BRIEFING PAPERS®

WEST®

SECOND SERIES

PRACTICAL TIGHT-KNIT BRIEFINGS INCLUDING ACTION GUIDELINES ON GOVERNMENT CONTRACT TOPICS

CONTRACTOR REPORTING REQUIREMENTS IN THE WAKE OF IMPLEMENTATION OF THE SYSTEM FOR AWARD MANAGEMENT

By Diana G. Richard, Neil S. Whiteman, and Sarah B. Gleich

Since the launch of the System for Award Management (SAM) in late July 2012, contractors have been forced, once again, to adjust to a redesigned and reengineered system for reporting and tracking certain Government contracting compliance issues. SAM was created to aggregate disparate federal acquisition content and to improve the efficiency and transparency of the contract award process. By replacing many of the historically siloed systems with "one web site for regulations, systems, resources, opportunities, and training,"[1] SAM's stated goal is to improve access to compliance and reporting data. While SAM changed the forum and mechanics of fulfilling the reporting requirements imposed on the Government and contractors more than the content of the data required, there are important substantive and procedural changes of which federal contractors must be aware. Of additional concern, many of the risks associated with the legacy systems predating SAM have continued with the new system.

This BRIEFING PAPER reviews the operational changes to reporting requirements following the implementation of SAM, beginning with an introduction to the purpose of the new system and the problems it has already confronted. The

---

IN BRIEF

Background

The Implications Of Implementing SAM
■ Problems From The Start
■ Phase I Launch & Resultant System Issues
■ Potential New Risks

Lessons Learned From Previous Initiatives

Diana G. Richard is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher LLP, where she is a member of the Government and Commercial Contracts and Intellectual Property Practice Groups. Neil S. Whiteman is of counsel in the Washington, D.C. office of Gibson, Dunn & Crutcher LLP, where he is a member of the firm's Government and Commercial Contracts Practice Group. Sarah B. Gleich is an associate in the Washington, D.C. office of Gibson, Dunn & Crutcher LLP, where she is a member of the firm's Government and Commercial Contracts Practice Group.

PAPER then compares SAM with its predecessor systems and highlights several of the new potential risk areas, as well as the risks that have carried over into SAM, for businesses engaged in federal contracting. Finally, the PAPER offers contractors guidelines for remaining in compliance following SAM's implementation.

Background

In 2001, the Office of Management and Budget (OMB) established the Integrated Acquisition Environment (IAE) initiative to "enable agencies to share data and make more informed decisions, make it easier for contractors to do business with the government, and result in cost savings to the taxpayer."[2] As the IAE executive agency, the General Services Administration (GSA) developed a series of independent online systems, which were operated separately by single vendors, to satisfy this goal. These systems, now referred to as "legacy" systems, include the Central Contractor Registration (CCR), the Online Representations and Certifications Application (ORCA), the Excluded Parties List System (EPLS), Federal Business Opportunities (FedBizOpps), Federal Procurement Data System-Next Generation (FPDS-NG), Wage Determinations Online (WDOL), the Electronic Subcontracting Reporting System (eSRS), and the Past Performance Information Retrieval System (PPIRS), which includes the Contractor Performance Assessment Reporting System (CPARS), and the Federal Awardee Performance and Integrity Information System (FAPIIS).[3] These legacy systems were eventually implemented Government-wide.[4]

In 2008, in effort to further eliminate redundancy, decrease data input errors, and streamline reporting, the GSA began to design a system that would consolidate the different legacy systems into a single system—the resource that would eventually become known as SAM.[5] In addition to consolidating the various legacy systems into one unified portal, another principal purpose of SAM was to reduce the costs associated with maintaining several different host servers for the different legacy systems. In 2010, the GSA awarded a $74 million fixed-price contract to IBM for developing the SAM system architecture, migrating legacy systems into SAM, and operating and maintaining SAM.[6] In 2011, the Chief of the GSA's Acquisition Systems Division, Christopher Fornecker, stated that the savings from no longer having to operate and maintain separate systems would equal the cost of SAM in three years.[7] Originally, the GSA imagined SAM would act as the single point of entry for Government and contractor reporting and would replace the existing legacy systems that required users to maintain multiple log-ins and to input the same data multiple times. In implementation, the plan for SAM is to incorporate the different legacy systems in a series of phases, after which each of the legacy systems will be permanently retired.[8] The first phase of SAM, implemented in the summer of 2012, involved the merging of the CCR/Federal Agency Registration (FedReg), ORCA, and the EPLS into the unified system.[9]

In designing this new system, the GSA changed course from the contracting scheme used to develop the legacy systems. Each of the previous legacy systems was developed, operated, and supported by just one vendor. Unlike those systems, the multiple functions of SAM are performed by

---

WEST.

