

Supporting Statement A
30 CFR 874.16 – Contractor Eligibility and the
AML Contractor Information Form

OMB Control Number: 1029-0119

Terms of clearance: None

Introduction

The Office of Surface Mining Reclamation and Enforcement (OSM) submits this request for renewed approval to collect information necessary to implement 30 CFR 874.16, Contractor Eligibility, under Part 874, General Reclamation Requirements. Part 874 contains the regulatory requirements that implement OSM's Abandoned Mine Land (AML) program.

OSM's regulation at 30 CFR 874.16 requires that every successful bidder for an AML contract must be eligible at the time of the contract award under the permit eligibility rules at 30 CFR 773.12, 773.13, and 773.14. This connection to our permit eligibility rules means a successful bidder for an AML contract is subject to the same eligibility rules as an applicant for a surface coal mining permit. This requirement applies to all AML contractors and any subcontractor a contractor might employ. It is under the permit eligibility requirements that successful bidders for AML contracts and State AML contracting officers and program staff incur information collection burdens.

The Office of Management and Budget (OMB) previously approved our request for continued information collection for the two-page form, the AML Contractor Information Form, as the instrument to collect information from successful bidders. OMB has assigned clearance number OMB 1029-0119 for approved information collection under 30 CFR 874.16. We now seek OMB's approval to continue this information collection and to continue to use the AML Contractor Information Form.

The statutory authority governing information disclosure requirements for applicants for permits, and therefore, AML contractors, is section 507(b) of the Surface Mining Control and Reclamation Act of 1977, as amended (SMCRA or the Act). The statutory authority for permit eligibility determinations is section 510(c) of the Act.

General Instructions

A completed Supporting Statement A must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified below. If an item is not applicable, provide a brief explanation. When the question "Does this ICR contain surveys, censuses, or employ statistical methods?" is checked "Yes," then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

Justification

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.*

Section 874.16 of 30 CFR 874 requires that every successful bidder for an AML contract must be eligible under sections 773.12, 773.13, and 773.14, of OSM's rules for permit eligibility, at the time of contract award. Therefore a successful bidder for an AML contract may not be awarded the contract if the successful bidder is associated with an unabated or uncorrected violation of Title IV or V of SMCRA. Insofar as successful bidders must be eligible for a permit, they must also disclose information comparable to that required from applicants for permits. Designated AML contracting officers and AML staff in State programs and in OSM's Field Offices are required to obtain an eligibility evaluation for each successful bidder before an AML contract is awarded. OSM's Applicant/Violator System (AVS) Office performs AML eligibility evaluations and maintains the majority of the automated records. OSM's internal procedures for performing evaluations, assisting States in implementing the requirements for contractor eligibility, creating and maintaining information in AVS, and assisting potential contractors with their information collection activities are found in the AVS Office's Standard Operating Procedures handbook. The statutory authorities for these eligibility and information collection requirements are sections 507 and 510 of the Act.

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. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.*

Since 2000, we have used the AML Contractor Information Form, approved by OMB, to collect the information required from every successful bidder in order to assess its eligibility for an AML contract. The information required in the form, except for information specific to coal mining operations, is based on the minimum requirements for legal, financial, compliance and related information required from applicants for surface coal mining permits. The information is used, in addition to other available information, to determine if a successful bidder for an AML contract is eligible under OSM's rules for permit eligibility. Following is a description of the requirements of each of the four parts of the AML Contractor Information Form.

Part A collects general information from the successful bidder. The successful bidder must disclose their business name, address, telephone number, tax payer identification number, fax number, and email address.

Part B collects legal structure information from the successful bidder. The successful bidder must identify whether its legal business structure is a corporation, sole proprietorship, partnership, or limited liability company. If the legal business structure is other than the given choices, the successful bidder must provide its description.

Part C requires the successful bidder to certify as to the accuracy and completeness of its information that already may be in the Applicant/Violator System (AVS). AVS is OSM's automated nationwide database of entity, business structure, affiliation, permit history, and violation information. The requirement in Part C allows successful bidders the same benefit as applicants for surface coal mining permits by certifying existing information by way of certified reference to AVS. The first choice for a successful bidder is to certify that all of the information currently in AVS is accurate, complete, and up-to-date. The second choice for a successful bidder is to certify that part of the information currently in AVS is accurate, complete, and up-to-date. The third choice is for the successful bidder to certify that there is currently no information for it in AVS.

