

**SUPPORTING STATEMENT  
FOR INFORMATION COLLECTION SUBMISSION  
9000-0174, INFORMATION REGARDING RESPONSIBILITY MATTERS**

**A. Justification.**

**1. Administrative requirements.** This is a request for extension of the information collection requirement currently approved under OMB Control Number 9000-0174 for Information Regarding Responsibility Matters, Federal Acquisition Regulation (FAR) Subpart 9.1, 52.209-7, and 52.209-9.

This information collection is necessary to: (a) determine the responsibility of prospective contractors; and (b) ensure that contractors maintain for accuracy and completeness, their integrity and performance information upon which responsibility determinations rely.

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).

Section 872 of the Duncan Hunter National Defense Authorization Act of 2009 (Public Law 110-417), enacted on October 14, 2008, required the development and maintenance of an information system that contains specific information on the integrity and performance of covered Federal agency contractors and grantees. The Federal Awardee Performance and Integrity Information System (FAPIIS) was developed to address these requirements. FAPIIS provides users access to integrity and performance information from the FAPIIS reporting module in the Contractor Performance Assessment Reporting System (CPARS), as well as proceedings information and suspension/ debarment information from the Central Contractor Registration (CCR) and the Excluded Parties List System (EPLS) functions in the System for Award Management (SAM).

Before awarding a contract in excess of the simplified acquisition threshold, a contracting officer is required to review FAPIIS, and consider all the information in FAPIIS and other past performance information when making a responsibility determination (9.104(a) and (b)).

If the contracting officer obtains relevant information from FAPIIS regarding criminal, civil, or administrative proceedings in connection with the award or performance of a Government contract; terminations for default or cause; determinations of non-responsibility because the contractor does not have a satisfactory performance record or a satisfactory record of integrity and business ethics; or comparable information relating to a grant, the contracting officer must, unless the contractor has already been debarred or suspended:

- (a) Promptly request such additional information from the offeror in order to demonstrate the offeror's responsibility; and
- (b) Notify prior to preceding with award, in accordance with agency procedures, the agency official responsible for initiating debarment or suspension action, if the information appears appropriate for the official's consideration.

Contracting officers are required to document the contract file for each contract in excess of the simplified acquisition threshold to indicate how the information in FAPIIS was considered in any responsibility determination, as well as the action that was taken as a result of the information.

**i. Information Regarding Responsibility Matters  
(52.209-7)**

Applicability: The prescription at FAR 9.104-7(b) requires contracting officers to insert the provision at 52.209-7, Information Regarding Responsibility Matters, in solicitations where the resultant contract value is expected to exceed \$500,000.

Content: Paragraph (a) of the provision at 52.209-7 defines the terms, "Administrative proceeding", "Federal contracts and grants with total value greater than \$10,000,000", and "Principal".

Paragraph (b) of the provision contains a check box to be completed by the offeror indicating whether or not it has current active Federal contracts and grants with total value greater than \$10,000,000.

Paragraph (c) of the provision states that, if the offeror indicated in paragraph (b) that it has current active Federal contracts and grants with total value greater than \$10,000,000,

then, by submission of the offer, the offeror represents that the information entered into FAPIIS is current, accurate, and complete as of the date of submission of the offer with regard to-

- Whether the offeror and/or any of its principals has, or has not, within the past five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level, that resulted in:
  - (A) A criminal conviction in the case of a criminal proceeding;
  - (B) The finding of fault and liability in a civil proceeding resulting in the payment of \$5,000 or more in damages, restitution, reimbursement, fine or penalty;
  - (C) The finding of fault and liability in an administrative proceeding resulting in the payment of a monetary fine or penalty of \$5,000 or more, or the payment of a reimbursement, restitution, or damages in excess of \$100,000; or
  - (D) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgement of fault by the contractor if the proceeding could have led to any of the outcomes specified in (A) through (C) above.
- If the offeror has been involved in the last five years in any of the occurrences listed in the provision (see (A) through (D) above), whether the offeror has provided the requested information with regard to each occurrence.

Paragraph (d) of the provision requires the offeror to post the information identified in the provision (see (A) through (D) above) in FAPIIS as required by maintaining an active registration in the CCR function in SAM.

**ii. Updates of Publicly Available Information Regarding Responsibility Matters (52.209-9)**

Applicability: The prescription at FAR 9.104-7(c) requires contracting officers to insert the clause at 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters, in -

- (A) Solicitations where the resultant contract value is expected to exceed \$500,000; and
- (B) Contracts in which the offeror checked in paragraph (b) of the provision at 52.209-7 that it has current active Federal contracts and grants with total value

greater than \$10,000,000.

Content:

Paragraph (a) of the clause at 52.209-9 requires the contractor to update responsibility information on a semiannual basis, throughout the life of the contract, by posting the information in the CCR function in SAM.

