

**SUPPORTING STATEMENT
FOR INFORMATION COLLECTION SUBMISSION
9000-0183, PREVENTING PERSONAL CONFLICTS OF INTEREST FOR
CONTRACTOR EMPLOYEES**

A. Justification.

1. **Administrative requirements.** This is a request for extension of an information collection requirement currently approved under OMB Control Number 9000-0183 for information gathering conducted in support of Federal Acquisition Regulation (FAR) subpart 3.11, Preventing Personal Conflicts of Interest, and the clause at FAR 52.203-16.

This information collection is necessary to implement Government policy to require contractors and subcontractors to: (a) identify and prevent personal conflicts of interest of their covered employees; and (b) prohibit covered employees who have access to non-public information by reason of performance on a Government contract from using such information for personal gain.

As defined in FAR subpart 3.11, "personal conflict of interest" means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under a contract. (A *de minimus* interest that would not "impair the employee's ability to act impartially and in the best interest of the Government" is not covered under this definition.) Among the sources of personal conflicts of interest are—

- (1) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household;
- (2) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
- (3) Gifts, including travel.

The currently approved information collection covers implementation of the clause at FAR 52.203-16, Preventing Personal Conflicts of Interest, as prescribed at FAR 3.1106, in solicitations and contracts that—

- (1) Exceed the simplified acquisition threshold; and
- (2) Include a requirement for services by contractor employee(s) that involve performance of acquisition functions closely associated with inherently

governmental functions for, or on behalf of, a Federal agency or department.

Under the currently approved information collection, "covered employee" means "an individual who performs an acquisition function closely associated with inherently governmental functions and is—

- (1) An employee of the contractor; or
- (2) A subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures."

The clause at FAR 52.203-16 requires contractors and subcontractors performing acquisition functions closely associated with inherently governmental functions to—

- (1) Obtain and maintain from each covered employee initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, e.g., financial interests, other employment or financial interests, gifts, including travel;
- (2) Require each covered employee to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing;
- (3) Report to the contracting officer any personal conflict of interest violation by a covered employee as soon as identified. The report shall include a description of the violation and the proposed actions to be taken by the contractor in response to the violation, with follow-up reports of corrective action taken, as necessary; and
- (4) In exceptional circumstances, if the contractor cannot satisfactorily prevent a personal conflict of interest, the contractor may submit a request, through the contracting officer, for the head of the contracting activity to—
 - (a) Agree to a plan to mitigate the personal conflict of interest; or
 - (b) Waive the requirement to prevent personal conflicts of interest.

FAR Case 2013-022, Extension of Limitation on Contractor Employee Personal Conflicts of Interest, proposes to amend the FAR by implementing section 829 of the National Defense

Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) to extend the limitations on contractor employee personal conflicts of interest to apply to the performance of *all* functions that are closely associated with inherently governmental functions (not just acquisition functions) *and* to contracts for personal services (to the extent such contracts are authorized by law, e.g., legal or medical services).

Similarly, under the revised information collection, the term "covered employee" is expanded to mean "an individual who performs a function closely associated with inherently governmental functions or performs under a personal services contract and is—

- (1) An employee of the contractor; or
- (2) A subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures.

2. Uses of information. The information provided to and by contractors in accordance with the clause at FAR 52.203-16 is used by the contractor and the contracting officer to identify and mitigate personal conflicts of interest in compliance with Government policy to (a) identify and prevent personal conflicts of interest of covered employees; and (b) prohibit covered employees who have access to non-public information by reason of performance on a Government contract from using such information for personal gain. (FAR 3.1102)

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 contractor may submit this information collection requirement electronically. There is no Government prohibition against the electronic collection of information by contractors from covered employees and subcontractors in fulfilling the requirements of the clause at FAR 52.203-16.

4. Efforts to identify duplication. The information to be collected under the revised requirements of FAR 52.203-16 does not duplicate information found or collected elsewhere.

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. The clause at 52.203-16 does not apply to solicitations at or below the simplified acquisition threshold, which are set-aside for small businesses.