Part D requires the successful bidder to either provide additional and complete information if it has certified that part of the information in AVS is missing or incomplete or acknowledge that there is no information for it in AVS and then provide all information necessary to complete Part D.

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 and specifically how this collection meets GPEA requirements.*

Successful bidders for AML contracts may obtain the AML Contractor Information Form from the AVS Office's Internet web site (<http://www.arcc.osmre.gov/Divisions/AVSO/AMLContractorIndex.shtml>). They may also obtain the form from their contracting officer or the AVS Office.

In order to provide the information required by the AML Contractor Information Form the successful bidders must: (1) obtain a report from AVS of their business affiliations (Entity Organizational Family Tree or OFT), (2) base their certification in Part C on this report, and (3) attach it to their submission of the AML Contractor Information Form. Successful bidders may obtain an OFT from direct access to AVS, their contracting officer, or the AVS Office. State and OSM contracting officers may transmit a request for an AML eligibility evaluation of a successful bidder or contractor from the AVS Office using fax or email. AML contracting officers submit their information by fax (approximately 71%), or email (approximately 29%).

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.*

No similar information specific to successful bidders for AML contracts is collected by other State or Federal agencies. Only OSM's AVS Office uses the information to perform eligibility evaluations for successful bidders on AML contracts.

5. *If the collection of information impacts small businesses or other small entities, describe*

any methods used to minimize burden.

The Small Business Administration defines a small business as having 500 or fewer employees. OSM neither collects nor maintains data on the number of employees an AML contractor or its subcontractor may have. Data available from contractor eligibility evaluations provided to State and Federal programs seem to indicate that all successful bidders for AML contracts during calendar year 2011 were small businesses.

The AML Contractor Information Form itself has been designed to minimize the time needed for completion, obtain the required attachment(s), and provide any necessary corrections to existing data. The form consists of only two pages. If the successful bidder can certify that the current information in AVS is accurate and complete, the successful bidder need only complete page one of the form.

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.*

The information is only collected as required and only from successful bidders. Therefore, the frequency of collection cannot be reduced. Less frequent collection of the information would result in non-compliance with section 874.16 of our regulations.

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;*
 - * *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
 - * *requiring respondents to submit more than an original and two copies of any document;*
 - * *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;*
 - * *in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
 - * *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
 - * *that includes 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*
 - * *requiring respondents to 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.*

Guidelines in 5 CFR 1320.5(d)(2) are not exceeded.

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 in response to the PRA statement associated with the collection over the past three years, 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 three 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.

We have consulted with the following Federal, State, and industry officials concerning the information collection burdens described for AML successful bidders, contractors, and State AML contracting officers and program staff.

Bill Dodd
North Dakota Public Service Commission
Abandoned Mine Land Division
Capitol Building
Bismarck, ND 58505
701.328.4101

Rita Chandler
Virginia Division of Mined Land Reclamation
P.O. Drawer 900
Big Stone Gap, VA 24219
276.523.8213

Dan Pollock
Office of Surface Mining and Enforcement
Three Parkway Center
Pittsburgh, PA 15220
412.937.2150

Lydia Gashel
Office of Surface Mining and Enforcement
Three Parkway Center
Pittsburgh, PA 15220
412.937.2131

Oftedal Construction Inc
P.O. Box 400
Miles City, MT 59301
406.232.5911

Trihydro Corporation
1252 Commerce Drive
Laramie, WY 82070
307.745.7474

One Federal official said the only recent concern expressed by a bidder was their preconceived idea that they would face a delay in obtaining the company's Entity OFT from AVS and this delay would cause them to miss the submission deadline therefore the company opted to check no information in AVS and provided part D to submit their bid on time. OSM called the Federal official and walked her through the process of getting the company structure information from the AVS application website. Additionally, OSM gave her the AVSO web address and showed her how to obtain the on-line instructions for using the AVS so that she in turn can share this information with her AML bidders. We also told her that the AVS office makes every effort to immediately respond to these requests.