Paragraph (b) of the clause provides notification regarding the availability of certain FAPIIS information to the public.

Paragraph (c) of the clause indicates that the contractor will receive notification when the Government posts new information to the contractor's record. The paragraph also provides procedural guidance regarding contractor requests to remove from FAPIIS information posted by the Government, and contractors' opportunity to post comments regarding information that has been posted by the Government.

Paragraph (d) states that public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under Executive Order 12600, "Predisclosure Notification Procedures for Confidential Commercial Information".

**2. Uses of information.** The information provided by offerors in accordance with the provision at 52.209-7 and the clause at 52.209-9 are used by the contracting officer to support his/her evaluation of a firm's responsibility in compliance with the policy at FAR 9.103 that purchases are made from, and contracts awarded to, responsible prospective contractors only.

**3. Consideration of information technology. The Government** uses improved information technology to the maximum extent practicable. As a means of reducing information collection burdens to the public, FAPIIS relies on a variety of feeder systems. It is populated with data pulled from the FAPIIS reporting module in the CPARS, as well as proceedings information and suspension/debarment information from the CCR and the EPLS functions in the SAM.

**4. Efforts to identify duplication.** The provision at 52.209-7 and the clause at 52.209-9 refer to data input and management requirements related to the FAPIIS. The provision at 52.209-7 focuses on information necessary for responsibility determinations in a contract's pre-award phase. The clause in 52.209-9, with its requirement for certain contractors to update the FAPIIS-related information in the CCR function in SAM on a

semi-annual basis throughout the life of the contract, focuses on post-award requirements for contractors to maintain the accuracy and completeness of their FAPIIS data. 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. Neither the provision at 52.209-7 nor the clause at 52.209-9 applies to solicitations at or below the simplified acquisition threshold, which is set-aside for small businesses. Furthermore, the provision at 52.209-7 and the clause at 52.209-9 only impose additional information collection requirements on businesses that have total Government grants and contracts exceeding \$10,000,000, which excludes most small businesses. To date, no public comments have been received with regard to the impact of the information collection required by the representation at 52.209-7 and the clause at 52.209-9 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 required by 52.209-7 is needed prior to award of a contract to evaluate responsibility. The semi-annual information update in CCR function in SAM is required by FAR 9.104-7(c) and 52.209-9 is necessary throughout the life of a contract in order to maintain the accuracy and completeness of the contractor's data in FAPIIS and the integrity of FAPIIS as a tool to support quality preaward responsibility evaluations.

**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 at 78 FR 18593 on March 27, 2013. One respondent submitted public comments. The analysis of the public comments is summarized as follows.

**a. Necessity of the information collection requirement.**

— **Comment:** According to the respondent, agencies should be seeking to create savings by reducing or eliminating such information collection requirements. However, the respondent did not challenge the propriety of this underlying information collection requirement.

**Response:** The provision at FAR 52.209-7 requires that for each solicitation where the resultant contract value is expected to exceed \$500,000, the offeror responds in paragraph (b) as to whether it has, or has not, active Federal contracts and grants that total greater than \$10,000,000. Only if the offeror responds affirmatively is there any further FAPIIS-related information collection requirement. The clause at FAR 52.209-9 applies to solicitations where the resultant contract value is expected to exceed \$500,000 and to contracts in which the offeror has indicated in paragraph (b) of the provision at 52.209-7 that it has current active Federal contracts and grants with total values greater than \$10,000,000. Paragraph (a) of the clause at 52.209-9 requires the contractor to update responsibility information on a semiannual basis, throughout the life of the contract, by posting the information in the CCR. These requirements are necessary. There are no aspects of this requirement that can be reduced or eliminated without negatively impacting the ability of the Government to assess contractor responsibility, investigate and address potential criminal actions, and protect the Government's interests in maintaining the integrity of the acquisition process.

**b. OMB approval to extend the approval of this information collection requirement.**

**Comment:** The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because the analysis significantly underestimates the paperwork burden imposed by this requirement and has therefore not provided sufficient justification for the requested extension. The respondent further stated that the agency and OMB should assess the need to extend this information collection requirement in the context of assessing the total information collection burden. The respondent further commented that the "collective burden of compliance" required of the Government acquisition community annually totals over 30 million hours. According to the respondent, the collective burden greatly exceeds the agency's estimates and outweighs any potential utility of the extension.

**Response:** The criteria for extension of an information collection requirement must be based primarily on the need and use for the required information. It is essential for contractors to report responsibility requirements, regardless the number of responses. If the agencies have determined that the information is essential to protect the interests of the Government, then the extension should be approved.