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. FAR 52.203-16 only requires contractors to obtain and maintain information from each covered employee on an "as required basis", i.e., (1) when initially assigned to a task that a disclosure of interest that might be affected by the task to which the employee has been assigned; and (2) whenever the employee's personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task that the covered employee is performing. Other associated information collection is required only to report to the contracting officer any personal conflict of interest violation by a covered employee as soon as it is identified, and, in exceptional circumstances, for submission of a request by the contractor, through the contracting officer, for the head of the contracting activity to agree to a plan to mitigate the personal conflict of interest, or waive the requirement to prevent personal conflicts of interest.

7. Special circumstances for collection. Collection is consistent 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. FAR case 2013-022, Extension of Limitations on Contractor Employee Personal Conflicts of Interest was published as a proposed rule in the *Federal Register* at 79 FR 18503 on April 2, 2014, providing updated burden hours. A 60 notice was published in the *Federal Register* at 79 FR 33557 on June 11, 2014. No Comments were received. A 30 day notice was published in the *Federal Register* at 79 FR 53708 on September 10, 2014.

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.

11. Additional justification for questions of a sensitive nature.

The information collected regarding contractor covered employee and subcontractor financial interests (as well as those of close family members or of other members of the covered employee's household); other employment or financial relationships; and gifts, including travel, is essential to identifying and mitigating personal conflicts of interest in accordance with Government policy. Further, integrity in contracting is of critical importance, and it is necessary for contractors to report violations of criminal law in connection with award or performance of Government contracts and subcontracts in order to reduce the occurrence of such conduct and to promptly investigate and deal with it, when it occurs.

12 & 13. Estimated total annual public hour and cost burden.

This is a request for revision of the information collection requirement currently approved under OMB Control Number 9000-0183 for information in support of Preventing Personal Conflicts of Interest, Federal Acquisition Regulation (FAR) subpart 3.11, and 52.203-16. Information shall be collected from covered employees. Under the clause at 52.203-16, as revised, "covered employee" means—

An individual who performs a function closely associated with inherently governmental functions or performs under a personal services contract and is—
(1) An employee of the contractor; or (2) A subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures.

The clause at FAR 52.203-16, Preventing Personal Conflicts of Interest, has four information collection requirements associated with it:

(1) Obtaining and maintaining from each covered employee initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, e.g., financial interests, other employment or financial interests, gifts, including travel.

(2) Requiring each covered employee to update the disclosure statement whenever the employee's personal or financial

circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing.

(3) Reporting to the contracting officer any personal conflict of interest violation by a covered employee as soon as identified. The report shall include a description of the violation and the proposed actions to be taken by the contractor in response to the violation, with follow-up reports of corrective action taken, as necessary.

(4) In exceptional circumstances, if the contractor cannot satisfactorily prevent a personal conflict of interest, the contractor may submit a request, through the contracting officer, for the head of the contracting activity to—

- (a) Agree to a plan to mitigate the personal conflict of interest; or
- (b) Waive the requirement to prevent personal conflicts of interest.

Annual reporting and recordkeeping burden estimates, based on data reported to the Federal Procurement Data System (FPDS) for the calendar year of March 1, 2012 to March 1, 2013¹, are provided for each of the above instances. Estimates are based on data reported to FPDS on contract actions over the simplified acquisition threshold (SAT) coded as being functions closely associated with inherently governmental functions, and personal services contracts (Product Service Code (PSC) R497). Between March 1, 2012, and March 1, 2013, a total of 22,716 contract actions over the simplified acquisition threshold (includes contract awards and modifications²) were coded as functions closely associated with inherently governmental functions. Of that total, 10,600 actions awarded to small businesses, and 12,116 actions were awarded to other than small businesses. During the same period, a total of 5,369 contract actions exceeding the simplified acquisition threshold were coded with a R497 Product Service Code (PSC), Support-Professional: Personal Services Contract. Of that total, 2,732 actions were awarded to small businesses, and 2,637 were awarded to other than small businesses.³ Together, the total contract actions reported to FPDS for functions closely associated with inherently governmental functions, and for personal services, during the

¹ A 12-month calendar year is used in lieu of a fiscal year for this information collection because the FPDS Inherently Governmental Functions Actions and Dollars Report is new.

