

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
9000-0018, CERTIFICATION OF INDEPENDENT PRICE DETERMINATION
AND PARENT COMPANY AND IDENTIFYING DATA**

A. Justification.

1. **Administrative requirements.** Agencies are required to report under 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) suspected violations of the antitrust laws (e.g., collusive bidding, identical bids, uniform estimating systems, etc.) to the Attorney General.

2. **Uses of information.** As a first step in assuring that Government contracts are not awarded to firms violating such laws, offerors on Government contracts must complete the certificate of independent price determination. An offer will not be considered for award where the certificate has been deleted or modified. Deletions or modifications of the certificate and suspected false certificates are reported to the Attorney General. Identification of the parent company is required to eliminate some suspected cases of antitrust violations.

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.

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.

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 basis other than solicitation-by-solicitation is not practical.

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

8. **Efforts to consult with person 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 Federal Register at 72 FR 64587, November 16, 2007, made this 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.** Not applicable.

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.** Time required to read and prepare information is estimated at .04 hours for the first completion, .0083 hours for subsequent completions, or an average of .01 hours per completion.

Certification of Independent Price Determination

Estimated respondents/yr.....	64,250
Responses annually.....x	20
Total annual responses.....	1,285,000
Estimated hrs/response.....x	.01
Estimated total burden/hrs.....	12,850
Estimated cost to public (\$24 + 75% OH).....	\$539,700

Parent Company and Identifying Data

Estimated respondents/yr.....	64,250
Responses annually.....x	20
Total annual responses.....	1,285,000
Estimated hrs/responses.....x	.01
Total burden hours.....	12,850
Cost to public (\$24 x 75% OH).....	\$539,700

14. **Estimated cost to the Government.** Time required for Governmentwide review is estimated at .0083 hours per response.

Certification of Independent Price Determination

Reviewing time/hr.....	.0083
Responses/yr.....x	1,285,000
Review time/yr.....	10,665.5
Average wages/hr.....x	\$20
Average wages/yr.....	\$213,310
Plus benefits and overhead of 100%.....+	213,310
Total Government cost.....	\$426,620

Parent Company and Identification Data

Reviewing time/hr.....	.0083
Responses/yr.....x	1,285,000
Review time/yr.....	10,665.5
Average wage/hr.....x	20
Average wage/yr.....	\$213,310
Plus benefits and overhead of 100%.....+	213,310
Total Government cost.....	\$426,620

15. **Explain reasons for program changes or adjustment reported in Item 13 or 14.** This submission requests an extension of OMB approval of an information collection requirement in the FAR. The information collection requirement in the FAR remains unchanged.

16. **Outline plans for published results of information collections.** Results will not be tabulated or published.

17. **Approval not to display expiration date.** Not applicable.

18. **Explanation of exception to certification statement.** Not applicable.

B. Collections of Information Employing Statistical Methods.

Statistical methods are not used in this information collection.

3.000 Scope of part.

This part prescribes policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence.

Subpart 3.1—Safeguards**3.101 Standards of conduct.****3.101-1 General.**

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

3.101-2 Solicitation and acceptance of gratuities by Government personnel.

As a rule, no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (a) has or is seeking to obtain Government business with the employee's agency, (b) conducts activities that are regulated by the employee's agency, or (c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Certain limited exceptions are authorized in agency regulations.

3.101-3 Agency regulations.

(a) Agencies are required by Executive Order 11222 of May 8, 1965, and 5 CFR 735 to prescribe "Standards of Conduct." These agency standards contain—

(1) Agency-authorized exceptions to [3.101-2](#); and

(2) Disciplinary measures for persons violating the standards of conduct.

(b) Requirements for employee financial disclosure and restrictions on private employment for former Government employees are in Office of Personnel Management and agency regulations implementing Public Law 95-521, which amended [18 U.S.C. 207](#).

