

**Supporting Statement for Information Collection Submission
3090-0221 – Civilian Board of Contract Appeals Rules of Procedure**

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The Civilian Board of Contract Appeals was established within GSA by section 847 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163, to hear and decide, among other matters, contract disputes between Government contractors and Executive agencies (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Rate Commission, and the Tennessee Valley Authority) under the provisions of the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (as codified by Pub. L. 111-350 (2011)), and regulations and rules issued thereunder. Attachment A. Section 7105(f) of the CDA specifically authorizes administrative judges to require by subpoena the attendance of witnesses for the taking of testimony or evidence by deposition or in the hearing of an appeal, and the production of books and papers. The CDA provides that the Board shall have rules of procedure necessary for the fair and expeditious resolution of appeals and petitions. See 41 U.S.C. §§7105(g), 7106. The Board's rules of procedure of May 12, 2008, govern proceedings before the Board in appeals and petitions. Attachment B. Board Rule 16 implements section 7105(f) of the CDA by requiring parties requesting issuance of a subpoena to use GSA Form 9534, contained in the Appendix to the Board's rules.

In order to facilitate disposition of cases in which the Board issues a decision awarding a party money from the permanent indefinite judgment fund, Board Rule 31 requires the parties to submit certifications containing the information provided in Forms 4 and 5, Certificates of Finality, which are used by the Department of the Treasury to process payment of the award. Treasury will not certify the award for payment without certifications as provided in Forms 4 and 5. See Attachment C.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The three forms collect the following information:

a. GSA Form 9534. GSA Form 9534 is mandatory for every subpoena issued by the Board. Board Rule 16. A subpoena is signed by an administrative judge and completed before service by the party who requests its issuance. A mandatory form is required because the requirements for the content and service of a subpoena are very precise and because failure to obey a subpoena may result in punishment for contempt by a U.S. district court.

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b. Form 4—Government Certificate of Finality; and

c. Form 5—Appellant/Applicant Certificate of Finality. Whenever the Board issues a decision awarding a party any money from the permanent indefinite judgment fund², certifications as provided in Forms 4 and 5 are used in order to process payment of the award. Board Rule 31. Each party is asked to certify that it will not seek reconsideration of or appeal the Board’s decision. A copy of each Certificate is sent to the Judgment Fund Branch (JFB) of the Financial Management Service, Department of the Treasury, along with a certified copy of the Board’s decision, and certain other forms required by the JFB. The JFB may then certify the award for payment from the judgment fund. Certifications such as those provided in Forms 4 and 5 are therefore required in order to facilitate disposition of cases in which a monetary award is made. Forms 4 and 5 are not mandatory. Board Rule 31.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

Not applicable. “Improved information technology” would not further reduce the minimal effort required to complete any of the forms.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The three forms serve very different purposes and are not duplicative. The forms pertain to specific cases filed with the Board. No “similar information” is “already available.”

5. If the collection of information impacts small businesses or other small entities (item 5), describe any methods used to minimize burden.

Each form is short and requires only that information essential for the Board to process the case. The burden of completing any of the forms is minimal.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

²¹Board award of attorney fees under the Equal Access to Justice Act, 5 U.S.C. § 504, are paid from agency operating appropriations.

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If the collection were conducted less frequently, the Board would be unable to fulfill its statutory responsibilities of hearing and deciding appeals and petitions.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner requiring respondents to:

- **Report information to the agency more often than quarterly;**
- **Prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Submit more than an original and 2 copies of any document;**
- **Retain records, other than health, medical, government contracts, grant-in-aid, or tax records, for more than 3 years;**
- **In connection with a statistical survey, that is not designed to produce valid, reliable results that can be generalized to the universe of study;**
- **Require the use of a statistical classification that has not been reviewed and approved by OMB;**
- **Include a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Not applicable.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

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A notice was published in the *Federal Register* at 77 FR 5020, on February 1, 2012, No comments were received.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

Not applicable; no payment or gift is provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

There is no confidentiality provided to respondents. Information filed with the Board on GSA Form 9534 becomes part of the record of the appeal, petition, or application and is available for public inspection. Board Rule 9(d). Forms 4 and 5 are not retained by the Board.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Not applicable; the forms do not ask questions of a “sensitive nature.”