BRIEFING PAPERS

several vendors. The new system, which aspires to consolidate the legacy systems, is divided into separate operating capacities performed by several different contractors. This multi-vendor approach is meant to encourage innovation, increase competition, and ensure that the Government owns the system's software as open-source code.[10] The Phase I contractors performing in separate capacities for SAM include IBM (as noted above, system design and operations), Qwest (consolidated data hosting service), Global Computer Enterprises (software development), and Hewlett Packard (help desk operations).[11]

Notably, the Department of Defense (DOD), the National Aeronautics and Space Administration, and the GSA issued a final rule on January 3, 2012, implementing the first phase of SAM without providing any notice or allowing the public an opportunity to comment.[12] During implementation of the legacy systems, including the EPLS,[13] FAPIIS,[14] and ORCA,[15] an opportunity for public comment was provided. Under Federal Acquisition Regulation (FAR) 1.501-2, an agency must provide an opportunity for public comments on proposed "significant revisions" to the FAR.[16] This requirement of notice and comment can be bypassed, however, when urgent and compelling circumstances make solicitation of comments impracticable.[17] The agencies concluded that the revisions to the FAR required to implement the first phase of SAM did not constitute significant revisions and thus did not require publication for public comment.[18] Under 41 U.S.C.A. § 1707, the Government must publish a proposed rule in the *Federal Register* to provide an opportunity for notice and public comment.[19] As under the FAR policy, this requirement may be waived by the officer authorized to issue a procurement policy, regulation, procedures, or form if urgent and compelling circumstances make compliance with the requirements impracticable.[20] In promulgating this final rule, the agencies did not put forth any rationale indicating urgent and compelling circumstances. Nonetheless, the rule implementing the first phase of SAM, which significantly impacts vendors engaged in federal contracts, was finalized without any opportunity for the public to voice suggestions, opinions, or concerns.

On May 16, 2013, the DOD issued a final rule amending the Defense FAR Supplement (DFARS) to reflect the implementation of the consolidation of the CCR, ORCA, and the EPLS in the first phase of SAM, likewise without providing notice or opportunity for public comment.[21] The DOD stated that the final rule was not required to be published for public comment "because it only serves to ensure that the procurement systems that are referenced in the DFARS reflect those that are currently being utilized by the acquisition workforce in the performance of those functions relating to entity registration, representations and certifications, and exclusions" and thus "has no significant effect beyond the internal operating procedures of the Government, nor does the rule create a significant cost or administrative impact on contractors or offerors."[22]

The Implications Of Implementing SAM

The launch of SAM brings the possibility of significant opportunities for economic efficiency, a reduction in data errors, and a streamlined contract award process, but also increased costs associated with both the initial startup and the execution of future phases of the implementation. In fact, because it is a new system, Government and industry users will continue to discover over time just what downstream effects will accompany the introduction of SAM. Problems arising from the immediate implementation of SAM, however, have already become quite apparent.

■ Problems From The Start

In a March 2012 report analyzing the GSA's plan to consolidate the legacy systems, published before SAM was launched, the Government Accountability Office (GAO) found that, since 2009, the GSA had encountered a high degree of cost growth in the development and implementation efforts related to SAM as a result of errors in the program design.[23] The agency's mistakes, according to the report, included initially "omitting hardware and other key components in acquiring a hosting infrastructure for SAM."[24] The GSA initially intended to award a contract for hosting services to a single vendor, but the contract awarded for these services did not include

all of the necessary requirements.[25] To remedy this mistake, the GSA had to purchase the additional hosting hardware and software at a cost of $29 million and the estimated costs of hosting services dramatically increased.[26] GSA officials admit that this increase in costs was not the fault of the contractors involved.[27] In 2008, the GSA estimated these hosting costs to be $2.8 million each year.[28] In March 2012, the GAO predicted hosting costs would average $8 to $9 million per year.[29]

Concurrent with this unexpected increase in costs, the GSA has experienced a shortage in funds. In 2011 and 2012, the GSA requested additional appropriated funds to cover the increase in costs, but the agency received only half of the $15 million it requested in 2011 and nothing at all in 2012.[30] In 2013, the GSA requested $21 million for continued IAE operation and consolidation of IAE legacy systems into SAM.[31] Together, this increase in costs and continuing absence of additional funds has contributed to a delay in the development schedule of almost two years.[32] In light of these delays and unexpected costs, in the 2012 report the GAO advised the GSA to consider whether moving forward with SAM was the most cost-effective strategy, or if it would be better to maintain the status quo or to use a single vendor to support SAM as opposed to the planned multiple vendor approach.[33] Nonetheless, the GSA proceeded with Phase I of the original, multiple vendor plan to consolidate the legacy systems into SAM. In February 2012, the GSA notified Congress that it was developing a new acquisition and investment strategy for Phase II of SAM "to reflect the Administration's direction of cloud computing, mobility and shared services approach to data management and information sharing."[34] In April 2013, the GSA notified Congress that it was endeavoring to stabilize the SAM Phase I migration and consolidation and was still developing an updated plan to address the consolidation of the remaining IAE legacy systems into SAM. [35]

