

**SUPPORTING STATEMENT
FOR INFORMATION COLLECTION
OMB CONTROL 9000-0045, BID GUARANTEES, PERFORMANCE AND PAYMENT
BONDS, AND ALTERNATIVE PAYMENT PROTECTION**

A. Justification.

1. Circumstances that make the collection of information necessary. This is a request for extension of the expiration date of the information collection requirement currently approved under OMB Control Number 9000-0045 for Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections (FAR Subparts 28.1 and 28.2; clauses at 52.228-1, 52.228-2, 52.228-13, 52.228-15, 52.228-16; and associated standard forms).

These regulations implement the statutory requirements of the Miller Act (40 U.S.C. §§ 3131 to 3134), which requires performance and payment bonds for any construction contract exceeding \$150,000 unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. In addition, the regulations implement the notice to 40 U.S.C. § 3132, entitled "Alternatives to Payment Bonds Provided by the Federal Acquisition Regulation," which requires alternative payment protection for construction contracts that exceed \$30,000 but do not exceed \$150,000. Although not required by statute, under certain circumstances the FAR permits the Government to require bonds on other than construction contracts.

FAR clause 52.228-1, Bid Guarantee, as prescribed in FAR 28.101-2, requires the bidder to furnish a bid guarantee in the proper form and amount. (SF 24, Bid Bond; SF 34, Annual Bid Bond).

FAR clause 52.228-2, Additional Bond Security, as prescribed in FAR 28.106-4(a), requires the Contractor to furnish additional bond security under certain circumstances. This clause is used both for construction and other than construction contracts.

FAR clause 52.228-13, Alternative Payment Protections, as prescribed in FAR 28.102-3(b), requires the Contractor to submit one of the payment protections listed in the clause by the Contracting officer, in construction contracts greater than \$30,000 but not exceeding \$150,000.

FAR clause 52.228-15, Performance and Payment Bonds-Construction, as prescribed in FAR 28.102-3(a), requires the contractor to provide performance and payment bonds in construction contracts exceeding \$150,000. (SF 25, Performance Bond; SF 25A, Payment Bond; SF 25B, Continuation Sheet (for SF's 24, 25, and 25A); SF 273, Reinsurance Agreement for a Miller Act Performance Bond; SF 274, Reinsurance Agreements for a Miller Act Payment Bond).

FAR clause 52.228-16, Performance and Payment Bonds-Other than Construction, as prescribed by 28.103-4, requires performance and payment bonds for other than construction contracts. This clause is only used in limited circumstances. (SF 35, Annual Performance Bond; SF 1416, Payment Bond for Other Than Construction Contracts; SF 275, Reinsurance Agreement in Favor of the United States; SF 1418, Performance Bond for Other than Construction Contracts).

2. **Uses of information.** The bid guarantees, bonds, or alternative payment protections are retained by the Government until the contractor's obligation is fulfilled.

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. **Describe 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 the consequences to Federal activities if the collection is not conducted or is conducted less frequently.** Collection of information is required in specific circumstances, as statutorily required by the Miller Act. Not conducting or conducting this collection of information less frequently, could subject the Government to substantial losses because this information collection provides the Government with a form of security that the contractor will not withdraw a bid or assures

that the contractor will perform its obligations under the contract. Therefore, collection is conducted only as necessary on a contract-by-contract basis.

7. **Special circumstances for collection.** Collection is generally consistent with guidelines in 5 CFR 1320.6.

8. **Efforts to consult with persons outside the agency.** A 60-day notice published in the *Federal Register* at 81 FR 15304 on March 22, 2016. No comments were received. A 30-day notice was published in the *Federal Register* at 81 FR 38180 on June 14, 2016.

A correction of notice was published in the *Federal Register* at 81 FR 39642 on June 17, 2016, to reflect a correction to the public comment period in the 30-day notice from August 12, 2016, to July 13, 2016.

9. **Explanation of any decision to provide any payment or gift to respondents, other than remuneration 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 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 burden.**

FAR 52.228-1 Bid Guarantee & FAR 52.228-15 Performance and Payment Bonds - Construction: The estimated number of respondents per year is based on the number of applicable contracts awarded in fiscal year (FY) 2015, the most recent year for which data were available. The Federal Procurement Data System contained actions involving construction (Product Service Codes Y199 and Y111): 215 contracts for projects over \$150K, and 271 contracts greater than \$30K but less than \$150K.

FAR 52.228-2 Additional Bond Security: This clause applies to limited contracts. It is estimated that this clause applies in half of the total number of actions per year, as described above. Therefore, the estimated number of respondents per year is 243.

FAR 52.228-13 Alternative Payment Protections: This clause only applies to actions below the \$150,000 threshold. Therefore, the estimated number of respondents per year is 271. (See data under FAR 52.228-1 paragraph.)

FAR 52.228-16 Performance and Payment Bonds - Other than Construction: The estimated number of respondents per year is based the total number of government contracts awarded in 2015. During this time period, the government awarded contracts to 9,780 unique vendors. It is estimated that this clause applies in 2.5% of the actions. Therefore, the estimated number of respondents per year is 245.

In all cases, it is estimated that only one response would be submitted annually per contractor. The amount of time required to read, prepare the information, and populate the forms is estimated at one hour per response.

There is no requirement in the above clauses for recordkeeping; there is only a reporting burden.

Bid Guarantees, Bonds, Etc.

Est. respondents/yr	974
Responses annually	<u>1</u>
Total annual responses	974
Estimated hrs/response	<u>1</u>
Total hours	974
Average wages + overhead*	<u>\$45.86</u>
Total cost to public	\$44,644

14. **Estimated cost to the Government.** Time required for Governmentwide review is estimated at 15 minutes per response.

Annual Recordkeeping Burden and Cost

Bid Guarantees, Bonds, Etc.

Total annual responses.....	974
Review time per response (hours).....x.	<u>25</u>
Total burden hours.....	243
Average wages and overhead*.....	<u>\$45.86</u>
Total Government Cost.....	\$11,161

*Using the OPM salary tables for Calendar Year 2016, we selected an hourly base rate equivalent to a GS 12, Step 5, or \$33.72/hour, plus a burden rate mandated by OMB for A-76 public-

private competitions, or 36.45%. This equated to a rate of \$45.86.

15. Explain reasons for program changes or adjustments reported in Item 13 or 14. The Federal Procurement Data System showed significantly fewer construction contracts at the given ranges of dollar values than were shown in FY2011; this is possibly due to a large number of Recovery Act projects in the earlier part of this decade. Additionally, the assumption of 10 minutes per review (on the Government side) was increased to 15 minutes per review.

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.