

**Supporting Statement for Collection  
9000-0164, Contractor Business Ethics Compliance Program and  
Disclosure Requirements**

**A. Justification.**

**1. Administrative requirements.** This is a request for an information collection renewal requirement concerning the Office of Management and Budget (OMB) Control Number 9000-0164; Contractor Compliance Program and Integrity Reporting.

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 contracting officers without delay whenever they become aware of violations of Federal criminal law with regard to 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 in contracts performed overseas and contracts for the acquisition of commercial items.

**2. Use of information.** Under the 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.

**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 2007-006 Contractor Code of Business Ethics and Conduct, published 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, 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 2007-006. The rule covers the new proposals by DOJ.

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

In FY 2010 there were 146,560 small business concerns listed in FPDS-NG with unique DUNS numbers. The Government estimates that of the listed small business concerns, approximately 117,000 (80%) will receive contracts in a given fiscal year. Government small business experts guess that at least twice that number of small businesses (234,000) will receive subcontracts. However, the only small business concerns impacted by the information collection requirements of this clause requiring contractor reporting of 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 encumbered or circumvented.

**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. A notice published in the *Federal Register* at 73 FR 67064, on November 12, 2008. Substantive comments received from interested parties outside the agency were considered in the formation of the final rule.

On June 27, 2011 a Notice of request for public comments regarding an extension to an existing OMB clearance was published in the Federal Register at 76 FR 37353. One public comment was received in strong support for extending the clearance.

On September 30, 2011 a Notice of request for public comments regarding a revision to an existing OMB clearance was published in the Federal Register at 76 FR 60837. No comments were received on this Federal Register notice.

**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 2010 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.

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)	X <u>\$100</u>
Estimated cost to the Public	1,704,000

**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 \$50/hr. + 32.85% OH)	X <u>\$67</u>
Total Government cost	\$456,672

**15. Explain reasons for program changes or adjustment reported in Item 13 or 14.** The 60 hour burden estimate reflects what was published in the November 12, 2008; final rule (73 FR 67064). There (page 73 FR 67090) the Government stated an initial estimate of 3 hours was inadequate and revised estimated burden hours to 60 per response. The change particularly considers the hours that would be required for the collection within a company, prior to release to the Government. These numbers were also used in the previous original supporting statement. The estimated cost to the Government is updated to reflect current GS-13 wages averaging \$50 per hour.

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