■ Phase I Launch & Resultant System Issues

Phase I of SAM was slated to debut on May 29, 2012. However, because of various delays in the system development in the late spring, the GSA pushed back the SAM launch to the end of June 2012. Further issues delayed system launch until July 29, 2012, two months after the original target date.[36] Just days later, however, SAM was taken offline due to performance issues.[37] Problematically, the legacy systems set to be consolidated into SAM as a result of the Phase I implementation—the CCR/FedReg, ORCA, and the EPLS—were already taken offline with the launch of the Phase I SAM implementation. Thus, when SAM initially failed to meet basic performance requirements, contracting officials and vendors were left temporarily without the ability to rely on the legacy systems. The GSA temporarily reinstated the migrated legacy systems until SAM could be fixed, but the interim absence of these vital systems wreaked havoc on procurement throughout the Government. Before the legacy systems were reinstated, Contracting Officers (COs) seeking to make awards were unable to check contractor data in the EPLS or the CCR, thwarting their ability to verify contractor registration, qualification, and eligibility for federal contract awards. This deprivation had an even greater impact due to the timing of the Phase I implementation, which coincided with the end of the fiscal year increase in contract awards.[38]

On August 7, 2012, SAM was re-launched. That same day, a GSA CO issued a Notice of Concern to IBM expressing concerns with IBM's overall performance and SAM's system functionality that "materialized with the initial release of SAM Phase 1 on July 29, 2012 [and] prevented a majority of users from performing a variety of award management processes with SAM Phase 1."[39] The Notice required that IBM submit a Corrective Action Plan and a full account of the issues and defects with a description of temporary and permanent fixes.[40] According to Dan Cruz, a GSA spokesman, the GSA and IBM had been working together to ensure that the GSA can "meet the critical information needs of [its] federal communities and external vendors."[41] OFPP Administrator Joseph Jordan said on September 11, 2012, that SAM's functionality has improved since the GSA issued the notice, and that IBM has taken corrective steps including adding more servers and bringing in new employees.[42] But Jordan cautioned

that, "GSA has a lot of thinking to do before they implement future phases of SAM."[43]

In the months following the SAM re-launch, the GSA took the CCR and ORCA back offline. On November 21, 2012, the EPLS was also retired.[44] Following the "retirement" of these legacy systems, users seeking to access those websites are automatically directed to SAM. Although the legacy systems are now offline, SAM has continued to experience intermittent performance problems. As late as December 2012, six months after launch, users were greeted by an announcement on the front page of the site stating: "We have been experiencing an intermittent issue with the search functionality. If you receive an error, please try your search again. Our team is working to resolve the search issue and we thank you for your patience in the interim." More disturbingly, nine months after launch, the GSA reported a security vulnerability in SAM that allowed existing users in the system to view certain registration information.[45] This vulnerability, which was reported to the GSA on March 8, 2013, was fixed "immediately" through a software patch but, during the incident, information including Social Security Numbers and Taxpayer Identification Numbers for approximately 183,000 users was potentially accessible during public searches.[46]

A month after the launch of SAM, on August 21, 2012, in response to the myriad problems with SAM both before and after its implementation, and the risks associated with its launch date towards the end of the fiscal year, the Director of Defense Procurement and Acquisition Policy, Richard Ginman, issued a class deviation from the initial SAM registration requirements.[47] According to Ginman, this deviation was meant to give the GSA time to resolve the issues with SAM.[48] Under this deviation, registration on SAM was not required for contractors at the time of award.[49] Registration was required, however, before a contractor submitted invoices.[50] Additionally, the deviation permitted DOD COs to accept representations and certifications after awarding a contract.[51] The DOD rescinded this deviation effective December 12, 2012, in a memorandum in which Ginman stated that the performance issues that had affected vendor abilities to enter and renew registrations

in SAM had been corrected.[52] However, both Government and businesses continue to find the SAM registration process very challenging.[53] As recently as May 22, 2013, users saw the following alert: "Do not begin a new registration in SAM today Wednesday, 22 May 2013. A technical issue may prevent you from submitting the new registration. GSA will update this notice later today with more information. This issue only impacts new registrations and not migrated registrations or updates."

