

**SUPPORTING STATEMENT
FOR INFORMATION COLLECTION SUBMISSION
9000-0094, DEBARMENT AND SUSPENSION**

A. Justification.

1. Administrative requirements. This is a request for extension of the information collection requirement currently approved under OMB Control Number 9000-0094 for Debarment, Suspension, and Other Responsibility Matters (Federal Acquisition Regulation (FAR)) Subpart 9.1, Subpart 9.4, 52.209-5, 52.212-3(h) and 52.209-6. This request for extension reflects an increase from the approved level of 91,300 public response burden hours to 110,160, and is based upon respondent comment to publication of the information collection's First Notice on July 23, 2012.

This information collection, in compliance with Executive Order 12549, Debarment and Suspension, is necessary to determine the responsibility of prospective contractors, and to ensure that contractors protect the interests of the Government when issuing subcontracts under Government contracts.

i. Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (52.209-5 and 52.212-3(h)).

- Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only (9.103, Policy).
- To be determined responsible, a prospective contractor must meet a series of general standards. The standards include having a satisfactory record of integrity and business ethics, and being otherwise qualified and eligible to receive an award under applicable laws and regulations (9.104-1, General standards).
- 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters is prescribed at 9.409, for use in solicitations where the contract value is expected to exceed the simplified acquisition threshold. This requirement is also at paragraph (h) of the provision 52.212-3, Offeror Representations and Certifications-Commercial Items, prescribed at 12.301(b)(2) for use in solicitations where the contract value is expected to exceed the simplified acquisition threshold for acquisition of commercial items. These certifications require the disclosure of the following critical factors, to be considered by the

contracting officer in making a responsibility determination:

- The offeror or any of its principals have been—
 - o Debarred, suspended, proposed for debarment, declared ineligible for contract award;
 - o Within a three-year period preceding their offer:
 - Convicted of or had a civil judgment rendered against them or indicted for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract, violation of Federal or State antitrust statutes relating to the submission of offers, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
 - Notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied;
 - Had one or more contracts terminated for default by any Federal agency; or
- The offeror or any of its principals are presently indicted for, or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses identified above.
- If the offeror has responded affirmatively, the offeror shall provide additional information if requested by the contracting officer.
- The offeror shall also provide immediate written notice to the contracting officer if, at any time prior to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

ii. Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (52.209-6).

- Other than a subcontract for a commercially available off-

the-shelf item, contractors are prohibited from entering into a subcontract in excess of \$30,000 with a subcontractor that has been debarred, suspended, or proposed for debarment, unless there is a compelling reason to do so (9.405-2(b)).

- The clause at 52.209-6, Protecting the Government's Interest When Subcontracting with Contractor's Debarred, Suspended, or Proposed for Debarment, is prescribed at 9.409, for use in solicitations and contracts where the contract value exceeds \$30,000.
- Paragraph (b) of the clause establishes the prohibition against contractors entering into any subcontract in excess of \$30,000 with a subcontractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so. (There is an exception for subcontracts for commercially available off-the-shelf items.)
- Paragraph (c) of the clause requires the contractor to require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the contractor in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Government.
- Paragraph (d) of clause requires that before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment, a corporate officer or designee of the contractor must notify the contracting officer, in writing, of the name of the subcontractor; why the subcontractor is debarred, suspended, or ineligible; the compelling reason(s) for doing business with the subcontractor; and how the contractor will protect the Government's interests when dealing with such subcontractor.
- For contracts for the acquisition of commercial items, the notification requirement applies only for first-tier subcontracts. For all other contracts, the notification requirement applies to subcontracts at any tier(9.405-2(b)).
- For any subcontract subject to Government consent, contracting officers shall not consent to such subcontracts, unless the agency head or a designee states in writing the compelling reasons for approving such

subcontract (9.405-2(a)).