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside**

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**parties for information collection activities should not be included here.
Instead, this cost should be included in Item 13.**

The estimates of the hour burden of the collection of information are as follows:

(a) Summary of hour burden estimates:

Form 9534 (Subpoena)

Total Annual Respondents	25
Responses per respondent	1
Estimates hours/response	10 (minutes)
Estimated total burden/hours	4.2

Form 4

Total Annual Requests	30
Responses per respondent	1
Estimates hours/response	5 (minutes)
Estimated total burden/hours	2.5

Form 5

Total Annual Requests	30
Responses per respondent	1
Estimates hours/response	5 (minutes)
Estimated total burden/hours	2.5

Form 9534: Subpoenas are not sought with any regularity by litigants before the Board. We estimate that at most 25 subpoena forms for contract appeals and petitions are filled out by respondents in the course of a year. Form 9534 may be completed in approximately 10 minutes.

Form 4: Form 4 is applicable only when (1) the Board makes a monetary award to an appellant, and (2) the party receiving the award seeks payment under 31 U.S.C. § 1304. Approximately 240 appeals are filed per year. Of those, approximately 30 will include monetary awards that involve payment under 31 U.S.C. §1304. Therefore, we estimate that 30 copies of Form 4 will be filed by the Government each year. Form 4 may be completed in approximately 5 minutes.

Form 5: Form 5 is the counterpart of Form 4 for non-Government parties, so the same explanation of our estimate of 30 forms applies. Form 5 also may be completed in approximately 5 minutes.

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b. Estimate of annual cost for hour burdens:

Since the subpoena form and Forms 4 and 5 can be filled out by the equivalent of GS-9, 10, or 11 attorneys in the Federal Government, we used a liberal hourly wage estimate (which includes fringe benefits, estimated at 20% of the base wage rate) of a GS-11, Step 1 rate (as of January 2012) to cover both Government and non-Government respondents. Multiplying that rate—\$35.92—by the number of hours to be spent in completing all of the forms, 9.2 hours (see paragraph “a” above), we arrived at our estimate of annualized hours burden costs of \$330.43.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)

- **The cost estimate should be split into two components: (a) total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling, and testing equipment, and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995; (2) to achieve regulatory compliance with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the Government or (4) as part of customary and usual business or private practices.**

a. Estimated total capital and start-up costs: \$0. There are no capital or start-up costs connected with filling out GSA Form 9534 or Forms 4 and 5.

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b. Estimated total operation, maintenance, and purchase of services costs: \$0. There are no costs of this type other than those associated with the hour burden costs covered in Item 12.

14. Provide estimates of annualized costs to the Federal Government. Also, provide a description of the method used to estimate cost, which should include qualification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The annual costs to the Federal Government connected with GSA Form 9534 and Forms 4 and 5 consist of the costs to the Civilian Board of Contract Appeals and to agencies who are parties to contract appeals and petitions.

The Board’s costs include: the cost of printing/photocopying the forms, supplying the forms to respondents, and receiving and processing (filing) some of the completed forms. Annualized printing/photocopying costs should be approximately \$8.50 (using an estimate of \$.10 per form and 85 forms per year—see Item 12). Support staff and overhead should each be a zero marginal cost because the forms can be supplied to respondents, returned to the Board, and processed by Board clerical employees along with other documents filed for litigation purposes. There are no other overheads or other expenses specifically incurred by the Board in connection with GSA Form 9534 and Forms 4 and 5.

The cost to the agencies who are parties to contract appeals and petitions is the cost of completing and transmitting the completed forms. The estimated total annual hour burden cost for all respondents is estimated to be \$330.43 (see Item 12(b)). One-half of that burden may be attributed to Government respondents, at an estimated annual cost of \$165.21.

Therefore, total annual costs to the Federal Government are \$173.71 (\$8.50 + \$165.21).

Total requests per year	85
Average wage per hour	\$ 35.92
Review time in hours	<u>9.2</u>
Annualized hours burden costs	\$ 330.43
Cost to Government (50%)	\$ 165.21
Cost for printing	<u>\$ 8.50</u>
Total cost to Government	\$ 173.71

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14.

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Not applicable.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Not applicable; the Board does not publish the information that it collects.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19, “Certification for Paperwork Reduction Act Submissions”.

Not applicable.

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B. Collections of Information Employing Statistical Methods

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-I is checked, “Yes,” the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

- 1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection methods to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.**
- 2. Describe the procedures for the collection of information including:**
 - **Statistical methodology for stratification and sample selection,**
 - **Estimation procedure,**
 - **Degree of accuracy needed for the purpose described in the justification,**
 - **Unusual problems requiring specialized sampling procedures, and**
 - **Any use of periodic (less frequent than annual) data collection cycles to reduce burden.**
- 3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield “reliable” data that can be generalized to universe studied.**
- 4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of test may be submitted for approval separately or in combination with the main collection of information.**
- 5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

Not applicable.