

**SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION
9000-0135, PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS**

A. Justification.

1. Administrative requirements. Part 28 of the Federal Acquisition Regulation (FAR) contains guidance related to obtaining financial protection against damages under Government contracts (e.g., use of bonds, bid guarantees, insurance etc.). Part 52 contains the texts of solicitation provisions and contract clauses. These regulations implement a statutory requirement for information to be provided by Federal contractors relating to payment bonds furnished under construction contracts which are subject to the 40 U.S.C. chapter 31, subchapter III, Bonds. This collection requirement is mandated by Section 806 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102-190), as amended by Section 2091 of the Federal Acquisition Streamlining Act of 1994 (P.L. 103-335). The clause at 52.228-12, Prospective Subcontractor Requests for Bonds, implements Section 806(a)(3) of P.L. 102-190, as amended, which specifies that, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of a construction contract for which a payment bond has been furnished to the United States pursuant to 40 U.S.C. chapter 31, subchapter III, Bonds, the contractor shall promptly provide a copy of such payment bond to the requestor.

2. Uses of information. In conjunction with performance bonds, payment bonds are used in Government construction contracts to secure fulfillment of the contractor's obligations under the contract and to assure that the contractor makes all payments, as required by law, to persons furnishing labor or material in performance of the contract. This regulation provides prospective subcontractors and suppliers a copy of the payment bond furnished by the contractor to the Government for the performance of a Federal construction contract subject to 40 U.S.C. chapter 31, subchapter III, Bonds. It is expected that prospective subcontractors and suppliers will use this information to determine whether to contract with that particular prime contractor. This information has been and will continue to be available from the Government. The requirement for contractors to provide a copy of the payment bond upon request to any prospective subcontractor or

supplier under the Federal construction contract is contained in Section 806(a)(3) of P.L. 102-190, as amended by Sections 2091 and 8105 of P.L. 103-355.

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 issued under the Federal Acquisition Regulation that 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. P.L. 102-190, as amended by P.L.103-335, requires that Federal prime contractors provide this information to prospective subcontractors or suppliers, at their request, under a construction contract that is subject to 40 U.S.C. chapter 31, subchapter III, Bonds. This information is already available to subcontractors from the contracting officer, but the statute placed this responsibility upon the prime contractor to provide the information directly to prospective subcontractors or suppliers. This statute imposes the same information collection requirement on both large and small businesses.

6. Describe consequence to Federal program or policy activities if the collection is not conducted less frequently. This collection of information is imposed upon Federal contractors upon award of each contract for construction subject to 40 U.S.C. chapter 31, subchapter III, Bonds, who must provide the information upon request of any prospective subcontractor or supplier under the Federal contract.

7. Special circumstances for collection. Collection is not inconsistent with the guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency. A first notice published in the *Federal Register* at 78 FR 56896, on September 16, 2013. One respondent submitted public comments. The analysis of the public comments is summarized as follows.

Comment: The respondent agrees that subcontractors and prospective subcontractors should have access to copies of the payment bonds and has advocated for this process. By having access to the bonds, the subcontractors and prospective subcontractors have the advantage of having insight on the prime contractor. At this time, the commenter does not have a recommendation for an alternative method for making this data available. However, the respondent recommends that alternatives be explored with associations involved and representing the surety industry.

Response: Because the respondent's suggestions neither question nor affect the information collection estimates included in this request for extension, the request for approval to extend this information collection will be submitted without change. However, the recommendation will be researched, and, as determined appropriate, revised as separate actions.

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 practices and current regulations.

11. Additional justification for questions of a sensitive nature. The collection requirement does not solicit any sensitive or personal information.

12 & 13 Estimated total annual public hour and cost burden. For estimation and accuracy purposes, we ran an ad-hoc Federal Procurement Data System (FPDS) report¹ on the number of new contract awards in fiscal year (FY) 2012 for construction contracts over \$150,000 (simplified acquisition threshold). Based on the FY 2012 report, 9,752 construction contracts were awarded Governmentwide over the simplified acquisition threshold. We estimated that each contract awarded would have an average of 10 subcontractors (9,752 x 10) resulting in a total universe of 97,520 subcontractors. Based on the 97,520, we estimated that 15% or 14,628 subcontractors would request this information. We also estimated that it would take an average of 15 minutes per

¹ Ad-hoc report included new construction awards – no task orders included in this report.

request resulting in 3,657 burden hours.

Number of respondents	14,628
Number of responses per respondent per year	<u>x 1</u>
Total annual responses	14,628
Preparation time per response	<u>x .25</u>
Total response burden hours	3,657
Average wage (\$30.81 + 36%)	<u>x \$42*</u>
Estimated cost to public	153,594

* We 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.

14. Estimated Cost to the Government.

Total annual responses	14,628
Review time per response	<u>x .25</u>
Total burden hours	3,657
Average cost per hour (\$30.81 + 36%)	<u>x \$42*</u>
Total Government cost	\$153,594

* We 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 an extension of OMB approval of an information collection requirement in the FAR. An adjustment was made regarding the estimated number of annual responses from 5 (in the currently approved burden) to a more appropriate estimate of 1 response annually (i.e., the number a subcontractor would request this information). This adjustment results in a decrease of the estimated burden on the public from 15,872.50 hours to 3,657 hours in Item 12/13 and is based on re-evaluation and consultation with subject matter experts on the average responses per respondent.

The previous information collection did not provide the average wages per hour for the public but provided \$25 for the Government (Item 14). To ensure greater accuracy in Item 12/13 and to adjust for inflation, the average wages of

\$30.81/per hour plus 35.25 percent (rounded to 36 percent) overhead totaling \$42 for the average wage per hour is used for both the public and the Government.

The one respondent did not question the information collection estimate. Therefore, no change is being made to the published 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.