

TAB C

Commercial and Government Entity CODE (FAR Case 2012-024) Supporting Statement FAR Part 4 – Administrative Matters

A. Justification

1. Requirement. Currently, the Federal Government does not have an organic, nonproprietary means to uniquely identify entities with which it contracts, nor does it have the ability to identify whether an offeror is owned by another entity. This rule adds a new provision to require that offerors obtain and provide a Commercial and Government Entity (CAGE) code referred to as North Atlantic Treaty Organization (NATO) CAGE (NCAGE) code for foreign entities. This rule also adds a new provision to the annual representations and certifications that are completed in System for Award Management. This provision requires offerors to represent whether they are owned or controlled by another entity, and if so, to provide the CAGE code and name of such entity.

2. Purpose. The Federal Government is seeking to collect from offerors the offeror's CAGE code and owner's name and CAGE code, if an owner exists. The ability to consistently, uniquely, and easily identify whether or not an offeror is owned by another entity is becoming increasingly necessary. Ownership information is critical to capturing data across corporate relationships. Efforts are underway to develop and implement business intelligence tools to capture such data across corporate relationships in order to–

- Provide for standardization across the Federal Government;
- Gain insight into Federal spending patterns;
- Support the tracking of performance issues;
- Provide insight on contractor personnel outside the United States; and
- Support supply chain traceability and integrity efforts.

This rule makes the following FAR changes:

- Revises subpart 4.1202, Representations and Certifications, Solicitation provision and contract clause, to add a new provision 52.204-17 Ownership or Control of Offeror

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under provision 52.204-8, Annual Representations and Certifications;

- Add new subpart 4.17 Commercial and Government Entity Code, to prescribe policies, procedures, and definitions for identification of commercial and government entities. Offerors are required to provide their CAGE code to the contracting officer, and contracting officers are provided instruction to verify CAGE codes. Offerors are required to, if owned or controlled by another business entity, provide the legal name and CAGE code of that entity;
- Revises subpart 12.3 to make CAGE code reporting and maintenance applicable to commercial items; and
- Revise subpart 52.2 to;
 - o Revise 52.204-8, Annual Representations and Certifications, to include 52.204-17, Ownership or Control of Offeror;
 - o Add a new provision at 52.204-16, Contractor and Government Entity Reporting;
 - o Add a new provision at 52.204-17, Ownership of or Control Offeror;
 - o Add a new clause at 52.204-18, Commercial and Government Entity Code Maintenance, and;
 - o Revise 52.212-3, Offeror Representations and Certifications—Commercial Items, to include new definitions and ownership or control representations.

3. Information Technology. Improved information technology is used to the maximum extent practicable.

4. Duplication. As a matter of policy, DoD, GSA, and NASA review the Federal Acquisition Regulation (FAR) to determine if adequate language already exists. The proposed language has been reviewed and is not considered duplicative of any existing language in the FAR. No similar information is available elsewhere.

5. Small Business. The collection of this information is not expected to have a significant impact on a substantial number of small businesses or other small entities. The requirement for information collection to obtain a CAGE code is a onetime requirement and applies to a subset population which does not register through the System for Award Management (SAM).

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Similarly, offerors who complete representations and certifications in SAM will update once to complete the new ownership provision. The burden on large and small entities is the minimum consistent with applicable laws, Executive Orders, regulations, and prudent business practices.

6. Consequences for non-collection. Federal Government specialists who are most knowledgeable of the requirements and the need for the information reviewed the information collection frequency. Failure to collect this information may result in increased costs to adequately develop and implement business intelligence tools capable to trace Federal data across corporate relationships. Failure to collect this information may also impact the Government's ability to identify and correct patterns or instances of fraud, waste, and abuse.

7. Special circumstances. There are no special circumstances that require the collection to be conducted in any manner inconsistent with the guidelines listed in 5 CFR 1320.5(d)(2).

8. Public comments and consultation. A 60 day notice was published in the *Federal Register* at 79 FR 31187 on May 30, 2014. One comment was received. A 30 day notice was published in the *Federal Register* at 79 FR 38892 on July 9, 2014. A Public comment was solicited in the Federal Register as required by 5 CFR 1320.8(d). A revised Supporting Statement will be provided to OMB to address any comments received on the information collection portion of the proposed FAR rule.

Comment: In response to the notice of proposed rulemaking and the request for comment on the burden estimates, one respondent did question the burden estimates. The respondent indicated that the rule adds additional costs to the process not recognized in the rule. This relates to usability issues with SAM. The respondent indicated that, as a pilot, industry conducted hierarchy assessment and this took well over an hour without the additional revalidations required by SAM. The respondent requested that the FAR Council republish the rule for public comment after clarifying the issues raised.

Response: The FAR Council determined that a revision to the Paperwork Burden is not warranted. Obtaining a CAGE code is already a requirement for an active registration in SAM and for its predecessors the Online Representations and Certifications

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(ORCA) and the Central Contractor Registration (CCR) database. This final rule applies no new burden in that regard. Burden for registration in SAM was re-assessed as part of the rulemaking in the FAR case (FAR Case 2011-021) that established that requirement. Additionally, this final rule does not require the use of SAM to obtain the CAGE code(s) for the immediate owner or highest-level owner; although registration in SAM could be accomplished to do so for U.S. registrants (as U.S. registrants are assigned a CAGE code upon registration). It is true that it may take some time in larger organizations to update all of the contractor's SAM registrations to include the immediate and highest-level owner CAGE information (if the contractor has hundreds of SAM records and it is updating them centrally and at the same time). However, including the data on an individual registration or renewal basis should not result in any significant additional time.