2. Uses of information. The certifications in 52.209-5, and 52.212-3(h) are used by the contracting officer in evaluating a firm's responsibility for contract award. The information provided by the subcontractors under 52.209-6(c) is used by prime contractors to evaluate the responsibility of the subcontractors. The information provided by the prime contractor under 52.209-6(d) when proposing to contract with a subcontractor that is debarred, suspended, or proposed for debarment, among other things, describes how the Government's interests will be protected by the contractor when dealing with such subcontractor.

3. Consideration of information technology. We use improved information technology to the maximum extent practicable. Pertinent to this information collection, the Online Representations and Certification Application (ORCA) was developed to eliminate the administrative burden for contractors of submitting the same information to various contracting offices, and to establish a common source for this information to procurement offices across the Government. Prior to ORCA's implementation, prospective contractors were required to submit representations and certifications in paper form for each individual contract award. Using the ORCA function in the System for Award Management (SAM), a contractor can enter their representations and certification information once for use on all Federal contracts. FAR 4.1201(a) requires prospective contractors to complete electronic annual representations and certifications at the SAM Internet site in conjunction with required registration in the Central Contractor Registration (CCR) function in SAM. (The ORCA function reuses data pulled from the CCR function and, in many cases, pre-populates several of the required representations and certifications with CCR data.) The representations and certifications are effective until one year from the date of submission or update to the ORCA function in SAM. FAR 52.209-5, Certification Regarding Responsibility Matters, and paragraph (h) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Items, are among the representations and certifications that are available for completion in the ORCA function of SAM. Because they only have to complete representations and certifications once on an annual basis, with periodic updates, use of the ORCA function by prospective contractors decreases the number of responses per respondent per year for purposes of this information collection.

4. Efforts to identify duplication. The information requirements in paragraphs 1. i. and ii. of this section are

separate and distinct. There is no duplication of information.

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 provisions at 52.209-5, and 52.212-3(h) do not apply to solicitations at or below the simplified acquisition threshold, which is set-aside for small businesses. For acquisitions over the simplified acquisition threshold, use of the ORCA function in SAM for completion of the representations at 52.209-5, and 52.212-3(h), is only required once a year, with periodic updates. In the case of commercial items, the requirement at 52.209-6 (c) extends only to the first-tier subcontracts. Small entities that are awarded a lower-tier subcontract for a non-commercial item that exceeds \$30,000 must disclose to the higher-tier subcontractor whether they are debarred, suspended, or proposed for debarment. Although a substantial number of small entities may be impacted by this requirement, the impact is not significant. It will probably take only minimal time to include the required information with an offer. Paragraph (d) of the clause at 52.209-6 requires the higher-tier subcontractor to provide an explanation prior to entering into a subcontract with an entity that has been debarred, suspended, or proposed for debarment. The information collection under 52.209-6 does not impact a substantial number of small entities, because it should be a rare occurrence when a subcontractor would potentially jeopardize performance or integrity by knowingly contracting with an entity that is debarred, suspended, or proposed for debarment. To date, no public comments have been received with regard to the impact of the information collection required by the clause at 52.209-6 on small entities.

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 ensure business integrity in contract performance. The information must be accurate at time of contract or subcontract award.

7. Special circumstances for collection. 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 and each comment addressed before finalization of the text. A notice was published in the