In October 2012, likely in response to the numerous performance problems, the GSA shifted management of the new system to two top executives, Mary Davie, acting Federal Acquisition Service commissioner, and Casey Coleman, the GSA's Chief Information Officer. The new managers are tasked with raising SAM to meet the agency's original expectations.[54] As reflected in the Release Notes for the latest version of the SAM software, the GSA is still quite busy stabilizing the basic functionality of the system.[55] The OMB's Federal IT Dashboard evaluates the SAM implementation as "Yellow" indicating "medium risk" since May 2012 primarily due to a "less than optimal deployment."[56] The current evaluation goes on to note that the GSA is still endeavoring to resolve the system defects that plagued the initial rollout of SAM.[57]

■ **Potential New Risks**

Beyond the technical issues related to the launch of SAM, new risk areas for contractors have emerged with the new system, and it is unclear when vendors will benefit from many of the selling points the Government has used to promote SAM. Following the SAM launch, contractors complained that information they put into the system would disappear, the system did not issue registration confirmations, and there was a general lack of easily attainable information and readily available customer service. Many contractors were frustrated by the extensive delays encountered when they attempted to update their basic company information or representations and certifications. Moreover, both Government users and federal contractors complained of the basic functionality inadequacies of the website. Unfortunately, these frustrations will likely con-

tinue for the near future, as it appears that the efficiencies projected from the consolidation of the legacy systems will take longer to come to fruition.

In this regard, one of the principal promotional characteristics of SAM was that contractors would only need to maintain log-in information for one site; however, this will not be accomplished until the still-existing legacy systems are fully consolidated into SAM. Previously, the Government had announced plans to incorporate into SAM other legacy systems including the Electronic Subcontracting Reporting System/Federal Funding Accountability and Transparency Act Subaward Reporting System, the Catalog of Federal Domestic Assistance (CFDA), FedBizOpps, the WDOL, the FPDS-NG, PPIRS, CPARS, and FAPIIS.[58] But, given the problems that arose with Phase I of SAM, streamlining the several legacy systems still in use today will involve a prolonged and difficult process. The continuing problems in the implementation of SAM will require the GSA to continue to maintain the still-existing legacy systems well beyond their previously predicted lifetime. This overlap will cause the Government to incur additional costs and require contractors to maintain accounts on both SAM and the legacy systems.[59] As an example, the EPLS was initially supposed to be consolidated into SAM during the Phase I launch; however, that system was not finally retired until November 21, 2012,[60] almost six months after launch. Thus, not only will vendors have to be aware of when each different legacy systems is scheduled to merge into SAM, but they will also have to follow the consolidation closely to determine whether any legacy systems are not successfully merged as scheduled.

Second, it may be difficult for a vendor to correct erroneous information merged from the CCR and ORCA because of the customer service performance issues on SAM and the lack of resources on the part of contractors. Initially, contractors reported that changes that they had input into SAM took weeks, and sometimes months, to be implemented, leading to frustration and, potentially, erroneous evaluation of their qualifications and eligibility for contract award. Moreover, where information in SAM is

not necessarily incorrect but could have a negative impact, a contractor may not have the resources to pursue corrective action. Even if the resources are available, contractors are not permitted to challenge certain past performance data in different adjudicative forums, such as the Civilian Board of Contract Appeals.[61] As a result, it is unclear how a contractor can formally contest, in a timely manner, information in SAM that is either plainly erroneous or that unfairly casts an unfavorable light on the contractor.

Third, along with other changes associated with the launch of SAM, there have been several changes in key terms formerly used on the EPLS that affect users:[62]

Legacy ELPS Term:	New SAM Term:
Cause	Nature
Treatment	Effect
CT Action	*Discontinued*
Action Date	Active Date
Term Date	Termination Date
Indef.	Indefinite
Perm.	*Discontinued*
CT Code	*Discontinued*
Exclusion Type	Exclusion Program
Description	Additional Comments

And, in this regard, with the transition to SAM the former "Cause and Treatment" codes utilized in EPLS have been mapped to four "Exclusion Types": preliminarily ineligible, ineligible, prohibition/restriction, and voluntary exclusion.[63] One of the effects of using different terms is that many agencies, and even vendors, may rely on applications that accessed legacy systems to run automated information checks to verify data. SAM's revised data structure requires Government agencies and businesses to update their programs and data interfaces to accurately translate and communicate information using the new SAM terminology.

Another effect that arises when terms are changed is that statutes and regulations are frequently not updated to reflect those changes. For example, the *Code of Federal Regulations* extensively uses the term "Excluded Party List System";[64] however, that system no longer exists under SAM. Thus, agencies must expend the effort to update their regulations to reflect the newly retired legacy systems and to timely update these regulations

again when the remaining legacy systems are taken offline. If such updates are missing or delayed, then agencies, businesses, and individuals may inadvertently and unintentionally fail to comply with applicable regulations and be subject to litigation.[65]

A fourth area for potential risk that is not making its debut with SAM, but has lingered around legacy systems for several years, is the potential for litigation that arises when information on these systems is made public. Although contractor information was made public by previous legacy systems, SAM promises to make access to that information easier. Before the GSA issued a final rule to make certain information on FAPIIS publicly available,[66] vendors and other industry representatives submitted comments to the interim rule expressing the concern that making more information available to the public would increase litigation risks for contractors.[67] Now, SAM will consolidate past performance information from FAPIIS, PPIRS, and CPARS into one publicly available online location. There is no log-in information required in SAM to view this information, and any member of the public can visit the SAM website and download a spreadsheet listing all of the currently excluded parties from federal contracts that is updated on a daily basis.[68] There is a plethora of sensitive information available on these reporting systems related to contractors' certifications, past performance, amount of Federal Government revenue, and executive compensation. Moreover, contractors have little control over the accuracy of certain information available in SAM that Government employees generate, including contract reports.