9. Payment to respondents. No payment or gift will be provided to respondents to this information collection requirement.

10. Confidentiality. This information is disclosed only to the extent consistent with prudent business practices and current regulations and statutory requirements. No assurance of confidentiality is provided to respondents.

11. Sensitive questions. No sensitive questions are involved.

12. Estimate of Public Burden. This burden estimate is comprised of requirements from two provisions. The first provision requires offerors, who do not have a CAGE code and are not otherwise assigned one through registration in Central Contractor Registration (CCR) SAM, to obtain one, and all offerors to provide their CAGE code. It is estimated that the time required to provide one's CAGE code with an offer is comparable to providing other identifying information (e.g. zip code) and is negligible. Therefore, the estimate below is of the burden to obtain a CAGE code. The second provision 52.204-17, Ownership of Offeror, requires offerors to provide ownership information in the online System for Award Management representations and certifications. Once the representation is in SAM, it will be applicable to all offers made. The hours for these two provisions are estimated in the two tables below and total 207,698 estimated hours as follows:

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52.204-16 CAGE Code Provision	
Number of respondents required to obtain CAGE: (Note 1)	1,134
Number of responses per respondent:	1
Total annual responses:	1,134
Hours per response: (Note 2)	.25
Subtotal response burden hours	283.5
Number of respondents required to obtain NCAGE: (Note 1)	1,020
Number of responses per respondent:	1
Total annual responses:	1,020
Hours per respondent: (Note 2)	.50
Subtotal response burden hours:	510
Total response burden hours:	793.5
Cost per hour: (Note 3)	\$25
Total annual public cost:	\$19,838

52.204-17 Ownership or Control of Offeror Provision	
Number of respondents: (Note 4)	413,808
Number of responses per respondent: (Note 4)	1
Total annual responses:	413,808
Hours per response: (Note 5)	.5
Total response burden hours:	206,904
Cost per Hour: (Note 3)	\$25
Total annual public cost:	\$5,172,600

Notes (All data is based on FY11 Federal procurement data):

(1) The Federal Government made 2,154 awards to unique contractors who were not required to register through SAM. Of these awards, 1,134 were U.S. contractors and 1,020 were foreign contractors.

(2) The estimated hours per response are based on 15 minutes to prepare and submit the request. For the foreign vendors another 15 minutes is added to this estimate to account for additional time to determine the correct issuing office.

(3) Cost per hour is based on typical clerical equivalent of a GS-07 step 5 (calendar year 2012) salary plus 36.25 percent burden, rounded to the nearest dollar, and is estimated as follows:

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Base Payroll	\$18.45
Times estimated overhead	<u>36.25%</u>
Equals	\$25.14
Rounded to	\$25.00

(4) Federal procurement data shows that 2,020,767 offers were made on solicitations that resulted in 704,100 awards. There was an average of 2.87 offers made per solicitation that resulted in an award. Federal procurement data also shows that of the 704,100 awards, 144,184 were to unique contractors. Federal procurement data does not distinguish unique offerors. It is possible, but not likely, that 144,184 offers were made by unique contractors that resulted in 144,184 awards to unique contractors. It is possible, but not likely that for each of 144,184 awards to unique contractors, the average of 2.87 offerors per solicitation would have been composed of unique offerors, totaling 413,801 unique offerors required to report under this burden. Without data available to show the average number of unique offerors, the Government is unable to accurately calculate the number of unique offerors. In order to ensure that the burden is not underestimated, the Government has elected to employ a methodology of estimating using 2.87 unique offerors as the average per unique award, resulting in the higher estimated total of 413,801 respondents. The number of responses per respondent is one as the reporting of information is done one time in the online SAM representations and certifications.

(5) It is estimated to take .5 hours (30 minutes) to retrieve information and provide response to the provision's representations.

13. Estimated nonrecurring costs. We estimate that there are no nonrecurring costs, i.e., capital and start-up operation and maintenance costs other than the hour burden detailed in section 12 above.

14. Estimated cost to Government. The time required for Government review of the requirements is based on receiving, reviewing, and analyzing the information submitted by the contractor. A total Government cost of \$7,519,274 is calculated as follows.

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Number of new awards: (Note 1)	704,100
Number of respondents per award: (Note 1)	2.87
Total annual responses:	2,020,767
Hours per response: (Note 2)	.10
Total annual hours:	202,077
Cost per hour: (Note 3)	\$37
Total annual Government cost:	\$7,519,274

Notes:

(1) The Federal Government made a total of 704,100 new awards in FY11. There was an average of 2.87 responses per award.

(2) The estimated hours per response is based on the time required for the Government to receive, review, and analyze the information submitted by the contractor.

(3) Cost per hour is based on a typical contract administrator at GS-11 step 5 salary (calendar year 2011) plus 36.25 percent burden, rounded to the nearest dollar, and is estimated as follows:

Base Payroll	\$27.31
Times estimated overhead	<u>36.25%</u>
Equals	\$37.21
Rounded to	\$37.00

15. Program changes. There are no program changes.

16. Publication. Results of this information collection will not be published.

17. Expiration Date. Not applicable.

18. Certification. There are no exceptions to the certification statement identified in Item 19 of OMB Form 83-I.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHOD

Results will not be tabulated. Statistical methods will not be employed.

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