Another Federal official said that contractors that have previously been awarded AML contracts occasionally use the same form previously submitted without changing the date signed to be current. Therefore, we are revising the form to state **NOTE: Signature and date of this form must be recent (within the last month) to be considered for a current bid.** Also, OSM has updated the instructions on the internet at <http://www.arcc.osmre.gov/Divisions/AVSO/AMLContractorIndex.shtm> "Instructions for completing AML Contractor Information form" to read: **Signature and date of this form must be recent (within the last month) to be considered for a current bid.**

A State official said that there have been a few questions from first time AML contractors about why the information is required. The official then said that contractors seem able to understand and use the form without problems. When the AVS Office receives information from first time AML contractors, we make an attempt to explain the process which includes informing them why the information is required by sending them a letter and providing them with an informational brochure titled "AVS and the AML Contractor."

Both company representatives said that the AML Contractor Information Form is easy to understand and use. They also said they have no suggestions for any changes to the form.

All six persons contacted agreed the estimates for preparing the AML Contractor Information Form are accurate and reasonable. They are satisfied with the timeliness and accuracy of the AML eligibility evaluations.

On August 17, 2012, OSM published in the *Federal Register* (77 FR 49827) a notice requesting comments from the public regarding the need for the collection of information, the accuracy of the burden estimate, ways to enhance the information collection, and ways to minimize the

burden on respondents concerning the AML Contractor Information Form. This notice gave the public 60 days in which to comment. However, 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 payments or gifts are provided to respondents beyond that authorized under the approval to conduct AML reclamation work.

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

Not applicable. No assurance of confidentiality is provided and none is required.

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. Sensitive questions are not asked.

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.*

** 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 parties for information collection activities should not be included here.*

a. Burden Hours for Respondents

The following table shows the actual number of respondents and the actual information collection burden hours for all respondents. The 2011 calendar year total number of successful bidder responses is 279. It represents a decrease in bidder responses, but an increase in State responses from our previous submission. Data in the table is discussed below. Some

calculations have been rounded.

| | Successful Bidder Responses | State Responses | Successful Bidder Burden Hours | State Burden Hours | Total Burden Hours |
|---|-----------------------------|-----------------|--------------------------------|--------------------|--------------------|
| Accurate, Complete and Up-to-date information | 199 | 0 | .25 | 0 | 50 |
| Part of the information is missing or incomplete | 14 | 0 | .50 | 0 | 7 |
| No information currently in AVS | 66 | 0 | 1 | 0 | 66 |
| States that create and maintain bidder and contractor information | 0 | 46 | 0 | 1 | 46 |
| TOTALS | 279 | 46 | | | 169 |

We found that 213 respondents were able to benefit from the same burden-saving provisions that minimize the time required to meet these requirements as are used by applicants for permits at 30 CFR 778.9. Section 773.9 allows an applicant for a surface coal mining permit to certify by reference to AVS that the entity, business, and affiliation information they provide in an application for a permit is both fully accurate and complete, or that the information is only partially accurate and complete. Also like applicants for permits, successful bidders and contractors must provide the missing information or update inaccurate information or provide all of the information, as it applies, in order to be compliant with the information collection rules.

We found that 199 successful bidder responses were able to certify that all information for them as listed in AVS is accurate, complete, and up-to-date. The number represents a significant decrease from our previous submission and is based upon the data collected, and actual use for the 2011 calendar year. We estimate it will require .25 hour for each respondent to complete the AML Contractor Information Form. This percentage estimate is unchanged from our previous submission. Therefore, the information collection burden for these 199 responses is rounded to 50 hours.

We found that 14 successful bidder responses certified that part of the information in AVS is accurate, complete, and up-to-date and part of the information is missing or inaccurate in AVS. The number represents a significant decrease from our previous submission and is based upon

data collected for the 2011 calendar year. We estimate it will require .50 hour for each respondent to complete the AML Contractor Information Form. This percentage estimate is unchanged from our previous submission. Therefore, the information collection burden for these 14 respondents is 7 hours.

We found that 66 successful bidder responses certified there is no current information for them in AVS. This number is substantially higher than from our previous submission and is based upon data collected for the 2011 calendar year. We estimate it will require 1 hour for each respondent to complete the AML Contractor Information Form. This percentage estimate is unchanged from our previous submission. Therefore, the information collection burden for these 66 respondents is 66 hours.

Therefore the total information collection burden for all successful bidder responses is rounded to 123 hours (50 hours for no additional information + 7 hours for partial information + 66 hours for complete information).