Making certain information available to the public can increase a contractor's vulnerability to bid protests and other litigation. With the availability of certain information, the risk of bid protests increases as losing bidders can use the information to supplement or form the basis of a bid protest—even if the information is incorrect. Arising from the transition to SAM, many contractors are complaining that information on the new system is inaccurate or was otherwise not properly converted into SAM. As a result, contractors may be presented in an unfavorable

light or exposed to litigation based on erroneous information. Beyond bid protests, other litigants completely removed from the theater of Government contracts may use the information in litigation related, for example, to labor wages or in a *qui tam* suit under the False Claims Act.[69] Contractors should be aware that any information available in SAM, as with the legacy systems, can and will be used against them.

Lessons Learned From Previous Initiatives

This is not the first time that missteps in implementing a GSA-sponsored IAE system to improve transparency and efficiency in federal contracting have hamstrung its efforts. Just a few years ago, the GSA unveiled FAPIIS, a system designed to improve the sharing of past performance information. FAPIIS followed in the footsteps of PPIRS—another system previously implemented to support the collection, use, and maintenance of past performance information. The Government described FAPIIS as a one-stop resource for contracting officials to use when evaluating the integrity and performance of prospective contractors. FAPIIS was a portal to existing databases tracking past performance in addition to newly collected information, but it was not designed to replace past performance systems that existed at the time.[70] Thus, FAPIIS differs from SAM, which was implemented to take the place of certain legacy systems so that over time, as information from these systems is consolidated into SAM, those systems will retire.

Although the Government has high expectations for SAM as a single mechanism that will consolidate all of the legacy systems into one virtual location accessible with a single log-in, in reality the system may end up like FAPIIS—just another piece of the current patchwork design to house information and monitor reporting. Given that the original schedule for implementing SAM is now on at least a two-year delay and it at present remains a mystery whether Congress will appropriate the funds necessary to complete the full implementation of the system, contractors and Government agencies may spend the next several years working with an incomplete

system. As a result, contractors and Government agencies will need to continue to monitor legacy systems that the GSA has not consolidated into SAM, removing several of the key improvements used to justify the system in the first place—including improved efficiency, the ability to access information with a single log-in, and decreased data reporting errors.

GUIDELINES

These *Guidelines* are intended to provide Government contractors with tips for complying with the requirements of the System for Award Management. They are not, however, a substitute for professional representation in any specific situation.

1. If your company is not registered, create an account on SAM. Visit the SAM website at *https://www.sam.gov/portal/public/SAM/*.

2. Take advantage of SAM training opportunities. The GSA is offering free training webinars via its Federal Service Desk at *http://www.fsd.gov.*

3. If your company was registered for the CCR or ORCA, be aware that SAM registration is unnecessary until it is time to update your registration. SAM will, or at least is supposed to, notify users when it is time to renew their registration. As delays have been widely reported, it is recommended that contractors update information well in advance to avoid being unable to correct inaccurate information at time of potential award. Note that, if your company has an expired record in the CCR or ORCA, it will need to activate its record by creating a SAM account to migrate your information from the CCR.

4. Whether or not registration is necessary at this time, continue to vigilantly monitor business information in SAM and take proactive measures to address errors and other past performance concerns. Follow up with any requests to correct errors and ensure that corrections are made to the SAM entry.

5. Be aware that revisions to the FAR and DFARS to implement SAM have thus far been issued as final rules without notice or opportunity for public comment.

6. Keep in mind that although the CCR, ORCA, and the EPLS have been retired and users seeking to access the websites of these legacy systems are now automatically redirected to SAM, the unified system continues to experience intermittent performance issues. Alerts for users are posted on the SAM website.

7. Monitor the schedule for and progress of the continued consolidation of the legacy systems into SAM on an ongoing basis to determine which systems have successfully merged on schedule and which have not.

8. Recognize that it may be difficult to change information merged from the CCR and/or ORCA that is erroneous—or information that is not necessarily incorrect but that could nevertheless have a negative impact on the evaluation of a contractor's qualifications—because of the customer service performance issues on SAM or a lack of resources.

