

**SUPPORTING STATEMENT  
FOR PAPERWORK REDUCTION ACT SUBMISSION  
9000-0150, Small Disadvantaged Business Procurement Credit  
Programs**

**A. Justification.**

1. **Administrative requirements.** Federal Acquisition Regulation (FAR) Subparts 19.11 and 19.12 and FAR clauses 52.219-22, 52.219-23, 52.219-24, 52.219-25, and 52.219-26 implement the Department of Justice (DOJ) proposal to reform affirmative action in Federal procurement. DOJ's proposal is designed to ensure compliance with the constitutional standards established by the Supreme Court in Adarand Constructors, Inc. v. Pena, 115 S. Ct. 2097 (1995). In Adarand, the Supreme Court extended strict judicial scrutiny to Federal affirmative action programs that use racial or ethnic criteria as a basis for decisionmaking. In Federal procurement, this means any use of race in the decision to award a contract is subject to strict scrutiny. Under strict scrutiny, any Federal programs that make race a basis for contract decisionmaking must be narrowly tailored to serve a compelling government interest.

2. **Uses of information.** This information is used by Federal agencies to ensure that Federal acquisition programs, which consider race in the decision to award a Federal contract, meet the strict scrutiny requirements of Adarand and to monitor actual use of small disadvantaged firms under contracts awarded, in part, based on the prime contractors' agreement to utilize those firms. The information is also used by Federal contracting officers in making contract award decisions.

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. With the implementation of the Electronic Subcontracting Reporting System (eSRS), the contractors are now able to submit electronically subcontracting reports electronically. This electronic system will reduce the contractors' reporting time.

4. **Efforts to identify duplication.** This requirement is issued under the 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.** Within the constraints imposed by the need to implement the DOJ-proposed reforms, the FAR coverage was crafted throughout to select alternatives that would minimize any adverse economic impact on small business.

**6. Describe consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently.** Without the information collection covered by this clearance, the Federal Government will be unable to determine if race is being used in a manner consistent with the constitutional standards established by the Supreme Court in Adarand.

**7. Special circumstance for collection.** Collection is consistent with the 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 27800, June 11, 2009, made this requirement available to the public and requested comments. No major problems regarding this requirement were reported.

**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.** Information concerning a firm's status as a small disadvantaged business will be in accordance with procedures developed by the Small Business Administration and the Federal Acquisition Regulation (FAR). Information related to individual contract performance will become part of the contract file. Information contained in that file will be subject to review and release in accordance with the Freedom of Information Act.

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

## **12. Estimated total annual public hour burden.**

Based on the current FAR (Subparts 19.11 and 19.12), vendors must be certified by the Small Business Administration (SBA) in order for the price evaluation adjustment (19.11) to be applied and also for small disadvantaged business participation targets and incentive subcontracting program(19.12).

Estimates for the public hour burden include price evaluation adjustment (PEA) (19.11) and price evaluation factor or subfactor or incentive subcontracting, recordkeeping and reporting (19.12). A query (October 2009) of the Dynamic Small Business Search in the Central Contractor Registration resulted in approximately 12,600 certified small disadvantaged businesses (SDBs). However, the requirement for certified SDBs has drastically diminished since the last supporting statement for the Paperwork Reduction Act submission. The reasons for the drastic reductions are as follows:

FAR Subpart 19.12, Small Disadvantaged Business Participation Program includes the price evaluation factor or subfactor and incentive subcontracting program for SDBs and is applicable for instances where a subcontracting plan under FAR Subpart 19.7 could apply. FAR Subpart 19.12 does not apply to Multiple Award Schedule contracts, negotiated acquisitions where the lowest price technically acceptable source selection process is used, and contract actions that will be performed entirely outside of the United States and its outlying areas. In addition, Subpart 19.12 does not apply to all NAICS codes but only to certain NAICS and/or regions. Therefore, FAR Subpart 19.12, Small Disadvantaged Business Participation Program would not apply in all cases. In addition, on October 3, 2008, the Small Business Administration (SBA) published a revision to 13 Code of Federal Regulations (CFR) Part 124 in the Federal Register (73 FR 57490) which now allows firms to self-represent their status for subcontracting purposes without receiving a SDB certification. Moreover, with the implementation of the Electronic Subcontracting Reporting System (eSRS), the amount of time to report data via the electronic system should reduce the recordkeeping and reporting hours.

FAR Subpart 19.11 currently requires application of the Price Evaluation Adjustment (PEA) to only NASA, DoD and

Coast Guard for certified small disadvantaged businesses. This reduces the number of certified SDBs that will be involved in procurements where the PEA could be applied for specific NAICS codes/regions. Also, on February 26, 2009, the Federal Circuit directed the United States District Court, Western District of Texas, to enter a judgment declaring Section 1207 as enacted in 2006 (i.e. the current 10 U.S.C. § 2323) to be facially unconstitutional and enjoined its further application for DoD. This decision drastically impacts the requirement for small disadvantaged business requirements for federal acquisitions.

It is estimated that approximately 1,500 small disadvantaged business concerns will attempt to secure contracts that will involve the requirements of FAR Subparts 19.11 or 19.12. Estimated hours for completion of certifications (1 hour), preparation of targets or (3 hours) and recordkeeping and reporting are 1.0 hours.

**13. Estimated total annual public cost burden.**

a. Total annual responses:	1,500
b. Responses per respondent:	2
c. Total annual responses:	3,000
d. Hours per response:	<u>x 5</u>
e. Total hours:	15,000
f. Average cost per hour:	<u>x \$34*</u>
g. Total annual cost to public:	\$510,000

\*Completion of certifications, preparation of targets, recordkeeping and reporting is expected to be accomplished by midlevel personnel equivalent to a GS-11, step 5, salary for fiscal year 2009 (\$27/hour base pay scale plus 25% overhead burden (\$34/hour).

**14. Estimate of annualized costs to the Federal Government.**

a. Total annual responses:	3,000
b. Hours per response:	<u>x 1*</u>
c. Total hours:	3,000
d. Average cost per hour:	<u>x34**</u>
e. Total annual cost to Government:	\$102,000

\*1 hour for evaluation of factor or subfactor for each proposal whether a firm does or does not win award or utilization of the incentive subcontracting program.

\* \*Completion of certifications, preparation of targets, recordkeeping and reporting is expected to be accomplished by midlevel personnel equivalent to a GS-11, step 5, salary for fiscal year 2009 (\$27/hour base pay scale plus 25% overhead burden (\$34/hour)).

**15. Explain reasons for program changes or adjustments 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 has changed because the number of certified small disadvantaged business concerns was overstated in the previous collection and the fact that the Government now relies on eSRS to collect subcontracting information.

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

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

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

**B. Collection of Information Employing Statistical Methods.**

Statistical methods will not be employed.