² Estimates are based upon contract actions that include modifications because service contract modifications frequently include additional contract services or tasks.

³ FPDS *Ad hoc* reports on: Functions Closely Associated with Inherently Governmental Functions Over the SAT (Run Date: 08/21/13; and Contract Actions Over the SAT with PSC Code of R497 (Run Date: 08/26/13).

period of March 1, 2012, to March 1, 2013, is 28,085 (22,716 + 5,369).

Collection and maintenance of contractor employee disclosures of interests and employee disclosure of interests updates are recordkeeping in nature, and are provided for under the Annual Recordkeeping Burden portion of this analysis.

Of the 28,085 total contract actions reported to FPDS for functions closely associated with inherently governmental functions, and for personal services, during the period of March 1, 2012, to March 1, 2013, we estimate that approximately one-third or 9,361 would include tasks for which contractors and subcontractors would be required to complete an initial disclosure of interests.

Personal Conflict-of-Interest Violation and Follow-up Reports

The clause at 52.203-16, Preventing Personal Conflicts of Interest, requires contractors to report to the contracting officer any personal conflict of interest violation by a covered employee as soon as it is identified. The report shall include a description of the violation and the proposed actions to be taken by the contractor in response to the violation, with follow-up reports of corrective action taken, as necessary. We estimate that personal conflict of interest violations would be identified and require the issuance of violation reports and follow-up corrective action reports for 1 percent (.01) of the covered contracts (9,361 x .01 = 94 (rounded)). Development and issuance of the initial violation report and any follow-up corrective action reports are estimated to require an average of 40 hours of effort.

Estimated number of respondents:	94
Estimated number of responses per respondent per year:	<u>x 1</u>
Total annual responses (rounded):	94
Estimated preparation time per response (hours):	<u>x 40</u>
Total response burden hours:	3,760
Average wage (\$47.74 + 36%):	<u>x \$ 65*</u>
Estimated cost to public:	\$ 244,400

* Because of contractor legal and management involvement necessary for the development and issuance of personal conflict of interest violation reports and their updates, we used a rate equivalent to a GS-14, Step 1 or \$47.74/hour (from the Office of Personnel Management (OPM) 2013 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 \$65 an hour.

Personal Conflict of Interest Mitigation Plan/Waiver Request

According to the clause at 52.203-16, in exceptional circumstances, if the contractor cannot satisfactorily prevent a personal conflict of interest, the contractor may submit a request, through the contracting officer, for the head of the contracting activity to:

- a. Agree to a plan to mitigate the personal conflict of interest; or
- b. Waive the requirement to prevent personal conflicts of interest.

Because of their exceptional nature, we estimate that such requests would be issued for one percent (.01) of the covered employees. Development, internal review, and issuance of the requests are estimated to require an average of 20 hours of effort.

Estimated number of respondents:	94
Estimated number of responses per respondent per year:	<u>x 1</u>
Total annual responses (rounded):	94
Estimated preparation time per response (hours):	<u>x 20</u>
Total response burden hours:	1,880
Average wage (\$47.74 + 36%):	<u>x \$ 65*</u>
Estimated cost to public:	\$ 122,200

* Because of contractor legal and management involvement necessary for the development and issuance of personal conflict of interest mitigation/waiver requests, we used a rate equivalent to a GS-14, Step 1 or \$47.74/hour (from the Office of Personnel Management (OPM) 2013 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 \$65 an hour.

