

**SUPPORTING STATEMENT
FOR INFORMATION COLLECTION SUBMISSION
9000-0136, COMMERCIAL ITEM ACQUISITIONS**

A. Justification.

1. **Administrative requirements.** This is a request for extension of the information collection requirement currently approved under OMB Control Number 9000-0136, Commercial Item Acquisitions.

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies. To implement these changes, DOD, NASA, and GSA amended the Federal Acquisition Regulation to include streamlined/simplified procedures for the acquisition of commercial items. As part of the streamlined procedures, a solicitation provision was developed to take the place of the multitude of certifications and representations used in Government solicitations. This provision is significantly shorter and collects less information than the corresponding provisions used in non-commercial acquisitions. This provision is required by statute.

In accordance with Section 8002 of Public Law 103-355 (41 U.S.C. 264), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items, or determined to be consistent with customary commercial practice.

2. **Uses of information.** Information will be used by Federal agencies to facilitate the acquisition of commercial items and services. Pertinent to this information collection is the FAR provision at 52.212-3, Offeror Representations and Certifications-Commercial Items. The provision is among the representations and certifications that are available for completion in the On-line Representation and Certification Application (ORCA) function of the System for Award Management (SAM) database. Because an offeror only has 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.

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. 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. This request for information does not duplicate any other requirement.

5. If collection of information impacts small businesses or other entities, describe methods used to minimize burden. The burden applied to small business is the minimum burden consistent with the provisions of the statutes applicable to the acquisition of commercial items and services by Federal agencies. The provision at 52.212-3(h) does 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 52.212-3(h), is only required once a year, with periodic updates.

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 must be accurate at time of contract award.

7. Special circumstances for collection. Collection is not inconsistent 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 78 FR 18349, on March 26, 2013. Comments were received from two respondents. The analysis of the public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would contradict 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 extension to an existing OMB approved 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 the FAR provision at 52.212-3, Offeror Representations and Certifications-Commercial Items. The provision is among the representations and certifications that are available for completion in the ORCA function of the SAM database. This provision is required by statute. In accordance with Section 8002 of Public Law 103-355 (41 U.S.C. 264), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

- (1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or
- (2) Determined to be consistent with customary commercial practice.

Not granting this extension would consequently eliminate a primary means of complying with this statutory requirement.

Comment: Two respondents 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. One respondent commented that the "estimate of four responses per contractor per year is unrealistically low." The respondent also commented that if the estimate accounted for the totality of the information collection requirement, including recordkeeping, compiling and reporting, the burden hours would be six to ten hours per response. For this reason, the respondent asserted that the agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007-006. A second respondent commented that on average, the time burden is approximately 215 hours per company, per response, for the end-to-end process. Further, the respondents commented that the estimate of 0.5 hours of burden per response was unrealistically low when considering the time and effort necessary for a company to gather the data.

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. It has been determined that an upward adjustment is not required at this time. The estimate of four responses per respondent is based upon contractor use of the ORCA function in 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 ORCA, 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 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.

Subject matter experts were consulted to obtain additional information that helped in estimating the hours of burden per response. After reviewing the average estimated burden hours per response, and the respondent's comments to the burden hours per response in conjunction with consultation with subject matter experts, it has been determined that the estimate of thirty minutes (0.500), or approximately 10 minutes more than the original estimate of 0.312 published in the Federal Register at 75 FR 6668 on February 2, 2010, was a valid measure of the average 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. Not applicable.

10. Describe assurance of confidentiality provided to respondents. The information collected 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. This is a request for an extension of the information collection requirement currently approved under OMB Control Number 9000-0136, Commercial Item Acquisitions. 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 34 under the previously approved information collection to four. 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.

Annual Reporting Burden

Number of respondents	162,000
Number of responses per respondent per year.	x 4
Total annual responses	648,000
Preparation time per response.	x .5
Total response burden hours.	324,000
Average wage (\$32.73 ¹ + 36.25% ² OH).	x \$44.59
Estimated cost to public	\$14,447,160

¹ The cost of \$32.73 per hour is based on a GS-12 Step 5 salary (Base GS Salary Table 2012).

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 36.25 percent overhead. According to agency data submissions to the Federal Procurement Data System - Next Generation (FPDS-NG), 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. For purposes of estimation, we will use the total base awards made in FY 2011 as reported to FPDS-NG as the basis for estimating the minimum total responses to the Government.

Annual Recordkeeping Burden and Cost

Total annual responses.	707,996
Review time per response.	x 0.167
Total burden hours.	118,235
Average wages + overhead (\$22.57/hr + 36.25% OH) x	<u>\$30.75</u>
Total Government cost	\$3,635,726

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 of 34 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. 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

² The 36.25% fringe benefit rate is derived from OMB Memorandum M-08-13, dated March 11, 2008.

accuracy, an adjustment is being made to the average wages and overhead calculation for Government review in Item 14.

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.