

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
9000-0193, Prohibition on Contracting With Corporations with
Delinquent Taxes or a Felony Conviction**

A. Justification.

1. **Administrative requirements.** This request covers the collection of information for sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) to prohibit entering into a contract with any corporation with any delinquent Federal tax liability or a felony conviction, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

It also covers section 523 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2015 (Division B). This section prohibits award of any contract in an amount greater than \$5,000,000, unless the offeror affirmatively certifies that it has filed all Federal tax returns required during the three years preceding the certification; has not been convicted of a criminal offense under the Internal Revenue Code of 1986; and has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

2. **Uses of information.** This information will be used in the source selection process, when awarding contracts using funds appropriated under the applicable acts.

Offerors responding to a Federal solicitation are required to make a representation regarding whether the offeror is a corporation with a delinquent tax liability or a felony conviction under Federal law as required by FAR 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. When an offeror provides an affirmative response in paragraph (c)(1) or (2) to the representation, the contracting officer is required to

request additional information from the offeror and notify the agency official responsible for initiating debarment or suspension action. The contracting officer shall not make an award to the corporation unless the agency suspending or debarring official has considered suspension or debarment of the corporation and determined that this further action is not necessary to protect the interests of the Government.

A certification, FAR 52.209-12, Certification Regarding Tax Matters, is required in solicitations for which the resultant contract (including options) may have a value greater than \$5,000,000, and that will use funds made available by section 523 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2014 (Division B) of Pub. L. 113-235, or under subsequent appropriations acts that contain the same provisions. Agencies funded by these acts include the Department of Commerce, the Department of Justice, NASA, as well as some smaller agencies. If the certification regarding tax matters is applicable, then the contracting officer shall not award any contract in an amount greater than \$5,000,000, unless the offeror affirmatively certified in its offer to all the required certifications regarding tax matters in 52.209-XX(c) or 52.212-3(q)(3).

3. Consideration of information technology. Information technology has been applied to the maximum extent possible. The Representation and Certification will be included in annual representations and certifications in the System for Award Management, to facilitate electronic completion.

4. Efforts to identify duplication. This requirement is being issued under the Federal Acquisition Regulation (FAR), which 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. The burden applied to small businesses is the minimum consistent with applicable laws, executive orders, regulations, and prudent business practices.

6. Describe consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently. It allows the offeror to submit this information to the System for Award Management, and then only requires updating on an annual basis (unless the information changes), if continuing to submit offers in response to Government

solicitations. This is the minimum submission feasible. All representations and certifications must be updated at least annually. The contracting officer must have current information available, when evaluating an offer in response to a Government solicitation.

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. A notice published in the *Federal Register* at 80 FR 75903, on December 4, 2015, as part of an interim rule under FAR case 2015-011. No public comments were received on the information collection.

A 30-day notice was published in the *Federal Register* at 81 FR 41971 on June 28, 2016.

9. Explanation of any decision to provide any payment or gift to respondents, other than remuneration of contractors or guarantees. No payment or gift will be provided to respondents, other than remuneration of contractors under their contracts.

10. Describe assurance of confidentiality provided to respondents. This information 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. The estimated cost to the public for the compliance plan is as follows:

52.209-11 Representation:

Number of respondents ¹	352,000
Responses per respondent	<u>x1.01</u>
Total annual responses	355,520
Hours per response	<u>x .1</u>
Total hours	35,552

¹ The number of respondents is based on SAM data – the number of active “contractor” registrants in SAM. This representation is included in the System for Award Management (SAM) annual representations and certifications. Therefore, submission is required only once per year, unless the offeror’s circumstances change (estimated at .01).

Cost per hour ²	<u>x\$42</u>
Total annual cost to respondents	\$1,493,184

The cost per response is approximately \$4.20.

52.209-12 Certification:

Number of respondents ³	440
Responses per respondent	<u>x 3</u>
Total annual responses	1320
Hours per response	<u>x .1</u>
Total hours	132
Cost per hour ⁴	<u>x \$42</u>
Total annual cost to respondents	\$ 5,544

The cost per response is approximately \$4.20.

Total (Representation and Certification)

Number of respondents ⁵	352,000
Responses per respondent	<u>x 1.01</u>
Total annual responses	356,840
Hours per response	<u>x .1</u>
Total public burden hours	35,684
Cost per hour	<u>x \$42</u>
Total annual estimate of public burden	\$1,498,728

14. **Estimated cost to the Government.** The time estimates are based on receiving, reviewing and analyzing the information submitted by the contractor.

The estimated cost to the Government is estimated as follows:

Total annual responses	356,840
Hours per response	<u>x .5*</u>
Total hours	178,420
Cost per hour	<u>x \$42</u>
Total annual estimate of burden	\$7,493,640

² Based on a rate equivalent to a GS-12, Step 3 or \$30.81/hour (from the 2012 OPM GS Salary Table), added overhead at 36.25 percent (the OMB-mandated burden rate for A-76 public-private competitions, rounded to 36 percent), and rounded the average wage to the nearest whole dollar, or \$42/hour.

³ The number of respondents is based on FPDS data for FY 2013 – the number of unique vendors that received awards valued at greater than \$5 million from DOC, DOJ, and NASA, plus 10 percent that may have submitted offers but did not receive an award. This representation is not included in the System for Award Management (SAM) annual representations and certifications.

⁴ Based on a rate equivalent to a GS-12, Step 3 or \$30.81/hour (from the 2012 OPM GS Salary Table), added overhead at 36.25 percent (the OMB-mandated burden rate for A-76 public-private competitions, rounded to 36 percent), and rounded the average wage to the nearest whole dollar, or \$42/hour.

⁵ The respondents to the certification requirement are also subject to the representation requirements.

*This is a weighted average of the negligible amount of time to review negative representations, and the occasional more substantial amount of time required if a respondent indicates a problem with regard to felony conviction or delinquent taxes.

15. Explain reasons for program changes or adjustments reported in Item 13 or 14. This submission requests a new OMB approval for an information collection requirement in the FAR.

16. Outline plans for published results of information collections. Results will not be tabulated or published.

17. Approval not to display expiration date. We do not seek approval not to display the expiration date for OMB approval of the information collection.

18. Explanation of exception to certification statement. There are no exceptions to the certification accompanying this Paperwork Reduction Act submission.

B. Collections of Information Employing Statistical Methods. Statistical methods are not used in this information collection.