

**Supporting Statement
for Paperwork Reduction Act Submission
Information Collection 9000-00xx; Information Regarding Responsibility Matters
(Re: Far Case No. 2008-027; FAR 52.209-XX)**

A. Justification.

1. Administrative requirements. This is a request for a new information collection requirement.

This justification for a new information collection is in compliance with section 872 of the Duncan Hunter National Defense Authorization Act of 2009 (Public Law 110-417), enacted on October 14, 2008. Section 872 of the Act requires the General Services Administration (GSA) to develop and maintain a database containing specific information on the integrity and performance of covered Federal agency contractors and grantees.

a. Information Required by the Statute to be Included in the Data System.

Section 872 defines a covered person as any person awarded a Federal agency contract or grant in excess of \$500,000 and any person awarded “such other category or categories of Federal agency contract as the FAR may provide...” Information to be included in the data system is listed in section 872 and must cover the most recent five-year period for--

- i. Each civil or criminal proceeding, or any administrative proceeding in connection with the award or performance of a contract or grant with the Federal government during the period when the proceeding results in one or more of the following:
 - A. A criminal proceeding resulting in a conviction.
 - B. A civil proceeding resulting in a finding of fault and liability that results in payment of a monetary amount of \$5,000 or more.
 - C. An administrative proceeding resulting in a finding of fault and liability that results in payment of a monetary fine or penalty of \$5,000 or more; or payment of a monetary reimbursement, restitution, or damages in excess of \$100,000.
 - D. A disposition of the matter by consent or compromise with an acknowledgment of fault by the covered person if the proceeding could have led to any of the outcomes specified in subparagraphs a, b, or c above.
- ii. Each Federal contract and grant awarded to the person that was terminated due to default.
- iii. Each Federal administrative agreement entered into between the person and the Federal government to resolve a suspension or debarment proceeding.
- iv. Each final finding by a Federal official that the person has been determined not to be a responsible source pursuant to subparagraph (C) or (D) of section 4(7) of the OFPP Act (41 U.S.C.403(7)).
- v. Such other information as shall be provided for purposes of this section in the FAR.

vi. To the maximum extent practical, information similar to that mentioned in 2 and 3 above, in connection with the award or performance of a contract or grant with a State government.

b. Information Regarding Responsibility Matters (52.209-XX).

The FAR drafters attempted to minimize the data necessary to be collected from offerors. Working with subject matter experts from the information technology community, the drafters tried to identify existing sources of information that would not require the creation of additional data submissions as far as possible. If no existing source was found, preference was given to obtaining data from Government sources rather than contractors/awardees.

i. Existing sources.

A. The Excluded Parties List System (EPLS).

B. Past Performance Information Retrieval System (PPIRS) and Contractor Performance Assessment Reporting System (CPARS).

ii. Sources within the Government.

A. Contracting officer determinations of non-responsibility and terminations for default or cause.

B. Suspension/Debarment Official (SDO) for entry of necessary information with regard to administrative agreements.

iii. Contractors. The information relating to criminal, civil, and administrative proceedings could only be provided by the offerors.

Therefore, a new solicitation provision has been developed for inclusion in solicitations expected to result in a contract of \$500,000 or more. A new provision (FAR 52.209-XX, Information Regarding Responsibility Matters) will require each offeror to check a box indicating whether it has, or has not, current Federal government contracts and grants totaling \$10,000,000 or more. If the offeror checks the box indicating that it does not currently have contracts and grants of at least \$10,000,000, that is the extent of the information collection. If, however, the offeror checks the box indicating that it does currently have contracts and grants of at least \$10,000,000, and the offeror has not updated its Central Contactor Registration (CCR) database in the last six months, then the offeror is obligated to go to the CCR web site and enter the following information:

“52.209-XX (c)

(1) (i) Whether the offeror, and/or any of its principals, has or has not, within the last five years, been involved in a civil or criminal proceeding, or any administrative proceeding, in connection with the award to or performance by the offeror of a Federal or State contract or grant, to the extent that such proceeding resulted in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(C) In an administrative proceeding, a finding of fault and liability that results in—

- (1) The payment of a monetary fine or penalty of \$5,000 or more; or
- (2) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(D) To the maximum extent practicable and consistent with applicable laws and regulations, in a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in subparagraphs (i), (ii), or (iii).

(ii) If the offeror checked “has” to the information request in (b)(1)(i), the offeror shall provide the requested information with regard to each occurrence.”

In addition, the final rule includes a clause that requires Contractors to semi-annually update of the information in FAPIIS.

2. Uses of information. The information provided to the website by the contractor will be used by contracting officers when making present responsibility determinations prior to awarding contracts.

3. Consideration of information technology. We use improved information technology to the maximum extent practicable. Offerors may submit their 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 required from the offeror is 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 at 52.209-XX does not apply to solicitations at or below the simplified acquisition threshold. The provision only is inserted in solicitations over \$500,000. 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 it must be accurate at time of contract award.

7. Special circumstances for collection. This 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 in the *Federal Register* published at 74 FR 45579, September 3, 2009. No responses were received regarding the information collection.

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 requires for every solicitation of \$500,000 or more that the offeror respond whether it has, or has not, current contracts and grants under performance that total at least \$10,000,000. Only if the offeror responds affirmatively is there any further information collection requirement. Given that the amount of current Federal contracts and grants is basic knowledge for any firm, the estimated number of hours for this initial response is 0.1 hours. Using data from the Federal Procurement Data System—Next Generation (FPDS-NG), we estimate that there will be approximately 12,000-14,000 contracts over \$500,000 each year. Estimating between five and six responses to each solicitation, then believe there will be 80,000 responses annually to the has/has not question.

We expect that 5,000 contractors will answer the first question affirmatively and then will have to enter data into the website. We have used a burden estimate of 0.5 hours to enter the company's data into the website. This time estimate does not include the time necessary to maintain the company's information internally. Most large businesses and some small businesses probably have established systems to track compliance. At this time, all or most Government contractors have entered relevant company data in the Central Contractor Registration (CCR) in accordance with another information collection requirement. Therefore, the estimate includes an average of 50 hours per year for recordkeeping for each of the 5,000 respondents to the request for additional information, for a total of 500,000 annual recordkeeping hours.

<u>Annual Reporting Burden</u>	<u>TOTAL</u>
<u>Initial response:</u>	
Respondents:	8,000
Responses per respondent	<u> x 10</u>
Total annual responses	80,000
Preparation time per response (hours)	x <u> 0.1</u>
Total response burden hours	8,000

Additional response:

Number of respondents	5,000*
Responses per respondent	x 2**
Total annual responses	10,000
Preparation time per response	x 0.5
Total response burden hours	5,000
Recordkeeping hours	+ 500,000
Total burden hours	505,000

Annual Cost to the Public

Total burden hours	513,000
Average wages + overhead	x \$51.97
Total cost to the public	\$33,670,610

* These respondents are a subset of the 8000 initial respondents.

** The information that must be submitted for this information collection is required by law to be updated at least every six months, i.e., twice a year.

14. Estimated cost to the Government. There is no estimated cost to the Government for the contractor's information collection requirement, because the Government does not review or correct contractor entries. The Government requirement to review all contractor responsibility information prior to selecting a successful offeror is already addressed under another information collection requirement (9000-0094).

15. Explain reasons for program changes or adjustments reported in Item 13 or 14. There are no adjustments reported in Item 13.

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.

B. Collections of Information Employing Statistical Methods.

Statistical methods are not used in this information collection.