9. Be aware that changes in key terms formerly used on the EPLS affect SAM users. Government agencies and businesses that rely on applications that access legacy systems to run automated information checks to verify data must ensure that that those data interface systems have been updated to reflect the SAM changes so that they access and report accurate data to users.

10. Bear in mind that although the EPLS was retired on November 21, 2012, and no longer exists, the *Code of Federal Regulations* uses the term "Excluded Party List System" numerous times. Where updates to agency regulations to reflect the retirement of the EPLS and other legacy systems are missing or delayed, agencies, businesses, and individuals may risk inadvertently and unintentionally violating applicable regulations and be subject to litigation.

11. Recognize that while contractor information was made public by previous legacy systems, SAM promises to make access to that information much easier, thus potentially increasing a contractor's vulnerability to bid protests and other litigation. Contractors must be aware that any information available in SAM may be used against them.

★ REFERENCES ★

1/ See http://acquisition.gov.

2/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 1 (GAO-12-429, Mar. 15, 2012); see 54 GC ¶ 97.

3/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 3–5 (GAO-12-429, Mar. 15, 2012). See generally West, Richard & Whitehurst, "The Federal Awardee Performance & Integrity Information System," Briefing Papers No. 11-11 (Oct. 2011); Nash, "The Federal Awardee Performance and Integrity Information System (FAPIIS): How Will It Be Used?," 26 Nash & Cibinic Rep. ¶ 59 (Nov. 2012); Sacilotto, "Challenging Contractor Performance Evaluations: FAR Processes and Claims Before the Court of Federal Claims and the Boards of Contract Appeals," Briefing Papers No. 11-10 (Sept. 2011).

4/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 3–5 (GAO-12-429, Mar. 15, 2012).

5/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 3 (GAO-12-429, Mar. 15, 2012).

6/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 9 (GAO-12-429, Mar. 15, 2012).

7/ Chacko, "GSA Prepares To Consolidate Contractor Databases," Federal Times, May 18, 2011, http://www.federaltimes.com/article/20110518/ACQUISITION03/105180302.

8/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 3, 10 (GAO-12-429, Mar. 15, 2012).

9/ http://acquisition.gov.

10/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 3, 7–8 (GAO-12-429, Mar. 15, 2012).

11/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 9 (GAO-12-429, Mar. 15, 2012).

12/ 77 Fed. Reg. 187 (Jan. 3, 2012).

13/ The GSA issued a notice prior to implementation of the EPLS, which provided opportunity for comments. 71 Fed. Reg. 70515 (Dec. 5, 2006).

14/ 74 Fed. Reg. 45579 (Sept. 3, 2009).

15/ The DOD, the GSA, and NASA issued a proposed rule to implement ORCA before it was implemented. 69 Fed. Reg. 4012 (Jan. 27, 2004).

16/ FAR 1.501-2(b).

17/ FAR 1.501-3(b).

18/ 77 Fed. Reg. 187; see FAR 1.501-1 (defining "significant revisions), 1.501-3(a) ("Comments need not be solicited when the proposed coverage does not constitute a significant revision.").

19/ 41 U.S.C.A. § 1707(b).

20/ 41 U.S.C.A. § 1707(d).

21/ 78 Fed. Reg. 28756 (May 16, 2013).

22/ 78 Fed. Reg. at 28757 (citing 41 U.S.C.A. § 1707 (a)(1)).

23/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 11–20 (GAO-12-429, Mar. 15, 2012); see 54 GC ¶ 97.

24/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed, Highlights (GAO-12-429, Mar. 15, 2012).

25/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 12–13 (GAO-12-429, Mar. 15, 2012).

26/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 12–13 (GAO-12-429, Mar. 15, 2012).

27/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 10 (GAO-12-429, Mar. 15, 2012).

28/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 12 (GAO-12-429, Mar. 15, 2012).

29/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 12 (GAO-12-429, Mar. 15, 2012).

30/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 14 (GAO-12-429, Mar. 15, 2012).

31/ GSA, FY 2013 Congressional Justification GSA-4 (Feb. 13, 2012), available at http://gsa.gov/graphics/staffoffices/FY2013_CONGRESSIONAL_JUSTIFICATION.pdf; see also GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 12 (GAO-12-429, Mar. 15, 2012).

32/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 14–16 (GAO-12-429, Mar. 15, 2012).

33/ GAO, Federal Contracting: Effort To Consolidate Governmentwide Acquisition Data Systems Should Be Reassessed 20–21 (GAO-12-429, Mar. 15, 2012).

34/ GSA, FY 2013 Congressional Justification GP-10 (Feb. 13, 2012), available at http://www.gsa.gov/graphics/staffoffices/FY2013_CONGRESSIONAL_JUSTIFICATION.pdf.