Total Public Reporting Burden

(Personal Conflict of Interest Violation and Follow-up Reports, and Personal Conflict of Interest Mitigation Plan/Waiver Request (combined))

Respondents	188
Responses per respondent:	1
Total responses:	188
Burden hours per response:	30
Total response burden hours:	5,640
Average wage (\$47.74 + 36%):	<u>x \$65</u>

Estimated cost to public:

\$ 366,600

Annual Recordkeeping Burden

Employee Disclosure of Interests

The clause at FAR 52.203-16, Preventing Personal Conflicts of Interest, requires contractors and subcontractors to obtain and maintain from each covered employee initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, e.g., financial interests, other employment or financial interests, gifts, including travel. As indicated above, of the 28,085 total contract actions reported to FPDS for functions closely associated with inherently governmental functions, and for personal services, during the period of March 1, 2012, to March 1, 2013, we estimate that approximately one third or 9,361 would include tasks for which contractors and subcontractors would be required to complete an initial disclosure of interests. Further, for estimating purposes, we propose that an average of 25 contractor and subcontractor employees per contract action will have a tasking under the contract that requires them to complete an initial disclosure of interests. Preparation time and maintenance per response is estimated to average 2 hours.

Estimated number of recordkeepers:	9,361
Estimated number of records per recordkeeper per year:	<u>x 25</u>
Total annual records:	234,025
Estimated hours per record:	<u>x 2.0</u>
Total recordkeeping burden hours:	468,050
Average wage (\$30.81 + 36%):	<u>x \$ 42*</u>
Estimated cost to public:	\$19,658,100

* 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.

Employee Disclosure of Interests Update

We estimate that a third of the covered employees who completed an initial disclosure of interests would be required to update their disclosure statements due to changes in their personal or financial circumstances that might introduce the occurrence of a

new personal conflict of interest because of the task the covered employee is performing. We estimate that the time necessary to complete and maintain an employee disclosure update would be half that required to complete an initial employee disclosure of interests, or one hour.

Estimated number of recordkeepers:	9,361
Estimated number of records per recordkeeper per year:	<u>x 9</u>
Total annual records:	84,249
Estimated hours per record:	<u>x 1.0</u>
Total recordkeeping burden hours:	84,249
Average wage (\$30.81 + 36%):	<u>x \$ 42*</u>
Estimated cost to public:	3,538,458

* 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.

Total Annual Recordkeeping Burden

Recordkeepers:	9,361
Estimated hours per record:	<u>x 59</u>
Total recordkeeping burden hours:	552,299

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

The Government's burden associated with the clause at 52.203-16 would be limited to receipt, review, and action taken on Personal Conflict of Interest Violation and Follow-up Reports and Personal Conflict of Interest Mitigation Plan/Waiver Requests received from contractors. We estimate receipt of an average of 188 such reports and requests Governmentwide annually. Time required for Governmentwide review is estimated at 80 hours per response.

Total annual responses:	188
Review time per response (hours):	<u>x 80</u>
Total burden hours (rounded):	15,040
Average wage (\$47.74 + 36%):	x <u>\$ 65*</u>
Total Government Cost:	\$977,600

* Because of contracting officer, legal counsel, and head of contracting activity involvement necessary for review and action to be taken on contractor Personal Conflict of Interest Violation and Follow-up Reports, and Personal

Conflict of Interest Mitigation Plan/Waiver Requests, we used a rate equivalent to a GS-14, Step 1 or \$47.74/hour (from the Office of Personnel Management (OPM) 2013 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 \$65 an hour.

15. Explain reasons for program changes or adjustments reported in Item 13 or 14. This submission requests the revision of an existing information collection requirement in the FAR. Although we have applied this rule to a few additional functions and contract types, the estimated number of respondents and recordkeepers has decreased slightly, due to the fact that estimates are now based on new data sources that were unavailable for the initial information collection, i.e., data reported to FPDS related to personal services contracts and functions closely associated with inherently governmental functions (new report) from March 1, 2012, through March 1, 2013.

There is an adjustment to the estimated annual reporting burden from 3,688 hours to 5,640 hours, based primarily on increased estimate of the average burden hours per response. The estimated annual recordkeeping hours have also increased from 61,300 hours to 552,299 hours, based on a substantial increase in the estimated recordkeeping burden per record.

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.