**c. Accuracy of data estimates.**

**Comment:** The respondent commented that the agency did not accurately estimate the public burden, challenging that the agency's methodology for calculating the burden is insufficient and inadequate and does not reflect the total burden. The respondent stated that—

- With regard to the number of unique vendors with contracts valued over \$500,000 and the number of proposals received per solicitation, FPDS data was used and the respondent considers the estimate of .1 hours per initial response to be reasonable.
- However, the respondent is unclear as to why the Agencies abandoned this approach when estimating the number of unique vendors with total current, active Federal contracts and grants with total values greater than \$10,000,000. If actual data is unavailable, the Agencies are required to do more than just declare, "It is estimated." The total burden hour estimates for the latter information collection requirement (506,313 hours) seems reasonable, but as the agencies have not provided a "specific, objectively supported estimate of burden" or clear explanation of its methodology, the exact burden estimate is unclear and the allocation is confusing. According to the notice's text, "[The Agencies] have used an average burden estimate of 100 hours to enter the company's data into the Web site. This time estimate also includes the average annual recordkeeping time necessary per respondent to maintain the company's information internally." However, the table then contradicts the text by assigning the 100 hours to the "recordkeeping burden" and then recognizing that entering the data will also take additional time, especially as the data must be entered into the new System Awards Management (SAM) system. According to the respondent, any change within SAM requires at least one hour of time: even one update will force the respondent to confirm the accuracy of every page, i.e. scroll down to the bottom and agree to every screen.

**Response:** The respondent found the overall burden estimate to be reasonable. However, based on Fiscal Year (FY) 2012 data, and in consultation with subject matter experts, the Councils have re-evaluated the total burden hours for this information collection. This re-evaluation resulted in a slight downward adjustment from the data previously published in the Federal Register at 78 FR 18593, on March 27, 2013.

The Councils take this process seriously. In this particular instance, the burden was prepared using the burden hour's method taking into consideration the time, effort and financial

resources put on the entity submitting the information. This includes 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 hours must also be viewed as 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, it must be noted that the burden includes estimated hours only for those actions which a company would not undertake in the normal course of business.

**d. Timing of request for extension.**

**Comment:** The respondent noted that this information collection is soliciting comments during an emergency extension period OMB granted in March 2013. The respondent reiterated OMB's comment that the agencies should have in place an internal planning process so that completion of the public notification and comment period required by 5 CFR 1320 occurs prior to an information collection's expiration date. Regular order allows the agencies and the public to have a meaningful and on-the-record dialogue on information collection extensions.

**Response:** There are over 100 information collection requirements that require periodic renewal, of which more than half expired in FY 2013. Although ideally it is preferable to complete the renewal process prior to expiration, an emergency extension may be necessary in order to allow the public the opportunity for input into the process.

**e. The collective burden of compliance.**

**Comment:** The respondent objects to the overall collective burden imposed by the Government on all respondents.

**Response:** The Councils cannot effectively address the broad allegations with regard to the accuracy and utility of the entire collective burden imposed on all Federal acquisitions. The Councils can only effectively address each individual information collection requirement that is under consideration for OMB approval. The Councils constantly review information collection requirements imposed by FAR regulations for ways to reduce the burdens and still achieve the objectives of the regulations, whether based on policy or statute.

**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. As required by section 3010 of Public Law 111-212, all information posted in FAPIIS on or after April 15, 2011, *except* for past performance reviews, is publicly available.

**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 9000-0174 for Information Regarding Responsibility Matters, Federal Acquisition Regulation (FAR) Subpart 9.1, 52.209-7, and 52.209-9.

**i. FAR 52.209-7 Information Regarding Responsibility Matters**

The provision at FAR 52.209-7 requires that for each solicitation where the resultant contract value is expected to exceed \$500,000, the offeror responds in paragraph (b) as to whether or not it has active Federal contracts and grants that total greater than \$10,000,000. Only if the offeror responds affirmatively is there any further information collection requirement.

Because a firm can quickly retrieve the total dollar amount of its current Federal contracts and grants, the estimated number of hours for response to the check block in paragraph (b) of the provision at 52.209-7 is 0.1 hours. The following analysis is provided in accordance with Fiscal Year (FY) 2012 Federal Procurement Data System (FPDS) data:

- There were 26,327 contracts with values over \$500,000 awarded in FY 12.
- The Government estimates that there was an average of 3 responses per solicitation, resulting in approximately 79,000 offers (26,327 x 3, rounded).
- Of the approximate 79,000 offers, the Government estimates that an average of five responses annually will be received by 15,800 unique vendors (79,000/5).
- The Government estimates that approximately 15,800 respondents, 1,090 of which will not receive an award

(15,800-14,710), would need to comply with the applicable provision for this information collection.

- Based on the analysis, it has determined that the 15,800 unique vendors will be used as the basis for the number of initial responses for this information collection.
- The Government further estimates that one third of the unique vendors (5,250) submitting offers may answer the first question affirmatively, and will then need to enter data into the FAPIIS.