Federal Register at 77 FR 43079, on Monday, July 23, 2012. One comment was received. As a result, a reassessment was made of the hours of burden per response. An upward adjustment of thirty minutes, six times the original estimate of 5 minutes per response, was made to provide a more accurate measure of the time required for a member of the public to complete and review each response. The analysis of the public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Required Act (PRA), agencies can request an OMB approval of an existing information collection. The PRA requires that agencies use the Federal Register notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to Debarment, Suspension, and Other Responsibility Matters, FAR Subpart 9.1, Subpart 9.4, 52.209-5, 52.212-3(h) and 52.209-6. This information collection, in compliance with Executive Order 12549, Debarment and Suspension, is necessary to determine the responsibility of prospective contractors, to ensure that contractors protect the interests of the Government when issuing subcontracts under Government contracts, and ensure business integrity in contract performance. Not granting this extension would consequently eliminate a key process for assessing contractor responsibility and protecting the Government's interests.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. The respondent stated that the "estimate of four responses per contractor per year is unrealistically low because almost all solicitations will include FAR 52.209-5 and 52.212-3(h) ... we believe, based on the experience of our members, that most companies will be required to meet this requirement from 20 to more than 100 times per year." Further, the respondent commented that the estimate of 0.083 hours of burden per response was low when considering the time and effort necessary for a company to gather responsibility data. For this reason, the respondent provided that the agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate. The same respondent also provided that the burden of compliance with the information collection

requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007-006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business.

Careful consideration went into assessing the estimated burden hours for this collection, and it is determined that an upward adjustment is not required at this time related to the responses per respondent. The estimate of four responses per respondent is based upon contractor use of the Online Representation and Certifications Application (ORCA) function in the System for Award Management (SAM) rather than the completion of representations and certifications for each solicitation/contract for which a vendor submits an offer. The ORCA function was developed to eliminate the administrative burden for contractors of submitting the same information to various contracting offices, and to establish a common source for this information to procurement offices across the Government. Prior to the ORCA function's implementation, prospective contractors were required to submit representations and certifications in paper form for each individual contract award. Under these conditions, a response rate of 20 to more than 100 times per year per contractor as suggested by the respondent may have been necessary. However, using the ORCA function in SAM, a contractor can enter their representations and certification information once for use on all Federal contracts and solicitations. FAR 4.1201(a) requires prospective contractors to complete electronic annual representations and

certifications at the SAM Internet site in conjunction with required registration in the Central Contractor Registration (CCR) function in SAM. The representations and certifications are effective until one year from the date of submission or update to the ORCA function in SAM. For purposes of this information collection, initial data entry plus three updates per year was considered reasonable and was used to estimate the number of responses per respondent per year, i.e., 4 responses per respondent.

We have reassessed the hours of burden per response based on the respondent's comment, and have determined that an upward estimate of thirty minutes or approximately six times the original estimate of 0.083 would provide a more accurate measure of the time required to complete and review each response.

However, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

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

11. Additional justification for questions of a sensitive nature. No sensitive questions are involved.

12 & 13. Estimated total annual public hour and cost burden. This is a request for extension of the information collection requirement currently approved under OMB Control Number 9000-0094 for Debarment, Suspension, and Other Responsibility Matters covering FAR Subpart 9.1, Subpart 9.4, 52.209-5, 52.212-3(h), and 52.209-6.

FAR 52.209-5 and 52.212-3(h) apply to a wide universe, e.g., 52.209-5 applies to solicitations above the simplified acquisition threshold, and the clause at 52.209-6 applies to only a very small subset of that universe based on dollar thresholds and other conditions. However, because ORCA allows for multiple uses from one entry, i.e., a contractor can enter their representations and certification information once a year (with any needed updates) for use on all Federal contracts, the number of responses per respondent has decreased from the currently approved number 12.22 to 4. For purposes of this information collection, initial entry plus three updates are estimated as the number of responses per respondent per year,

i.e., 4 responses per respondent. As of May 2012 there were 162,000 vendors registered in the ORCA function of SAM. For purposes of estimation, the number of vendors registered in the ORCA function of SAM will serve as the number of respondents). Data entry by contractors is estimated at 30 minutes per response.