35/ GSA, FY 2014 Congressional Justification GP-10 (Apr. 10, 2013), available at http://www.gsa.gov/portal/getMediaData?mediaId=169335.

36/ See System for Award Management: Announcement, https://www.sam.gov/sam/announce1.htm.

37/ Weigelt, "GSA's New Award-Management System Offline Right After Launch," FCW, Aug. 3, 2012, http://fcw.com/articles/2012/08/03/sam-goes-live.aspx.

38/ Miller, "OFPP Keeping a Close Eye on Struggling Acquisition System Consolidation," Federal News Radio, Sept. 12, 2012, http://www.federalnewsradio.com/517/3033079/OFPP-keeping-a-close-eye-on-struggling-acquisition-system-consolidation.

39/ Letter from Gene Lee, Team Lead Contracting Officer to Ms. Manzi (Aug. 7, 2012), available at http://www.federalnewsradio.com/pdfs/IBM_SAM_concern_letter_GSA.pdf; Miller, "GSA Issues IBM a Letter of Concern for Problems With Procurement System," Federal News Radio, Aug. 10, 2012, http://www.federalnewsradio.com/239/2988217/GSA-issues-IBM-a-letter-of-concern-for-problems-with-procurement-system.

40/ Letter from Gene Lee, Team Lead Contracting Officer to Ms. Manzi (Aug. 7, 2012), available at http://www.federalnewsradio.com/pdfs/IBM_SAM_concern_letter_GSA.pdf; Miller, "GSA Issues IBM a Letter of Concern for Problems With Procurement System," Federal News Radio, Aug. 10, 2012, http://www.federalnewsradio.com/239/2988217/GSA-issues-IBM-a-letter-of-concern-for-problems-with-procurement-system.

41/ Weigelt, "GSA's SAM Continues To Frustrate Its Users," FCW, Sept. 13, 2012, http://fcw.com/articles/2012/09/15/buzz-system-for-award-management-gsa.aspx.

42/ Miller, "OFPP Keeping a Close Eye on Struggling Acquisition System Consolidation," Federal News Radio, Sept. 12, 2012, http://www.federalnewsradio.com/517/3033079/OFPP-keeping-a-close-eye-on-struggling-acquisition-system-consolidation.

43/ Miller, "OFPP Keeping a Close Eye on Struggling Acquisition System Consolidation," Federal News Radio, Sept. 12, 2012, http://www.federalnewsradio.com/517/3033079/OFPP-keeping-a-close-eye-on-struggling-acquisition-system-consolidation.

44/ See http://acquisition.gov.

45/ System for Award Management Security Vulnerability FAQ, http://www.gsa.gov/portal/content/167855.

46/ See Sherman, "GSA System Showed SSNs for 183K Contractors," CBS Moneywatch, Mar. 15, 2013, http://www.cbsnews.com/8301-505124_162-57574681/gsa-system-showed-ssns-for-183k-contractors/.

47/ Memorandum from Director, Defense Procurement and Acquisition Policy Richard Ginman, Class Deviation—System for Award Management (SAM) (Aug. 21, 2012), available at http://www.acq.osd.mil/dpap/policy/policyvault/USA004926-12-DPAP.pdf; see 54 GC ¶ 270.

48/ Memorandum from Director, Defense Procurement and Acquisition Policy Richard Ginman, Class Deviation—System for Award Management (SAM) 1 (Aug. 21, 2012), available at http://www.acq.osd.mil/dpap/policy/policyvault/USA004926-12-DPAP.pdf.

49/ Memorandum from Director, Defense Procurement and Acquisition Policy Richard Ginman, Class Deviation—System for Award Management (SAM) 2 (Aug. 21, 2012), available at http://www.acq.osd.mil/dpap/policy/policyvault/USA004926-12-DPAP.pdf.

50/ Memorandum from Director, Defense Procurement and Acquisition Policy Richard Ginman, Class Deviation—System for Award Management (SAM) 1 (Aug. 21, 2012), available at http://www.acq.osd.mil/dpap/policy/policyvault/USA004926-12-DPAP.pdf.

51/ Memorandum from Director, Defense Procurement and Acquisition Policy Richard Ginman, Class Deviation—System for Award Management (SAM) 2 (Aug. 21, 2012), available at http://www.acq.osd.mil/dpap/policy/policyvault/USA004926-12-DPAP.pdf.

52/ Memorandum from Director, Defense Procurement and Acquisition Policy Richard Ginman, Rescission of Class Deviation—System for Award Management (Dec. 12, 2012), available at http://www.acq.osd.mil/dpap/policy/policyvault/USA007351-12-DPAP.pdf.

53/ PRWeb, USDA Becomes Frustrated With the New SAM Registration Process; Turns to US Federal Contract Registration for Help (Apr. 23, 2013) http://www.prweb.com/releases/usfederal/contractorregistration/prweb10661850.htm.

