

**SUPPORTING STATEMENT
FOR INFORMATION COLLECTION SUBMISSION 9000-0029,
EXTRAORDINARY CONTRACTUAL ACTION REQUESTS**

A. Justification.

1. **Administrative requirements.** This request covers the collection of information under 50 U.S.C. 1431 et seq. and Executive Order (EO) 10789 dated November 14, 1958, as amended by E.O. 12919 dated June 3, 1994, EO 13232 dated October 20, 2001, and EO 13286 dated February 28, 2003, that allows contracts to be entered into, amended, or modified in order to facilitate national defense. In order for a firm to be granted relief under the Act, specific evidence must be submitted which supports the firm's assertion that relief is appropriate and that the matter cannot be disposed of under the terms of the contract.

2. **Uses of information.** The information is used by the Government to determine if relief can be granted under the Act and to determine the appropriate type and amount of relief.

3. **Consideration of information technology.** We use improved information technology to the maximum extent practicable. Where both the Government agency and contractors are capable of electronic interchange, the contractors may submit this information collection requirement electronically.

4. **Describe 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.

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.

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 basis other than solicitation-by-solicitation is not practical.

7. **Special circumstances for collection.** Collection is consistent with guidelines in 5 CFR 1320.6.

8. **Efforts to consult with persons outside the agency.** A notice was published in the Federal Register on September 12, 2012 (77 FR 56213). One comment was received.

One respondent submitted public comments on the extension of the previously approved information collection. 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 Reduction 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 information collections associated with extraordinary contractual actions as authorized under 50 U.S.C. 1431 et seq. and Executive Order (EO) 10789 dated November 14, 1958, as amended by E.O. 12919 dated June 3, 1994, EO 13232 dated October 20, 2001, and EO 13286 dated February 28, 2003, as implemented in FAR Part 50, that allow contracts to be entered into, amended, or modified in order to facilitate national defense. In order for a firm to be granted relief under the Act, specific evidence must be submitted which supports the firm's assertion that relief is appropriate and that the matter cannot be disposed of under the terms of the contract. The information is used by the Government to determine if relief can be granted under the Act and to determine the appropriate type and amount of relief.

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 each respondent faces to comply. The respondent suggested that the estimated total burden hours be reassessed and revised for greater accuracy. Specifically, the respondent stated that the "estimate of only 100 respondents that will be subject to this requirement is understated" and estimated, without providing substantive supporting data, that "the number of respondents is more likely closer to 500 annually." In addition, the respondent questioned the estimate of 16 hours of burden associated with each response, and suggested that "a more reasonable estimate would be in the range of 80 to 160 hours per response." For these reasons, the same respondent 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 burden hours for this collection, and it is determined that an upward adjustment is not required.

The respondent expressed concern that the “estimate of only 100 respondents that will be subject to this requirement is understated” and estimated, without providing substantive supporting data, that “the number of respondents is more likely closer to 500 annually.” We disagree. FAR Part 50 prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under extraordinary emergency authorities. Executive Order 10789 authorizes 15 agencies to exercise the authority conferred by Pub. L. 85-804 (50 U.S.C. 1431-1434). The estimate of 100 respondents would, therefore, average to approximately seven actions issued under extraordinary contracting authority per agency per year. We find this to be a more reasonable estimate and more in keeping with the extraordinary, thus, rare nature for exercise of the authority than the average of 33 actions per agency per year estimated by the commenter when citing that “the number of respondents is more likely closer to 500 annually.” The respondent is reminded that the estimate provided is based on an average which considers that not every one of the 15 agencies with extraordinary contracting authority uses that authority in a given year.

In addition, the respondent questioned the estimate of 16 hours of burden associated with each response, and again, without providing substantive supporting data, suggested that “a more reasonable estimate would be in the range of 80 to 160 hours per response.” The respondent is reminded that estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. We believe that the estimated 16 hours of burden reasonably reflect the time necessary for a contractor to perform the actions associated with its role in extraordinary contractual actions that go beyond the normal course of business, e.g., issue a request and certification, provide supporting information, as appropriate. Therefore, in the absence of substantive data to support doing otherwise, no adjustments are deemed necessary for the estimated number of respondents or estimated burden hours per respondent.

9. Explanation of any decision to provide any payment or gift to respondents, other than reenumeration of contractors or guarantees. Not applicable.

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.** Time required to read and prepare information is estimated at 16 hours per completion.

Estimated respondents/yr.....		100
Responses annually.....	x	<u>1</u>
Total annual responses.....		100
Estimated hrs/response.....	x	<u>16</u>
Estimated total burden/hrs.....		1,600
Average wages/hr.(\$30.81hr.+36% OH)**	x	<u>\$ 42</u>
Estimated cost to public*		\$67,200

* We revised the estimated cost to public to a rate equivalent to a GS-12, Step 3 or \$30.81/hour (from the 2012 OPM GS Salary Table), added overhead at 36.25 percent (the OMB-mandated burden rate for A-76 public-private competitions, rounded to 36%, and rounded the average wage to the nearest whole dollar, or \$42/hour. No adjustments were deemed necessary for the estimated number of respondents or estimated number of responses per respondent.

14. **Estimated cost to the Government.** Time required for Governmentwide review is estimated at 16 hours per response.

Annual Reporting Burden and Cost

Responses/yr.....		100
Reviewing time/hr.....	x	<u>16</u>
Review time/yr.....		1,600
Average wages/hr.(\$30.81hr.+36% OH)**	x	<u>\$ 42</u>
Total Government cost.....		\$67,200

** We used a rate of \$30.81 an hour based on the OPM 2012 GS Salary Table for a GS-12, Step 3 plus 36.25 percent burden (rounded to 36%) and rounded to the average wages and overhead to nearest dollar, or \$42 an hour. No further adjustments were made.

15. Explain reasons for program changes or adjustments reported in Item 13 or 14.

This submission requests an extension of an information collection requirement in the FAR. For greater accuracy, the following adjustments are being made: (1) An adjustment is being made to estimated cost to the public in Items 12 and 13. We revised the estimated cost to public from \$24/hour plus 75 percent overhead, to a rate equivalent to a GS-12, Step 3 or \$30.81/hour (from the 2012 OPM GS Salary Table). We added overhead at 36.25 percent (the OMB-mandated burden rate for A-76 public-private competitions, rounded to 36%, and rounded the average wage to the nearest whole dollar, or \$42/hour. No adjustments were deemed necessary for the estimated number of respondents or estimated number of responses per respondent; and (2) 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 responses to this information collection requirement at \$30.81 an hour based on the

Office of Personnel Management 2012 GS Salary Table for a GS-12, step 3 plus 36 percent burden rounded to the nearest dollar, or \$42 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 collection.

16. **Outline plans for published results of information collections.** Results will not be tabulated or 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.