Annual Reporting Burden  
FAR 52.209-7

(i) Initial Response:

Estimated number of respondents:	15,800
Est. number of responses per respondent per year:	<u>x 5</u>
Total annual responses (rounded):	79,000
Estimated hours per response:	<u>0.1</u>
Total response burden hours:	7,900

(ii) Additional Response:

Estimated number of respondents:	5,250
Est. number of responses per respondent per year:	<u>x 1</u>
Estimated number of responses:	5,250
Estimated hours per response:	<u>x 1</u>
Estimated response burden hours:	5,250

Total response burden hours for FAR 52.209-7:	13,150
Average wage (\$30.81 + 36%):	<u>x \$ 42*</u>
Estimated cost to public:	\$552,200

\* The Government used a rate equivalent to a GS-12, Step 3 or \$30.81/hour (from the Office of Personnel Management (OPM) 2012 GS Salary Table - Hourly Rate), added overhead at 36.25 percent (rounded to 36%) and rounded the average wages and overhead to the nearest dollar, or \$42 an hour.

**ii. FAR 52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters**

The clause at FAR 52.209-9 applies to solicitations where the resultant contract value is expected to exceed \$500,000 and to contracts in which the offeror has indicated in paragraph (b) of the provision at 52.209-7 that it has current active Federal contracts and grants with total values greater than \$10,000,000.

Of the unique vendors that submitted offers, pursuant to FAR 52.209-9, those contractors will have to update the FAPIIS-related data in SAM every 6 months. Because the FAPIIS

information in SAM is maintained on individual vendors, contractors awarded more than one contract will still only have to update the data two times per year regardless of the number of contracts awarded them. An average burden estimate of .5 hours is used to make the semi-annual updates.

For recordkeeping, the Government has used an average burden estimate of 100 hours annually per respondent to include the time necessary per respondent to maintain the company's information internally. Most large businesses and some small businesses have established systems to track compliance. At this time, all or most Government contractors have entered relevant company data in the CCR function in SAM in accordance with another information collection requirement. The following analysis is provided in accordance with Fiscal Year (FY) 2012 Federal Procurement Data System (FPDS) data:

- FY 2012 data revealed that 26,327 contracts with values over \$500,000 were awarded to 14,710 unique vendors.
- The Government estimates that approximately one third (4,900) of the unique vendors (14,710) submitting offers may answer the first question affirmatively (from the clause at FAR 52.209-7), and then will have to enter data into FAPIIS.
- Based on the analysis, it was determined that the 4,900 unique vendors will be used as the basis for the number of respondents required for this information collection.

Annual Reporting Burden

FAR 52.209-9

Estimated number of respondents:	4,900
Est. number of responses per respondent per year:	<u>x 2</u>
Total annual responses (rounded):	9,800
Estimated hours per response:	<u>0.5</u>
Total response burden hours for FAR 52.209-9:	4,900

Total Public Reporting Burden

(FAR 52.209-7 and 52.209-9 (combined))

Total response burden hours:	18,050
Average wage (\$30.81 + 36%):	<u>x 42*</u>
Estimated cost to public:	\$758,100

\* The Government used a rate equivalent to a GS-12, Step 3 or \$30.81/hour (from the Office of Personnel Management (OPM) 2012 GS Salary Table - Hourly Rate), added overhead at

36.25 percent (rounded to 36%) and rounded the average wages and overhead to the nearest dollar, or \$42 an hour.

Annual Recordkeeping Burden

Number of recordkeepers:	5,250
Estimated preparation time per response (hours):	<u>x 100</u>
Total recordkeeping burden hours:	525,000
Average wage (\$30.81 + 36%):	<u>x 42*</u>
Total:	\$22,050,000

**14. Estimated cost to the Government.**

Total annual responses:	94,050
Review time per response (hours):	<u>x 0.1</u>
Total burden hours (rounded):	9,405
Average wage (\$30.81 + 36%):	<u>x \$ 42*</u>
Total Government Cost:	395,010

\* The Government used a rate equivalent to a GS-12, Step 3 or \$30.81/hour (from the Office of Personnel Management (OPM) 2012 GS Salary Table - Hourly Rate), added overhead at 36.25 percent (rounded to 36%) and rounded the average wages and overhead to the nearest dollar, or \$42 an hour.

**15. Explain reasons for program changes or adjustments reported in Item 13 or 14.** This submission requests the extension of an existing information collection requirement in the FAR. There have been no program changes. Based on FY 2012 FPDS data, the total estimated burden hours has increased slightly based primarily on an increase in the estimated number of recordkeepers and a recognition that offerors that make an affirmative response need to make an initial entry into SAM, in addition to the biannual updates by contractors after contract award.

**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.** 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.