| | Currently Approved <u>Level</u> | <u>Change</u> | <u>TOTAL</u> |
|--|---------------------------------------|---------------|--------------|
| Annual Reporting Burden Number of respondents | 89,995 | +72,005* | 162,000 |
| Number of responses per respondent per year | x <u>12.22</u> | -8.22 | x <u>4</u> |

| | | | |
|-------------------------------|---------------|---------------|--------------|
| Total annual responses | 1,100,000 | -452,000 | 648,000 |
| Preparation time per response | <u>x .083</u> | <u>+0.417</u> | <u>x .50</u> |
| Total response burden hours | 91,300 | +232,700 | 324,000 |

| | | | |
|---------------------------|-----------------|--------------|---------------|
| Annual Cost to the Public | | | |
| Total burden hours | 91,300 | +232,700 | 324,000 |
| Average wages+overhead | <u>x \$42**</u> | <u>0</u> | <u>x \$42</u> |
| Total cost to the public | \$ 3,834,600 | +\$9,773,400 | \$13,608,000 |

*Estimate reflects a change in medium for collecting representations and certifications from paper to Internet (ORCA function in SAM)

**We used a rate equivalent to a GS-12, Step 3 or \$30.81/hour (from the OPM 2012 GS Salary Table), added overhead at 36.45 percent (the OMB-mandated burden rate for A-76 public-private competitions), and rounded it to the nearest whole dollar, or \$42/hour.

14. **Estimated cost to the Government.** We estimate the annual cost to the Government to review and analyze the responses to this information collection requirement to be 10 minutes per response at \$22.57 an hour based on the Office of Personnel Management 2012 salary for a GS-09, step 5 plus 36.45 percent burden rounded to the nearest dollar, or \$31 an hour. According to agency data submissions to the Federal Procurement Data System (FPDS), in FY 2011, 707,996 base awards exceeding the simplified acquisition threshold of \$150,000 were made by Federal agencies. Government officials must verify prospective contractor representations and certifications made in ORCA prior to the award of each contract. (This would include the representations at FAR 52.209-5 and 52.212-3(h). FAR 52.209-5 applies to solicitations above the simplified acquisition threshold.) For purposes of estimation, we will use the total base awards made in FY 2011 as reported to FPDS as the basis for estimating the minimum total responses to the Government.

| | |
|--------------------------|---------------|
| | <u>TOTAL</u> |
| Total responses to Govt. | 707,996 |
| Govt. hours/response | 0.167 |
| Total burden hours | 118,235 |
| Average wages +overhead | <u>x \$31</u> |
| (\$22.57/hr +36.45%OH) | |
| Total Government cost | \$ 3,665,285 |

15. **Explain reasons for program changes or adjustments reported**

in Item 13 or 14. Because the ORCA function in SAM allows for multiple uses from a single entry, i.e., a contractor can enter their representations and certification information once a year (with any needed updates) for use on all Federal contracts, the number of estimated responses per respondent (public) has decreased from the currently approved number 12.22 to 4. With regard to the estimated cost to the Government, Government officials must verify prospective contractor representations and certifications made in ORCA prior to the award of each contract. According to agency data report submissions to the Federal Procurement Data System (FPDS), in FY 2011, 707,996 base awards exceeding the simplified acquisition threshold of \$150,000 were made by Federal agencies. (This would include the representations at FAR 52.209-5 and 52.212-3(h). FAR 52.209-5 applies to solicitations above the simplified acquisition threshold.) For purposes of estimation, we used the total base awards made in FY 2011 as reported to FPDS as the basis for estimating the total responses reviewed by the Government. In addition, for greater accuracy, an adjustment is being made to the average wages and overhead calculation for Government review in Item 14. We estimate the annual cost to the Government to review and analyze the responses to this information collection requirement at \$22.57 an hour based on the Office of Personnel Management 2012 salary for a GS-09, step 5 plus 36.45 percent burden rounded to the nearest dollar, or \$31 an hour, instead of the \$20 per hour plus 100% overhead (\$40 per hour) formula used for calculation of the Government review costs under the current information collect.

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. The information to respondents required by 50 CFR 1320.8(b)(3) will be provided in a separate Federal Register notice announcing the OMB approval of this collection of information.

B. Collections of Information Employing Statistical Methods. Statistical methods are not used in this information collection.

