

**Supporting Statement for
OMB Control No. 9000-0181, FAR Case 2008-025,
Preventing Personal Conflicts of Interest for Contractor
Employees Performing Acquisition Functions**

A. Justification.

1. Administrative requirements. This is a request for a new information collection requirement concerning the Office of Management and Budget (OMB) Control Number 9000-0181, FAR Case 2008-025, Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions.

This case was opened on October 21, 2008, to implement Section 841(a) of the National Defense Authorization Act, Fiscal Year 2009 (Pub. L. 110-417). The FAR principals tasked the FAR Acquisition Law Team (the Law Team) to prepare a draft proposed rule and report to implement section 841(a), due December 10, 2008. The Team was subsequently tasked to analyze the public comments and prepare a draft final rule.

Section 841(a) requires the Administrator for Federal Procurement Policy to develop and issue a standard policy to prevent personal conflicts of interest by contractor employees performing acquisition functions closely associated with inherently governmental functions, and an associated personal conflicts of interest clause or set of clauses. The Law Team has worked closely with OFPP in preparing the required FAR coverage to implement OFPP policy.

2. Use of information. Under the final rule, contractors are required to notify contracting officers whenever they become aware of any personal conflicts of interest violations by a covered employee. The objective of the notification requirement is to emphasize the critical importance of integrity in contracting and reduce the occurrence of personal conflicts of interest violations by contractor employees performing acquisition-related functions.

In addition, contractors have the opportunity, in exceptional circumstances, to request mitigation or waiver of the personal conflicts of interest standards. The information is used by the Government to evaluate the requested mitigation/waiver.

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.

There is no duplication or overlap with existing acquisition regulations.

5. If the collection of information impacts small businesses describe 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 117,200 (80%) will receive contracts in a given fiscal year. Government small business experts guess that at least twice that number of small businesses (234,400) will receive subcontracts. However, the only small business concerns impacted by the information collection requirements of this rule are those receiving contracts that exceed \$150,000 and have employees performing acquisition-related functions for the Government.

It is good business practice to have procedures in place to screen covered employees for potential conflicts of interest and to maintain effective oversight to verify compliance. Nor is it a significant economic burden to report to the contracting officer personal conflicts of interest violations by covered employees and the corrective actions taken.

The final rule has also reduced potential burden by-

1. Not including a certification requirement;
2. Not requiring a formal training program;
3. Only requiring an update when circumstances change;
4. Not applying to commercial items; and
5. Allowing mitigation under exceptional circumstances.

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

If the collection of the information relating to violations is not collected, the Federal Government will be in violation of the law. If the mitigation information is not collected, either the law will be violated or the contractors may be unable to perform the contract.

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 were sought for the FAR case 2008-025. FAR Case 2008-025 was published in the *Federal Register* at 74 FR 58584, on November 13, 2009. A notice of request for public comments regarding a new OMB information clearance was also published on May 12, 2011, 76 FR 27648, but this notice addressed the final rule, which had not yet been published, contained burden hours different than those published with the proposed rule, and did not address the recordkeeping burden associated with the rule.

Substantive comments received in response to both notices from interested parties have been considered in the formation of a final rule.

9. Explanation of any decision to provide any payment or gift to respondents, other than remuneration 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 in

connection with award or performance of Government contracts and subcontracts in order to reduce the occurrence of such 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:

a. REPORTING

1. First, we estimated the number of contractor employees performing functions closely related to inherently governmental functions. Based on an estimate of 500,000 acquisition personnel, we estimated that there may be up to half that many covered contractor employees, i.e., 250,000. Although the GAO study found that in some offices there were more contractor employees than Government employees, we are estimating that many of those contractor employees were performing purely administrative functions, rather than acquisition-related functions.

2. The number of violations was calculated based on comparison to data for Federal Government employees. With an estimated 2,000,000 civilian Government employees, annually there were 178 referrals to the Department of Justice for prosecution rate of .000089. If this same percentage is applied to the estimated number of covered contractor employees, it equals 22 violations per year. We estimate an average of 4 hours per violation report.

3. The estimated number of mitigation/waiver requests was based on the ratio of Government employees that request a waiver to the total number of Government employees that fill out the SF 278, Public Financial Disclosure Report ($46/25,679 = .0018$). Applying this to 250,000 covered employees equals about 450 mitigation/waiver requests. We estimate an average of 8 hours per mitigation/waiver request.

4. Wages are based on the average hourly wage and associated overhead of a lawyer and business manager that may be responsible for disclosing violations or requesting mitigation/waiver.

	Violation	Mitigation	Total
Respondents:	22	450	472
Responses per respondent:	<u>X 1</u>	<u>X 1</u>	
Total annual responses:	22	450	
Preparation hours per response:	<u>X 4</u>	<u>X 8</u>	
Total response burden hours:	88	3,600	3,688
Averages wages (\$75 + 32.85% OH)			<u>X \$100</u>
Est. response cost to the public			\$368,800

b. RECORDKEEPING

In addition, the rule will require the contractor to collect and review information from covered employees. There is, however, no requirement for the contractor to submit this information to the Government. There will be an estimated 250,000 covered contractor employees working for an estimated 10,000 contractors (recordkeepers). There will be an estimated 36 records per recordkeeper (using an average of 25 employees per recordkeeper and allowing for updates during the year when a covered employee's reportable circumstances change). We estimate that it will take approximately 10 minutes review time per response.

We estimate the annual total recordkeeping burden hours as follows:

Recordkeepers:	10,000
Records per recordkeeper:	<u>x 36</u>
Total annual records:	360,000
Review hours per response:	x 0.17
Total recordkeeping burden:	61,200 hours
Average wages (\$40/hr + 32.85 OH)	<u>x 53</u>
Est. recordkeeping cost to the public	\$3,243,600

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 per response. The cost is based on the average hourly wage salary of GS-13 step 6.

Responses/yr	472
Reviewing time/response	<u>x24</u>
Review time/yr	11,328 hours
Average wages (\$40/hr. + 32.85% OH)	<u>X \$53</u>
Total Government cost	\$600,384

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.

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.