

**SUPPORTING STATEMENT
FOR INFORMATION COLLECTION SUBMISSION
9000-0102, PROMPT PAYMENT**

A. Justification.

1. **Administrative requirements.** Part 32 of the Federal Acquisition Regulation (FAR) and the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, require that contractors under fixed-price construction contracts certify, for every progress payment request, that payments to subcontractors/suppliers have been made from previous payments received under the contract and timely payments will be made from the proceeds of the payment covered by the certification, and that this payment request does not include any amount which the contractor intends to withhold from a subcontractor/supplier. Part 32 of the FAR and the clause at 52.232-27, Prompt Payment for Construction Contracts, further require that contractors on construction contracts:

(a) Notify subcontractors/suppliers of any amounts to be withheld and furnish a copy of the notification to the contracting officer;

(b) Pay interest to subcontractors/suppliers if payment is not made by 7 days after receipt of payment from the Government, or within 7 days after correction of previously identified deficiencies;

(c) Pay interest to the Government if amounts are withheld from subcontractors/suppliers after the Government has paid the contractor the amounts subsequently withheld, or if the Government has inadvertently paid the contractor for nonconforming performance; and

(d) Include a payment clause in each subcontract which obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days after such amounts are paid to the contractor, include an interest penalty clause which obligates the contractor to pay the subcontractor an interest penalty if payments are not made in a timely manner, and include a clause requiring each subcontractor to include these clauses in each of its subcontracts and to require each of its subcontracts to include similar clauses in their

subcontracts. These requirements are imposed by Pub. L. 100-496, the Prompt Payment Act Amendments of 1988.

2. **Uses of information.** Contracting officers will be notified if the contractor withholds amounts from subcontractors/suppliers after the Government has already paid the contractor the amounts withheld.

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. **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.** Most construction contracts awarded by Federal agencies are awarded to small business concerns; however, the burden applied to small business concerns is the minimum consistent with Public Law 100-496.

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 contract-by-contract is not practical.

7. **Special circumstances for collection.** Collection is consistent with guidelines in 5 CFR 1320.6, except that contractors may need to provide information that is not customarily maintained. Construction contractors historically have billed the Government based on the percentage of completion of the contract effort. Thus, they may have either paid subcontractors prior to billing the Government or may have paid subcontractors in accordance with industry practice. They were not previously required to maintain or report information related to amounts withheld from subcontractors, or to pay interest on late payments made to subcontractors.

8. **Efforts to consult with persons outside the agency.** A notice was published in the *Federal Register* at 78 FR 5450, on January 25, 2013. No comments were received.

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

10. **Describe assurance of confidentiality provided to respondents.** Confidentiality will be provided to contractors in accordance 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 assemble and prepare notification or certification regarding withhold is estimated at .11 hours per notice. This estimate is based on the assumption that some construction contractors will be required to notify the Government of withholding and others will have to provide their payment certification, and that 2,679 contractors under a total of 4,450 contracts will have to notify the Government 11 times per year. This estimate assumes automation of contractor records.

Annual Reporting Burden

Estimated responses/yr.....	4,450
Responses annually.....X	<u>11</u>
Total annual responses.....	48,950
Estimated hrs/response.....X	<u>.11</u>
Estimated total burden hrs.....	5,384
Estimated cost to public (\$48.95 per hr).....\$	263,546

Annual Recordkeeping Burden and Cost

Recordkeeping burden is estimated at 18 hours per contract. This estimate is based on the time required to maintain a recordkeeping system in more detail than is currently maintained so that the contractor knows precisely in what amount and when individual subcontractor/supplier effort will be billed to the Government, when actual Government payment is made, when subcontractors/suppliers are paid, and whether an interest penalty must be paid to subcontractors.

Annual Recordkeeping Burden and Cost

Estimated recordkeepers/yr.....	4,450
Estimated number of contracts involved.....	4,450
Hours per contract.....	<u>18</u>
Total recordkeeping hours.....	80,100
Cost to the public (\$48.95 per hr).....	\$ 3,920,895

14. **Estimated cost to the Government.** Time required for Governmentwide review is estimated as follows:

Annual Reviewing Burden and Cost

Reviewing time/hr.....	.11
Responses/yr.....	<u>48,950</u>
Review time/yr.....	5,384
Average wages/hr.....	<u>\$48.95</u>
Total Government cost.....	\$ 263,546

15. **Explain reasons for program changes or adjustments reported in Item 13 or 14.** This submission requests an extension of OMB approval of an information collection requirement in the FAR. The information collection requirement in the FAR remains unchanged. However, data from the Federal Procurement Data System (FPDS) regarding fixed price construction contracts for FY 2011 revealed that the number of affected contracts has been reduced. This decrease has been partially offset by an increase in the applicable average hourly rate to both the public and Government from \$23.94 from in the previous OMB approval to the current \$48.95.

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.