



## Decision

**Matter of:** CGS-ASP Security JV LLC

**File:** B-420497

**Date:** February 18, 2022

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Robert Nichols, Esq., Andrew Victor, Esq., and Madison Plumber, Esq., Nichols Liu LLP, for the protester.

Kathleen D. Martin, Esq., Department of State, for the agency.

Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency properly rejected proposal submitted by protester because the firm did not have an active registration in the System for Award Management (SAM) by the deadline established for proposal submission; the solicitation expressly required offerors to have an active SAM registration by the deadline for proposal submission as a precondition to the agency performing a substantive evaluation of the proposal.

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### DECISION

CGS-ASP Security JV, LLC, of Falls Church, Virginia, protests the elimination of its proposal from consideration under request for proposals (RFP) No. 19AQMM21R0201, issued by the Department of State (DOS) for security guard services at various locations in France. CGS argues that the agency improperly eliminated its proposal from consideration because the firm was not registered in the System for Award Management (SAM) at the time it submitted its proposal.

We deny the protest.

The facts of this case are straightforward and not in dispute. On July 29, 2021, the agency published a pre-solicitation notice advising that it intended to solicit its requirement. On October 13, the agency issued the RFP, which established a deadline for submission of proposals on December 15. As is relevant here, the RFP included the provision at Federal Acquisition Regulation (FAR) 52.204-7 which, among other things, requires an offeror to be registered in SAM at the time it submits its offer. In addition the RFP included another provision that provided as follows:

**Offerors, including any offeror organized as a joint venture, must have an active SAM registration at the time of proposal submission and throughout the procurement process. *Any offeror whose registration is not active in SAM at the time of proposal submission will be excluded from the process and their proposals will not be evaluated.***

RFP at 89. (bold in original, italics supplied)

The protester represents that on October 26, some two weeks after the agency issued the RFP, it incorporated as a joint venture and, thereafter, on November 15, submitted its application for registration in SAM. That same day, the protester represents that it received a SAM-generated e-mail stating that its taxpayer identification number (TIN) had to be validated by the Internal Revenue Service (IRS), and that this process could take up to two days. The protester further represents that on November 17, it received a second SAM-generated e-mail stating that the TIN validation process had failed. CGS represents that it tried unsuccessfully several more times to register in the SAM before the deadline for submission of proposals. The protester states that on December 14, it submitted its proposal to the agency but, as of that time, it did not have an active registration in SAM.

By letter dated January 4, 2022, the agency advised CGS that its proposal had been excluded from consideration because the firm did not have an active SAM registration at the time of proposal submission. Agency Request for Dismissal, exh. 3, Proposal Exclusion Letter. CGS filed an agency-level protest challenging the exclusion of its proposal from consideration; the agency denied CGS's protest; and CGS then filed the current protest with our Office.

CGS argues that it was improper for the agency to have excluded its proposal from consideration. CSG maintains that it was the fault of the government that it did not have an active SAM registration at the time of proposal submission because of confusion surrounding its attempt to register in SAM as a joint venture. CSG suggests that it was the actions either of the General Services Administration (GSA)--the agency that administers the SAM--or the IRS--which is responsible for providing taxpayer identification numbers--that resulted in its failure to have timely established its active SAM registration. According to the protester, DOS should have allowed correction of its SAM registration status as a minor clarification of its proposal. Alternatively, CSG argues that its failure to have an active SAM registration at the time of proposal submission should be treated as a matter of its responsibility that it can cure before contract award.

We deny CSG's protest. While CSG is correct that we have characterized a firm's failure to have an active SAM registration at the time of bid submission to be a minor error that can be corrected after bid opening, and also characterized it as a matter of responsibility generally, we have reached these conclusions only in the context of sealed bidding acquisitions. *Jade Excavation, Inc.*, B-419515, Mar. 18, 2021, 2021

CPD ¶ 128 at 2; *Master Pavement Line Corporation*, B-419111, Dec. 16, 2020, 2020 CPD ¶ 404 at 5. In contrast, where the agency is using negotiated procedures, we have found that the question of when a firm is required to have an active SAM registration is governed by the terms of the solicitation itself, because the mandatory cure or waiver provisions governing sealed bidding acquisitions, FAR section 14.405, are inapplicable to negotiated acquisitions. *Acon Traders, LLC*, B-417558, June 26, 2019, 2019 CPD ¶ 226; *Master Pavement Line Corporation*, *supra.* at 6 n.5.

Here, the RFP was explicit that an active SAM registration at the time of proposal submission was required as a precondition of proposal evaluation. RFP at 89. The RFP also explained that the agency intended to perform a three-phase evaluation of proposals, and during phase one, the agency would review proposals to ensure that they were timely and complied with the RFP's instructions to offerors. RFP at 100. Among the requirements of the RFP's instructions was the requirement that the offeror have an active SAM registration at the time of proposal submission.

Consistent with these RFP provisions, the agency investigated the question of whether CSG had an active SAM registration at the time of proposal submission, and found that, in fact, it did not. Accordingly, the agency properly eliminated the CSG proposal from further consideration.

As a final matter, we note that CSG's generalized allegation of improper government action relates to actions allegedly taken by GSA and the IRS, not to any actions on the part of DOS. Leaving aside the propriety of GSA's and the IRS's actions, there is no evidence that the acquiring agency here did anything to cause CSG to fail in its effort to obtain an active SAM registration by the deadline for proposal submission. It necessarily follows that DOS was not responsible for CSG's failure to have an active SAM registration at the time it submitted its proposal to the agency.<sup>1</sup>

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>1</sup> As a final matter, CSG states that it repeatedly received pre-closing notices from GSA rejecting its attempt to establish an active SAM registration on November, 17, 19 and 24. Given the specificity of the terms of the RFP, CSG has not explained why it did not seek an amendment to the terms of the RFP, either to relax the requirement for an active SAM registration at the time of proposal submission, or to extend the deadline for proposal submission under the circumstances.