

SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
9000-0094, DEBARMENT AND SUSPENSION
(FAR Case No. 99-010)

A. Justification.

1. **Administrative requirements.** This is a request for revision of the information collection requirement currently approved under OMB Control Number 9000-0094 for Debarment, Suspension, and Other Responsibility Matters (FAR Subpart 9.1, Subpart 9.4, 52.209-5, 52.212-3(h), and 52.209-6. The revised information collection requests an increase from the approved level of 91,667 hours to 596,667 hours, based on increased requirements in the final rule under FAR Case 99-010, Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings.

This information collection, in compliance with Executive Order 12549, Debarment and Suspension, is necessary to determine the responsibility of prospective contractors, and to ensure that contractors protect the interests of the Government when issuing subcontracts under Government contracts.

i. Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (52.209-5 and 52.212-3(h)).

- Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only (9.103, Policy).
- To be determined responsible, a prospective contractor must have a satisfactory record of integrity and business ethics (9.104-1, General standards).
- 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters is prescribed at 9.409(a), for use in solicitations where the contract value is expected to exceed the simplified acquisition threshold. This requirement is also at paragraph (h) of the clause 52.212-3, Offeror Representations and Certifications—Commercial Items,

prescribed at 12.301(b)(2) for use in all solicitations for acquisition of commercial items. This certification requires the disclosure of the following critical factors, to be considered by the contracting officer in making a responsibility determination:

- The offeror or any of its principals have been—
 - Debarred, suspended, proposed for debarment, declared ineligible for contract award;
 - Convicted of or had a civil judgment rendered against them or indicted for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract, violation of Federal or state antitrust statutes relating to the submission of offers, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;
- The offeror has had a contract terminated for default.
- The final rule under FAR Case 99-010 revises 9.104-1 to state that a satisfactory record of integrity and business ethics must include satisfactory compliance with laws, including tax laws, labor and employment laws, environmental laws, antitrust laws, and consumer protection laws. Therefore, the final rule revises the certification at 52.209-5 and 52.212-3(h) to also require each offeror to certify whether, within the past three years, relative to tax, labor and employment, environmental, antitrust, or consumer protection laws, the offeror has—
 - Been convicted of a Federal or state felony (or has any Federal or state felony indictments currently pending against them);
 - Had a Federal court judgement in a civil case brought by the United States rendered against them;
 - Had an adverse decision by a Federal administrative law judge, board or commission.
- If the offeror has responded affirmatively, the offeror shall provide additional information if requested by the contracting officer.

- The final rule also corrects an error in the application of paragraph (h) of 52.212-3, limiting it to solicitations for contracts expected to exceed the simplified acquisition threshold. The estimates in the presently approved burden hours assume application above the simplified acquisition threshold, so no reduction results from this correction.

ii. Additional information (9.408(a)).

- When an offeror responds positively to the certification at 52.209-5 or 52.212-3(h) with regard to an indictment, charge, civil judgment, conviction, suspension, debarment, proposed debarment, ineligibility, or default of a contract, the contracting officer shall request such additional information from the offeror as the contracting officer deems necessary in order to make a determination of the offeror's responsibility.
- Under the final rule of FAR Case 99-010, this will also include a positive response regarding Federal or state felony convictions or indictments; adverse Federal court judgment in a civil case brought by the United States; or an adverse decision by a Federal administrative law judge, board, or commission for violation of any tax law, labor or employment law, environmental law, antitrust law or consumer protection law during the last three years.

iii. Obtaining disclosure from first-tier subcontractors (52.209-6(b)).

- Contractors shall not enter into a subcontract greater than \$25,000 with a subcontractor that has been debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so (9.405-2(b)).
- The clause at 52.209-6, Protecting the Government's Interest When Subcontracting with Contractor's Debarred, Suspended, or Proposed for Debarment, is prescribed at 9.409(b), for use in solicitations and contracts where the contract value exceeds \$25,000. Paragraph (b) requires that the contractor must require that each proposed first-tier subcontractor disclose to the contractor, in writing, whether as of the time of award of the subcontract, the subcontractor is or is not debarred, suspended, or proposed for debarment by the Government.

iv. Contractor notification to contracting officer.

