Provisions and Contract Clauses, of the GSAR by creating Subsection 552.270-35, System for Award Management - Leasing.

Currently, each business entity submitting a bid must complete all SAM representations prior to submitting its offer. It is common practice for leasing companies to register each individual property within its portfolio as a separate legal entity. Under the current SAM representation process, a leasing company will have to make separate SAM representations prior to offer for each property within its portfolio as each property is considered a separate entity.

Completing SAM representations prior to offer for each property is time consuming for a leasing company and burdensome to effective competition. To streamline the process and encourage competition, GSA is proposing to permit the completion of SAM representation for leases prior to award instead of prior to offer for leasing companies.

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

GSA has approximately 8,000 leases in total. Approximately 70 percent of leasing entities were small entities. This information is based on internal inventory data sources.

GSA does not expect this rule to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601. This rule reduces the burden on small business entities by allowing offerors to complete SAM representation for leases prior to award instead of prior to offer, and does not implement new or changed requirements.

The rule involves reporting and recordkeeping that are currently covered under OMB Control Number 9000-0159, System for Award Management Registration (SAM). This rule does not include any new reporting, recordkeeping, or other compliance requirements for small business entities.

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

There are no known alternatives to this rule which would accomplish the stated objectives. This rule does not initiate or impose any new administrative or performance requirements on small business contractors.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under the Office

of Management and Budget Control Number 9000-0159, System
for Award Management Registration (SAM).

List of Subjects in 48 CFR Parts 552 and 570

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive,

Office of Acquisition Policy,

Office of Government-wide Policy,

General Services Administration.

Therefore, GSA proposes to amend 48 CFR parts 552 and 570 as set forth below:

1. The authority citation for 48 CFR parts 552 and 570 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Add section 552.270-35 to read as follows:

552.270-35 System for Award Management - Leasing.

As prescribed in 570.702, insert the following provision:

SYSTEM FOR AWARD MANAGEMENT - LEASING (DATE).

In lieu of FAR provision 52.204-7 use the following:

(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, 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 the 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 the 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 the solicitation. See <https://www.sam.gov> for information on registration.

[(End of provision)]

PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

§ 570.701 [Amended]

3. In section 570.701 amend the table by removing from paragraph (a), in the second column, the entry “52.204-7 System for Award Management.”

4. Amend section 570.702 by adding in numerical order the entry for “552.270-35” to read as follows:

570.702 GSAR solicitation provisions.

* * * * *

552.270-35—System for Award Management—Leasing

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