

Justification for Collection

9000-XXXX, FAR Case 2007-006

Contractor Compliance Program and Integrity Reporting

A. Justification.

1. Administrative requirements. This is a request for a new information collection requirement for FAR Case 2007-006 (Proposed Rule), Contractor Compliance Program and Integrity Reporting. This rule requires the contractor to report violations of Federal criminal law, in connection with the award or performance of any Government contract performed by the Contractor (principal, employee, agent) or subcontractor.

On May 23, 2007, the Office of Federal Procurement Policy received a request from the Department of Justice (DOJ) to open a FAR case to require contractors to have a code of ethics and business conduct, establish and maintain specific internal controls to detect and prevent improper conduct in connection with the award or performance of Government contracts or subcontracts, and to notify the agency Office of the Inspector General, with a copy to the contracting officer whenever they become aware of violations of Federal criminal law with regard to their Government contracts or subcontracts.

Subsequently, the Department of Justice requested that the requirement to timely notify the Government be expanded to include violations of the civil False Claims Act.

In addition, based on public comments received, the rule was expanded to include the clause 52.203-13, Contractor Code of Ethics and Business Conduct, in contracts performed overseas and in contracts for the acquisition of commercial items.

2. Use of information. Under the proposed rule, contractors are required to notify contracting officers whenever they become aware of violations of Federal Criminal law with regard to their contract. The objective of the notification requirement is to emphasize the critical importance of integrity in contracting and reduce the occurrence of improper or criminal conduct in connection with the award and performance of Federal contracts and subcontracts. Information obtained from the notification

requirements will be referred to the agency Inspector General. Whenever, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law, in connection with the award or performance of any Government contract performed by the Contractor or subcontractor, the contractor is required to timely report this information, in writing, to the Inspector General and with a copy to the Contracting Officer.

The purpose of the contractor's disclosure is to alert Government Officials, primarily the IG's office on the possible need for them to conduct their own investigations. A written format was purposely not specified or required for this reporting requirement, because the rule specifically requires the Contractor to disclose "credible evidence of a violation" of Federal criminal law or a violation of the False Claims Act, involving fraud, conflict of interest, bribery, or gratuity violations. The rule leaves it to the contractor to determine if credible evidence of such violation exists for reporting purposes. Requiring the Contractor to disclose the "credible evidence of a violation" in a particular format or on a particular form would increase the Contractor's burden. Thus disclosures can be in the amount the Contractor deems appropriate for the reporting violations. This open disclosure format will reduce the amount of paperwork burden on the contracting community.

3. Consideration of information technology. Contractors have the option to use electronic interchange to comply with the notification requirements.

4. Describe efforts to identify duplication.

FAR Case 2006-007, Contractor Code of Business Ethics and Conduct, was published on February 16, 2007 (72FR 7588), which proposed the creation of a new FAR subpart 3.10 to address the requirements for a contractor code of business ethics and conduct. This case serves as the baseline for the proposed rule and covers some areas requested by DOJ. However, several aspects of the DOJ request go beyond FAR Case 2006-007. This rule covers the new proposals by DOJ which includes this reporting requirement.

5. If the collection of information impacts small businesses (item 5 of OMB 83-1) describes any methods used to minimize the burden.

In FY 2006 there were 144,854 small business concerns listed in FPDS-NG with unique DUNS numbers. The Government estimates that of the listed small business concerns, approximately 116,000 (80%) will receive contracts in a given fiscal year. Government small business experts also estimate that at least twice that number of small businesses (232,000) will receive subcontracts. However, the only small business concerns impacted by the information collection requirements of this clause which requires contractors to report violations of Federal criminal law are those small businesses that are aware of such violations with regard to their Government contracts or subcontracts.

To minimize the impact on small business concerns, the Government adopted the following alternatives:

- The requirement for formal training programs and internal control systems are inapplicable to small business concerns.
- The requirement for mandatory reporting is limited to
 - violations of Federal criminal law or civil False Claims Act in connection with performance or award of a Government contract performed by the contractor or a subcontract there under, rather than requiring report of any improper conduct, even that which is not a violation of Federal criminal law, or
 - reports of violations under the contracts of other contractors.

6. Describe the consequences to Federal activities if the collection is not conducted or is conducted less frequently.

FAR Case 2007-006 is in response to a request to the Office of Federal Procurement Policy from the Department of Justice. The requirement for mandatory disclosure is necessary because few companies have actually responded to the invitation of DoD that they report or voluntarily disclose suspected instances of violations of Federal criminal law relating to the contract or subcontract. Without mandatory disclosure, the occurrence of improper or criminal conduct in connection with the award and

performance of Federal contracts and subcontracts may not be slowed or stopped.

7. Special circumstances for collection. No special circumstances for collections exist.

8. Efforts to consult with persons outside the agency. Under the procedures established for development of the FAR, agency and public comments are being sought for FAR Case 2007-006. Any substantive comments received from interested parties outside the agency will be considered in the formation of a final rule.

9. Explanation of any decision to provide any payment or gift to respondents, other than reenumeration of contractors or guarantees. No such payments or gifts are contemplated.

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. Integrity in contracting is of critical importance, and it is necessary for contractors to report violations of Federal criminal law in connection with the award or performance of Government contracts and subcontracts in order to reduce the occurrence of such criminal conduct and to promptly investigate and deal with it, when it occurs.

12. Estimated total annual public hour burden.

The annual total burden hours as follows:

Based on review of FY 2006 contract awards as entered in the Federal Procurement Data System, the Government estimate that 5400 contractors per year will be subject to the clause 52.203-13 (contracts greater than \$5 million). It's estimated that of those 5400 contractors, 216(4%) will report violations of Federal criminal law with regard to performance or award of a Government contract or subcontract. In addition, the Councils estimate that 68 contractors that do not have the clause 52.203-13 in their contract will also report such violations.

The Government's estimate for contractors subject to the clause, begin at 1400 (the number of contractors and subcontractors that are small businesses, rather than the

number 3600 (which would include small and large businesses). The number 3600 has now been increased by 50% to 5400, to include commercial contracts and contracts performed outside the United States.

Wages are based on the average hourly wage and associate overhead of a lawyer and business manager that may be responsible for disclosing violations of Federal criminal law.

Respondents:		284
Responses per respondent:	X	<u>1</u>
Total annual responses:		284
Preparation hours per response:	X	<u>60</u>
Total response burden hours:		17,040
Averages wages (\$75 + 32.85% OH)		<u>X \$100</u>
Estimated cost to the Public		\$170,040

13. There are no capital start-up or operational land maintenance costs associated with this information collection, other than the hour burden detailed in paragraph 12.

14. Estimated cost to the Government.

The time required for the Government review is estimated at 24 hours. The cost is based on the average hourly wage salary of GS 13, plus 100% overhead.

Reviewing time/hr		24
Responses/yr	X	<u>284</u>
Review time/yr		6816
Average wages \$33/hr. + 32.85% OH)		<u>X \$44</u>
Total Government cost	\$	299,904

15. Explain reasons for program changes or adjustment reported in Item 13 or 14. Not applicable.

16. Outline plans for published results of information collection. Results of this information collection will not be published. However, the information may be used by the agency Inspector General (IG) to conduct appropriate investigations or refer matters to the U.S. Department of Justice. Contracting Officers copied on the collection will be advised by the agency IG of any action to be taken.

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

18. **Explanation of exception to certification statement.**
No applicable.

B. Collections of Information Employing Statistical Methods.

Statistical methods are not used in this information collection.