- Paragraph (c) of clause 52.209-6 requires that before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment, a corporate officer or designee of the contractor must notify the contracting officer, in writing, of the name of the subcontractor; why the subcontractor is debarred, suspended, or ineligible; the compelling reason(s) for doing business with the subcontractor; and how the Contractor will protect the Government's interests when dealing with such subcontractor.
- For any subcontract subject to Government consent, contracting officers shall not consent to such subcontracts, unless the agency head or a designee states in writing the compelling reasons for approving such subcontract (9.405-2(a)).

2. **Uses of information.** The certifications in 52.209-5 and 52.212-3(h) and the additional information required pursuant to 9.408(a) are used by the contracting officer in evaluating a firm's responsibility for contract award. The information provided by the subcontractors under 52.209-6(b) is used by prime contractors to evaluate the responsibility of the subcontractors. The information provided by the prime contractor under 52.209-6(c) when proposing to subcontract with a subcontractor debarred, suspended, or proposed for debarment, is used by the contracting officer in cases where Government consent to subcontractor is required, and to evaluate the purchasing system of the Contractor during a Contractor Purchasing System Review.

3. **Consideration of information technology.** We use improved information technology to the maximum extent practicable. Where both the Government agency and contractors are capable of electronic interchange, the contractors may submit this information collection requirement electronically.

4. **Efforts to identify duplication.** This requirement is being issued under the Federal Acquisition Regulation (FAR) which has been developed to standardize Federal procurement practices and eliminate unnecessary duplication. The information requirement in paragraphs 1.i. and 1.iii. of this section A is only partially available through GSA's List of Parties Excluded from Procurement and Nonprocurement Programs. For example, GSA's list does not contain information about an offeror's convictions, civil judgments, or indictments. Furthermore, there is always a time lag between debarment, suspension, or proposed debarment, and actual appearance on the list. Information requirements in paragraphs 1.ii. and 1.iv. are not available from any other source.

5. **If the collection of information impacts small businesses or other entities, describe methods used to minimize burden.** The burden applied to small businesses is the minimum consistent with applicable laws, Executive orders, regulations, and prudent business practices. The provision 52.209-5 and 52.212-3(h) (as modified) does not apply to solicitations at or below the simplified acquisition threshold. The clause 52.209-6 only requires information regarding subcontracts greater than \$25,000. A high percentage of lower dollar value contracts and subcontracts are awarded to small businesses.

6. **Describe consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently.** Collection of information on a less frequent basis is not practical. The information is needed prior to award of a contract or subcontract to evaluate responsibility, and must be accurate at time of contract or subcontract award.

7. **Special circumstances for collection.** Collection is consistent with guidelines in 5 CFR 1320.6.

8. **Efforts to consult with persons outside the agency.** Under the procedures established for development of the FAR, agency and public comments were solicited and each comment addressed before finalization of the text. A notice in the December 14, 2006, (71 FR 75236), Federal Register, as required by 5 CFR 1320.8(d) made this requirement available to the public and requested comments.

9. **Explanation of any decision to provide any payment or gift to respondents, other than reenumeration of contractors or guarantees.** There will be no payment or gift to respondents, other than remuneration of contractors.

10. **Describe assurance of confidentiality provided to respondents.** This information is disclosed only to the extent consistent with prudent business practices and current regulations.

11. **Additional justification for questions of a sensitive nature.** No sensitive questions are involved.

12 & 13. **Estimated total annual public hour and cost burden.** The proposed rule required each offeror that responded affirmatively to the new certification to explain the nature of the violation and whether any fines, penalties, or damages were assessed and also permitted the contracting officer to request additional information. The paperwork burden estimate for the proposed rule included 375,000 hours for response to the new certification (3

hours per initial response, .5 hours per subsequent response) and 140,000 hours to supply additional information requested by the contracting officer (4 hours per initial response and 1 hour per subsequent response).