We found that some States create and maintain their own successful bidder and contractor information in AVS and additionally perform their own AML eligibility evaluations. These states performed 46 AML eligibility evaluations during the 2011 calendar year. This was based on the actual number of States that create and maintain their own information in AVS during calendar year 2011. This is an increase from our previous submission. This increase is due to changes in AVS that allow users to update and maintain data in the AVS and the State's knowledge of how to perform these functions. We estimate each State response will require 1 hour creating and maintaining data in AVS for successful bidders and contractors. As a result, we found that the information collection burden for State AML program staff to be 46 hours (46 bidder/contractor information maintained in AVS by States x 1 hour per bidder/contractor).

Therefore, the total information collection burden for this activity is 169 hours (123 hours for successful bidder and contractor respondents + 46 hours for State respondents).

b. Estimated Wage Cost to Respondents

OSM uses the U.S. Department of Labor's Bureau of Labor Statistics (BLS) figures for calculating cost burden placed on respondents and on the Federal government. These figures are derived for mining companies found at http://www.bls.gov/oes/current/naics4_212100.htm and for State government employees found at http://www.bls.gov/oes/current/naics4_999200.htm#b17-0000. We have also included a benefits factor of 1.4 for the coal companies, and a benefits factor of 1.5 for State government employees. These benefit estimates were developed in accordance with the U.S. Bureau of Labor Statistics news release USDL-12-1124;EMPLOYER COSTS FOR EMPLOYEE COMPENSATION—MARCH 2012 at - <http://www.bls.gov/news.release/pdf/ecec.pdf>.

OSM assumes that each response by an AML bidder will be prepared by a mining engineer, with a salary of \$58.49 per hour which is derived from Bureau of Labor Statistics, and includes benefits. At \$58.49 per hour, the cost to all respondents to prepare the AML Contractor Information Form would be \$58.49 per hour x 123 hours = \$7,194 (rounded).

In addition, we estimate that a State government engineer will require one hour requesting AML eligibility evaluations from OSM and processing the findings. At a salary of \$60.92 per hour, including benefits, the cost to all State respondents will be \$60.92 per hour x 46 hours = \$2,802 (rounded).

The total wage cost to all respondents is \$9,996.

13. *Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)*
- * The cost estimate should be split into two components: (a) 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 (including filing fees paid for form processing). 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. Annual Capital and Start-up Costs

The information collection requirements of this activity do not involve any capital or start-up costs apart from expenditures associated with customary business practices.

b. Operation and Maintenance Costs

There are no significant or distinct non-wage operations or maintenance costs associated with compliance with the information requirements for this section.

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification 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.

We found that OSM received 233 total responses for processing eligibility evaluations that required creating and maintaining data in AVS. It represents a decrease in responses from our previous submission due to the States' ability and willingness to create and maintain data in the AVS, and their ability to evaluate the data themselves. We estimate OSM will require 1 hour to review the AML Contractor Information Form, perform any necessary updates or corrections in AVS, and perform the eligibility evaluation in AVS on each request for an AML eligibility evaluation. This hourly estimate is unchanged from our previous request to OMB for continued information collection approval.

A program analyst with a GS 12, step 5 salary will conduct this activity. At \$42.55 per hour (including benefits) as described in item 12 (<http://www.opm.gov/oca/12tables/html/gsh.asp>), the annual cost to the Federal government is \$42.55 per hour x 233 hours = \$9,914.

(Benefits have been calculated using OSM's Financial and Business Management System which calculates benefits at 1.30 of salary.

15. *Explain the reasons for any program changes or adjustments in hour or cost burden.*

This is a request for continued approval of information collection activities and use of our AML Contractor Information Form. The total estimated information collection burden is estimated to be 169 hours. We estimate an adjustment in the burden hours for successful bidders and contractors due to an overall decrease in use but an increase in respondents with no current information for them in AVS. There is also an increase in the instances where States create and maintain their own successful bidder and contractor information in AVS and additionally perform their own AML eligibility evaluations. The total estimated information collection burden is estimated to be 169 hours. The estimated change in burden hours is shown below.

136 hours currently approved
+ 3 hours adjustment for contract bidders
+ 30 hours adjustment for increased State participation
169 hours requested

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.*

OSM has no plans to publish this information.

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.*

OSM will display the OMB control number and expiration date on the AML Contractor

Information Form upon approval by OMB and will continue using the form.

18. *Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."*

We claim no exemption.