

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
9000-0094, DEBARMENT AND SUSPENSION**

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 a decrease from the approved level of 596,667 hours to 91,300 hours, based on decreased requirements in the rule under FAR Case 2001-000, 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 must include satisfactory compliance with laws, including tax laws, labor and employment laws, environmental laws, antitrust laws, and consumer protection laws (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 solicitations where the contract value is expected to exceed the simplified acquisition threshold 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—
 - o Debarred, suspended, proposed for debarment, declared ineligible for contract award;
 - o 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;
 - o Within the past three years, relative to tax, labor and employment, environmental, antitrust, or consumer protection laws, the offeror has-
 - o Been convicted of a Federal or state felony (or has any Federal or state felony indictments currently pending against them);
 - o Had a Federal court judgment in a civil case brought by the United States rendered against them;
 - o 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 offeror has had a contract terminated for default.
- The rule under FAR Case 99-010 revises 9,104-1 from "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" to read" a satisfactory record of integrity and business ethics." Therefore, the rule revises the certification at 52.209-5 and 52.212-3(h)to eliminate the requirement that each offeror certify whether, within the past three years, relative to tax, labor and employment, environmental, antitrust, or consumer protection laws, the offeror has-

- o Been convicted of a Federal or state felony (or has any Federal or state felony indictments currently pending against them);
- o Had a Federal court judgment in a civil case brought by the United States rendered against them;
- o Had an adverse decision by a Federal administrative law judge, board or commission.

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.
- The rule of FAR Case 2001-000, will eliminate 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. 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 published in the *Federal Register*, at 74 FR 18716 made this requirement available to the public and requested comments. No comments were received.

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 analysis for the rule estimates that the annual reporting burden for OMB Control Number 9000-0094 applies to only 89,995 respondents, of which approximately 50,000 would be affected by the modified certification requirement. The 39,995 subcontractors that respond to inquiries from the prime contractor regarding debarment, suspension, or proposed debarment are not affected by the modified certification

requirements. The total estimated responses of 500,000 per year is not affected by the modified certification requirements.

It is estimated that the modified certification requirement would reduce the total burden by 505,000 hours, for a new total from 596,667 to 91,300. This is based on an estimate of 50,000 respondents and 500,000 responses per year. It is estimated that the modified certification would take an average of 1 hour less for each of the 50,000 initial responses and .3 hours less for each of the 450,000 subsequent responses that year, for a total of 185,000 hours less to respond to the modified certification requirements. It is further estimated that in many acquisition, the contracting officer only requested additional information if the other wise apparently successful offeror had certified affirmatively. However, it is estimated, in some source selections, the contracting officer may request such information from all offerors in the competitive range that certified affirmatively. Therefore, a reduced burden of 140,000 hours for providing additional information is estimated. This is based on a 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. An additional reduction is estimated of 180,000 annual record-keeping hours based on an estimated average of 6 hours per year for record-keeping for each of the 30,000 respondents to request for additional information.

The Paperwork Reduction Act does not apply to the proposed FAR Part 31 cost principles changes because the changes do not impose information collection requirements that require Office of Management and Budget approval under 44. U. S. C. 3501, et. seq.

	<u>Current</u>	<u>Proposed</u> <u>Decrease</u>	<u>TOTAL</u>
Annual Reporting Burden			
Number of respondents	89,995	0	89,995
Number of responses per respondent per year	x <u>12.78</u>	·56	<u>x12.22</u>

Total annual responses	1,150,000	50,000	1,100,000
Preparation time per response	<u>x .362</u>	<u>.318</u>	<u>x .083</u>
Total response burden hours	416,667	325,000	91,300
Record-keeping hours:	180,000		
Total burden hours:	596,000		

Annual Cost to the Public			
Total burden hours	596,667	505,000	91,300
Average wages +overhead	<u>x \$53.85*</u>	<u>\$11.85**</u>	<u>x \$42</u>
Total cost to the public	\$32,130,014	\$28,280,000	\$3,834,600

*\$24/hr +75%OH

**The eliminated hours are estimated to cost \$56 per hour (\$32/hr +75%OH), which results in a decrease in the average cost per hour of \$11.85.

14. **Estimated cost to the Government.** Average time required for Government review of the new certification requirement is estimated at 5 minutes per response, rather than 6 minutes, for 400,000 of the 500,000 responses. However, for an estimated 100,000 responses in which the contracting officer would have reviewed the deleted data in detail to make a responsibility determination, we estimate 12 hours per response reduction.

Also, the Government estimates an additional reduction of 400,000 hours required to review the information requested under the certification before this modification eliminated the requirement with regard to approximately 50,000 positive responses to the deleted certification requirement.

	<u>Current</u>	<u>Proposed</u> <u>Increase</u>	<u>TOTAL</u>
Total responses to Govt.	550,072	50,000	500,072
Govt. hours/response	2.997	2.675	0.084
Total burden hours	1,488,662	1,606,800	41,843
Average wages +overhead (\$20/hr +100%OH)	x \$40	x \$40	x \$40
Total Government cost	\$65,945,720		\$1,673,720

15. Explain reasons for program changes or adjustments reported in Item 13 or 14. The total estimated public burden of 91,300 hours is a decrease of 505,000 hours from the 596,667 hours approved in 2000. This decrease 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.