

**Supporting Statement for Information Collection Submission
OMB Control No. 9000-0196; Payments to Small Business
Subcontractors; FAR 52.242-5**

A. Justification.

1. Administrative requirements.

Section 1334 of the Small Business Jobs and Credit Act of 2010 (Public Law 111-240) and the Small Business Administration's Final Rule at 78 FR 42391, Small Business Subcontracting, published on July 16, 2013, and effective August 15, 2013, requires the prime contractor to self-report to the contracting officer when the prime contractor makes late or reduced payments to small business subcontractors. In addition, the contracting officer is required to record the identity of contractors with a history of late or reduced payments to small business subcontractors in the Federal Awardee Performance and Integrity Information System (FAPIIS). FAR Part 42 is revised to include in the past performance evaluation reduced or untimely payments reported to the contracting officer by the prime contractor, in accordance with the clause at 52.242-5, Payments to Small Business Subcontractors, that are determined by the contracting officer to be unjustified.

2. Use of information. The information is used by the Government record the identity of contractors with a history of late or reduced payments to small business subcontractors.

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. Similar information is not already available to the contracting officer or buyer.

5. If the collection of information impacts small businesses (item 5 of OMB 83-1) describes any methods used to minimize the 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. Similar information is not already available to the contracting officer or buyer.

7. Special circumstances for collection. Collection of information on a basis other than as proposed would severely hamper, if not make impossible, the ability of the Government to record the identity of contractors with a history of late or reduced payments to small business subcontractors. Collection is consistent with guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency. A notice was published in the *Federal Register* at 81 FR 3087 on January 20, 2016, as part of a proposed rule under FAR Case 2014-004. Two public comments were received on the information collection.

B. Discussion and Analysis

A response to comments from the public regarding burden for FAR Case 2014-004; Payment of Subcontractors, was published in the *Federal Register* at 81 FR 93481, on December 20, 2016. The comments and response are located in section B, Analysis of Public Comments. The comments and response from the FRN follow:

Comment: Two respondents stated that the Councils had underestimated the public burden in regards to the proposed rule. One respondent commented that the FAR Council has greatly underestimated the implementation burden on commercial item and COTS item contractors, especially considering the broad definition of "subcontractor" that applies to the proposed rule. The other respondent believed that the estimate of reporting time of only two hours per respondent is grossly underestimated. This negligible amount of time assumes that all contractors can easily identify from their payment systems which subcontractors are small businesses.

The respondent believed that this is often not the case, and that the small business size status of a subcontractor may be unknown to the contractor's other accounting systems. The other respondent commented that since the Small Business Jobs Act of 2010 does not specifically require that the subcontractor payment clause apply to commercial contracts, the respondent recommended that the FAR Council seek additional information about the burden on contractors before a determination is made to apply the payment of subcontractor requirements to commercial item acquisitions.

The respondent did not find that the availability of limited information indicated that the burden may not be significant, as described in the proposed rule. Rather, initial feedback from contractors suggested that the burdens associated with reporting under the rule will have a significant impact.

Response: The respondents do not offer data with which to support changing the current estimated public burden hours. However, since this is a new rule without an empirical frame of reference, the public reporting burden is reviewed every three years and can be adjusted as necessary.

9. Explanation of any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees. 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 and cost burden. FPDS for FY 2014 lists 794 new commercial item contracts over \$650,000 where the size determination was other than small and a subcontracting plan was required. FPDS for FY 2014 also lists 1,485 new non-commercial item contracts over \$650,000 where the size determination was other than small and a subcontracting plan was required. It is estimated that no more than twenty percent of contractors with new commercial and non-commercial contracts where the size determination was other than small and where a subcontracting plan was required would have to notify the contracting officer that the prime contractor paid a

reduced or an untimely payment to a small business subcontractor. It is also estimated that the average time required for a contractor to prepare the information for this collection is two hours. It is estimated also that the responses per respondent would be one.

Number of responses/yr.....	456
Responses Per Respondent.....	<u>x 1</u>
Total Responses.....	456
Average hours per response.....	<u>x 2</u>
Total hours.....	912
Cost per hour.....	<u>x \$43*</u>
Total annual burden.....	\$39,216.00

*Based on the OPM GS-11/step 5 salary (\$31.80 an hour) plus 36.25 percent burden, rounded to the nearest dollar, or \$43 an hour. The burden rate used is that mandated by OMB memorandum M-08-13 for use in public-private competition, as updated by OMB for the current year. Reference Salary Table 2015-GS, Effective January 2015, found at www.opm.gov). The estimated cost per response is approximately \$86.

14. Estimated cost to the Government. Government-wide review is estimated at a one hour per response.

Number of responses.....	456
Responses Per Respondent.....	<u>x 1</u>
Total Responses.....	456
Average hours per response.....	<u>x 1</u>
Total hours.....	456
Cost per hour.....	<u>x \$43*</u>
Total annual cost.....	\$19,608.00

*Based on the OPM GS-11/step 5 salary (\$31.80 an hour) plus 36.25 percent burden, rounded to the nearest dollar, or \$43 an hour. The burden rate used is that mandated by OMB memorandum M-08-13 for use in public-private competition, as updated by OMB for the current year. Reference Salary Table 2015-GS, Effective January 2015, found at www.opm.gov)

15. Explain reasons for program changes or adjustment reported in Item 13 or 14. This is a new information collection.

16. Outline plans for published results of information collection. 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.