3.102 [Reserved]**3.103 Independent pricing.****3.103-1 Solicitation provision.**

The contracting officer shall insert the provision at [52.203-1](#), Certificate of Independent Price Determination, in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(a) The acquisition is to be made under the simplified acquisition procedures in [Part 13](#);

(b) [Reserved]

(c) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(d) The solicitation is for utility services for which rates are set by law or regulation.

3.103-2 Evaluating the certification.

(a) *Evaluation guidelines.* (1) None of the following, in and of itself, constitutes "disclosure" as it is used in paragraph (a)(2) of the Certificate of Independent Price Determination (hereafter, the certificate):

(i) The fact that a firm has published price lists, rates, or tariffs covering items being acquired by the Government.

(ii) The fact that a firm has informed prospective customers of proposed or pending publication of new or revised price lists for items being acquired by the Government.

(iii) The fact that a firm has sold the same items to commercial customers at the same prices being offered to the Government.

(2) For the purpose of paragraph (b)(2) of the certificate, an individual may use a blanket authorization to act as an agent for the person(s) responsible for determining the offered prices if—

(i) The proposed contract to which the certificate applies is clearly within the scope of the authorization; and

(ii) The person giving the authorization is the person within the offeror's organization who is responsible for determining the prices being offered at the time the certification is made in the particular offer.

(3) If an offer is submitted jointly by two or more concerns, the certification provided by the representative of each concern applies only to the activities of that concern.

(b) *Rejection of offers suspected of being collusive.* (1) If the offeror deleted or modified paragraph (a)(1) or (a)(3) or paragraph (b) of the certificate, the contracting officer shall reject the offeror's bid or proposal.

(2) If the offeror deleted or modified paragraph (a)(2) of the certificate, the offeror must have furnished with its offer a signed statement of the circumstances of the disclosure of prices contained in the bid or proposal. The chief of the contracting office shall review the altered certificate and the statement and shall determine, in writing, whether the disclosure was made for the purpose or had the effect of restricting com-

petition. If the determination is positive, the bid or proposal shall be rejected; if it is negative, the bid or proposal shall be considered for award.

(3) Whenever an offer is rejected under paragraph (b)(1) or (b)(2) of this section, or the certificate is suspected of being false, the contracting officer shall report the situation to the Attorney General in accordance with [3.303](#).

(4) The determination made under paragraph (b)(2) of this section shall not prevent or inhibit the prosecution of any criminal or civil actions involving the occurrences or transactions to which the certificate relates.

3.103-3 The need for further certifications.

A contractor that properly executed the certificate before award does not have to submit a separate certificate with each proposal to perform a work order or similar ordering instrument issued pursuant to the terms of the contract, where the Government's requirements cannot be met from another source.

3.104 Procurement integrity.

3.104-1 Definitions.

As used in this section—

“Agency ethics official” means the designated agency ethics official described in 5 CFR 2638.201 or other designated person, including—

(1) Deputy ethics officials described in 5 CFR 2638.204, to whom authority under [3.104-6](#) has been delegated by the designated agency ethics official; and

(2) Alternate designated agency ethics officials described in 5 CFR 2638.202(b).

“Compensation” means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

“Contractor bid or proposal information” means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data (as defined by [10 U.S.C. 2306a\(h\)](#)) with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services Act of 1949 ([41 U.S.C. 254b\(h\)](#)), with respect to procurements subject to that section.

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as “contractor bid or proposal information” in accordance with applicable law or regulation.

(5) Information marked in accordance with [52.215-1\(e\)](#).

“Decision to award a subcontract or modification of subcontract” means a decision to designate award to a particular source.

“Federal agency procurement” means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovative research programs, each proposal received by an agency constitutes a separate procurement for purposes of the Act.

“In excess of \$10,000,000” means—

(1) The value, or estimated value, at the time of award, of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract, unless the contracting officer documents a lower estimate;

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

“Official” means—

(1) An officer, as defined in [5 U.S.C. 2104](#);

(2) An employee, as defined in [5 U.S.C. 2105](#);

(3) A member of the uniformed services, as defined in [5 U.S.C. 2101\(3\)](#); or

(4) A special Government employee, as defined in [18 U.S.C. 202](#).