The final rule does not require any information other than the certification, unless requested by the contracting officer. Therefore, we have reduced the estimated hours per response to 1 hour per initial response and .3 hours per subsequent response, for a total of 185,000 hours for the certification itself, a reduction of 190,000 hours. We estimate that in many acquisitions, the contracting officer will only request additional information if the otherwise apparently successful offeror has certified affirmatively. However, in some source selections, the contracting officer may request such information from all offerors in the competitive range that certified affirmatively. Therefore, we still estimate 50,000 additional requests for information from 30,000 respondents. We have retained the burden estimate of 4 hours per initial response and 1 hour per subsequent response, for a total of 140,000 hours for providing additional information.

Several commenters on the proposed rule stated that businesses wishing to do business with the Government in excess of the simplified acquisition threshold will have to establish a system to track compliance and keep it current. As one commenter stated, no single official at any but the smallest companies is presently able to keep track of their compliance with all applicable laws, nor would they have reason to do so. We concur that most large businesses and some small businesses will probably establish a system to track such compliance. Such a system would be required in any complex organization to obtain the significant reductions that we have built into estimates of subsequent response time. Therefore, we have included an estimated average of 6 hours per year for recordkeeping for each of the 30,000 respondents to the request for additional information, for a total of 180,000 annual recordkeeping hours.

	<u>Current</u>	<u>Proposed Increase</u>	<u>TOTAL</u>
<u>Annual Reporting Burden</u>			
Number of respondents	89,995	0	89,995
Number of responses per respondent per year	x <u>12.22</u>	.56	x <u>12.78</u>
Total annual responses	1,100,000	50,000	1,150,000
Preparation time per response	x <u>.083</u>	.318	x <u>.362</u>
Total response burden hours	91,667	325,000	416,667
Recordkeeping hours:			<u>180,000</u>
Total burden hours:			596,667
<u>Annual Cost to the Public</u>			
Total burden hours	91,667	505,000	596,667
Average wages + overhead	x <u>\$42*</u>	<u>\$9.97**</u>	x <u>\$51.97</u>
Total cost to the public	3,850,014	\$27,160,000	\$31,010,014

*\$24/hr + 75%OH

**The additional hours are estimated to cost \$56 per hour (\$32/hr + 75%OH), which results in an increase in the average cost per hour of \$9.97.

14. **Estimated cost to the Government.** We have reduced the current estimated cost to the Government because the Government does not review subcontractor responses to the prime contractor. Average time required for Government review of the certification requirement is now estimated at 6 minutes per response, rather than 5 minutes for 400,000 of the 500,000 responses. However, for an estimated 100,000 responses in which the contracting officer must review the data in detail to make a responsibility determination, we estimate 12 hours per response. Also, the Government estimates the need for an additional 400,000 hours to review the additional information requested with regard to approximately 50,000 positive responses to the new certification requirement.

	<u>Current</u>	<u>Proposed Increase</u>	<u>TOTAL</u>
Total responses to Govt.	500,072	50,000	550,072
Govt. hours/response	.084	2.675	2.706
Total burden hours	41,843	1,606,800	1,488,662
Average wages + overhead (\$20/hr + 100% OH)			x \$40
Total Government cost			\$65,945,720

15. **Explain reasons for program changes or adjustments reported in Item 13 or 14.** The total estimated public burden of 596,667 hours is an increase of 505,000 hours from the 91,667 hours approved in 1999. This increase in public burden hours is due to the new requirements under FAR Case 99-010, as explained in paragraphs 1. and 12.

16. **Outline plans for published results of information collections.** Results of this information collection will not be published.

17. **Approval not to display expiration date.** We do not seek approval not to display the expiration date for OMB approval of the information collection.

18. **Explanation of exception to certification statement.** There are no exceptions to the certification accompanying this Paperwork Reduction Act submission. The information to respondents required by 50 CFR 1320.8(b)(3) will be provided in a separate Federal Register notice announcing the OMB approval of this collection of information

B. Collections of Information Employing Statistical Methods.

Statistical methods are not used in this information collection.