54/ See Weigelt, "GSA Appoints a New Duo To Run SAM," FCW, Oct. 12, 2012, http://fcw.com/articles/2012/10/22/coleman-davie-sam.aspx; System for Award Management, News and Announcements, SAM Management Moves to GSA FAS and CIO, https://www.sam.gov/portal/public/SAM/.

55/ SAM Release Notes Build 2013-05-17–v1.2, https://www.sam.gov/sam/transcript/SAM_Release_Notes_2013-05-17_v1.0.pdf. These release notes highlight numerous software patches related to basic functionality such as secure data access, requiring users to accept the terms and conditions before logging into the site, logic fixes to prevent registration where all the required data was not provided, and bug fixes that had prevented users from the Canadian province of Newfoundland and Labrador from starting an entity registration.

56/ OMB Federal IT Dashboard for IAE, Evaluation Explanation, http://www.itdashboard.gov/investment?buscid=616.

57/ OMB Federal IT Dashboard for IAE, Evaluation Explanation, http://www.itdashboard.gov/investment?buscid=616.

58/ According to a 2011 Memorandum from the Director of Defense Procurement and Acquisition Policy, Phase II was to include implementation of FedBizOpps, eSRS, the Federal Subaward Reporting System, and the CFDA into SAM. Phase III was to include implementation of the WDOL. Phase IV was to include implementation of the FPDS-NG. And finally, Phase V was to include implementation of PPIRS, CPARS, and FAPIIS. Memorandum from Director, Defense Procurement and Acquisition Policy Richard Ginman, Implementation of System for Award Management (SAM) (Sept. 11, 2012), available at http://www.acq.osd.mil/dpap/policy/policyvault/USA005210-11-DPAP.pdf.

59/ 54 GC ¶ 97.

60/ See http://acquisition.gov.

61/ See generally Sacilotto, "Challenging Contractor Performance Evaluations: FAR Processes and Claims Before the Court of Federal Claims and the Boards of Contract Appeals," Briefing Papers No. 11-10 (Sept. 2011).

62/ System for Award Management, Quick Start Guide for Exclusions, http://www.acq.osd.mil/dpap/pdi/eb/docs/Quick_Guide_for_Exclusions_v1.7.pdf.

63/ System for Award Management, I'm used to EPLS what changes do I need to know?, http://www.acquisition.gov/SAM_Guides/SAM_Exclusions_changes_from_epls.pdf.

64/ See, e.g., 2 C.F.R. § 180.155; 5 C.F.R. § 919.140; 7 C.F.R. § 400.454; 21 C.F.R. § 1404.140; 22 C.F.R. § 1006.140; 24 C.F.R. § 17.79; 26 C.F.R. § 1.42-18; 29 C.F.R. § 98.140; 31 C.F.R. § 19.140; 32 C.F.R. § 22.420; 40 C.F.R. § 46.130; 42 C.F.R. § 455.436; FAR 2.101, 9.105–1, 9.207, 9.404, 17.207, 22.1025, 25.703-3, 28.203-7, 44.202-2, 44.303, 52.209-6; DFARS 252.209-7004; 48 C.F.R. §§ 519.7006, 519.7007, 570.108, 609.404, 809.404, 809.405, 809.406-3, 809.407-3, 819.7104, 828.203-7, 909.405, 1309.405, 1409.404.

65/ The DOD recently issued a final rule amending the DFARS to reflect the joining of the CCR, ORCA, and the EPLS into SAM. This rule revised various references to the legacy systems to replace them with the correct SAM references and terminology. 78 Fed. Reg. 28756 (May 16, 2013).

66/ 77 Fed. Reg. 197 (Jan. 3, 2012) (implementing Supplemental Appropriations Act, 2010, Pub. L. No. 111-212, § 3010, 124 Stat. 2302, 2340 (July 29, 2010)). A subsequent correction to the final rule provides that its clause prescription applies to solicitations issued on or after January 17, 2012, and resultant contracts. 77 Fed. Reg. 1640 (Jan. 11, 2012).

67/ 77 Fed. Reg. at 198; see also 76 Fed. Reg. 4188 (Jan. 24, 2011) (interim rule). See generally West, Richard & Whitehurst, "The Federal Awardee Performance & Integrity Information System," Briefing Papers No. 11-11 (Oct. 2011).

68/ See https://www.sam.gov/portal/public/SAM/.

69/ 31 U.S.C.A. §§ 3729–3733.

70/ See generally West, Richard & Whitehurst, "The Federal Awardee Performance & Integrity Information System," Briefing Papers No. 11-11 (Oct. 2011); Nash, "The Federal Awardee Performance and Integrity Information System (FAPIIS): How Will It Be Used?," 26 Nash & Cibinic Rep. ¶ 59 (Nov. 2102).

BRIEFING PAPERS