“Participating personally and substantially in a Federal agency procurement” means—

(1) Active and significant involvement of an official in any of the following activities directly related to that procurement:

(i) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(ii) Preparing or developing the solicitation.

(iii) Evaluating bids or proposals, or selecting a source.

(iv) Negotiating price or terms and conditions of the contract.

(v) Reviewing and approving the award of the contract.

Subpart 3.3—Reports of Suspected Antitrust Violations

3.301 General.

(a) Practices that eliminate competition or restrain trade usually lead to excessive prices and may warrant criminal, civil, or administrative action against the participants. Examples of anticompetitive practices are collusive bidding, follow-the-leader pricing, rotated low bids, collusive price estimating systems, and sharing of the business.

(b) Contracting personnel are an important potential source of investigative leads for antitrust enforcement and should therefore be sensitive to indications of unlawful behavior by offerors and contractors. Agency personnel shall report, in accordance with agency regulations, evidence of suspected antitrust violations in acquisitions for possible referral to—

- (1) The Attorney General under [3.303](#); and
- (2) The agency office responsible for contractor debarment and suspension under [Subpart 9.4](#).

3.302 Definitions.

As used in this subpart—

“Identical bids” means bids for the same line item that are determined to be identical as to unit price or total line item amount, with or without the application of evaluation factors (*e.g.*, discount or transportation cost).

“Line item” means an item of supply or service, specified in a solicitation, that the offeror must separately price.

3.303 Reporting suspected antitrust violations.

(a) Agencies are required by [41 U.S.C. 253b\(i\)](#) and [10 U.S.C. 2305\(b\)\(9\)](#) to report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws. These reports are in addition to those required by [Subpart 9.4](#).

(b) The antitrust laws are intended to ensure that markets operate competitively. Any agreement or mutual understanding among competing firms that restrains the natural operation of market forces is suspect. Paragraph (c) of this section identifies behavior patterns that are often associated with antitrust violations. Activities meeting the descriptions in paragraph (c) are not necessarily improper, but they are sufficiently questionable to warrant notifying the appropriate authorities, in accordance with agency procedures.

(c) Practices or events that may evidence violations of the antitrust laws include—

- (1) The existence of an “industry price list” or “price agreement” to which contractors refer in formulating their offers;

(2) A sudden change from competitive bidding to identical bidding;

(3) Simultaneous price increases or follow-the-leader pricing;

(4) Rotation of bids or proposals, so that each competitor takes a turn in sequence as low bidder, or so that certain competitors bid low only on some sizes of contracts and high on other sizes;

(5) Division of the market, so that certain competitors bid low only for contracts let by certain agencies, or for contracts in certain geographical areas, or on certain products, and bid high on all other jobs;

(6) Establishment by competitors of a collusive price estimating system;

(7) The filing of a joint bid by two or more competitors when at least one of the competitors has sufficient technical capability and productive capacity for contract performance;

(8) Any incidents suggesting direct collusion among competitors, such as the appearance of identical calculation or spelling errors in two or more competitive offers or the submission by one firm of offers for other firms; and

(9) Assertions by the employees, former employees, or competitors of offerors, that an agreement to restrain trade exists.

(d) Identical bids shall be reported under this section if the agency has some reason to believe that the bids resulted from collusion.

(e) For offers from foreign contractors for contracts to be performed outside the United States and its outlying areas, contracting officers may refer suspected collusive offers to the authorities of the foreign government concerned for appropriate action.

(f) Agency reports shall be addressed to the—

Attorney General
U.S. Department of Justice
Washington DC 20530
Attention: Assistant Attorney General
Antitrust Division

and shall include—

(1) A brief statement describing the suspected practice and the reason for the suspicion; and

(2) The name, address, and telephone number of an individual in the agency who can be contacted for further information.

(g) Questions concerning this reporting requirement may be communicated by telephone directly to the Office of the Assistant Attorney General, Antitrust Division.