

**SUPPORTING STATEMENT FOR INFORMATION COLLECTION
FAR Case 2010-013, PRIVACY TRAINING
OMB Control Number 9000-0182;
52.224-1, 52.224-2 and 52.224-3**

A. Justification

1. Circumstances that make the collection of information necessary. This information collection supports section 552a of the Privacy Act of 1974, (5 U.S.C., section 552a), which prescribes the standards for disclosure, accounting, and access to information about an individual that is maintained by a Federal agency within a system of records.

In accordance with the Privacy Act, and existing Federal Acquisition Regulation (FAR) clauses concerning the Privacy Act (52.224-1, Privacy Act Notification and 52.224-2, Privacy Act), each Federal agency that contracts for the design, development, or operation of a system of records on individuals on behalf of the agency must extend all Privacy Act safeguards to the contractors and employees engaged in the performance of these contracts.

This rule specifically addresses the recordkeeping and reporting associated with the requirement for Federal contractors to provide privacy training, as set forth in FAR 52.224-3, whenever contract performance requires access to personally identifiable information (PII), including access to a system of records on individuals or the design, development, maintenance, or the operation of a system of records on individuals.

Other applicable authorities that address the responsibility for Federal agencies to ensure that Government and contractor personnel are trained on compliance requirements with the laws, rules, and guidance pertaining to handling and safeguarding personally identifiable information include:

- OMB Circular No. A-130, Managing Information as a Strategic Resource, revised July 28, 2016;
- The Federal Information Security Modernization Act of 2014 (FISMA), 44 USC Chapter 35, sections 3551-3558) - Expressly requires that agency information security programs include security training, which relates to protecting all agency information resources, including personally identifiable information;
- OMB Memorandum M-07-16 "Safeguarding Against and Responding to the Breach of Personally Identifiable Information" issued May 27, 2007; and
- The E-Government Act of 2002.

2. Use of information. The privacy training requirement

contained in the rule is necessary to establish the standard for appropriate administrative, technical, and physical safeguards to protect PII. This information collect request is limited to that required to assure compliance with the Privacy Act of 1974 (5 U.S.C. 552a) and applicable authorities. The information will be used to establish that all applicable contractor and subcontractor employees comply with the privacy training requirements.

3. Consideration of information technology. Federal agencies will use information technology to the maximum extent practicable. Where both the Government and the contractor are capable of electronic interchange, the information collection requirements may be submitted electronically, and the usage of information technology will be 100 percent.

4. Describe efforts to identify duplication. There is no duplication of information under this collection. 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, describe 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. Under this rule, contractors are required to maintain training completion documentation records, but are only required to submit this documentation upon the request of the contracting officer. The contracting officer will request this information when there are indications that the contractor is not in compliance with the rule's training requirements.

If these training records were not retained by the contractor, there would be adverse consequences, including but not limited to, the following:

- Contractor personnel not adequately trained would be granted access to Government systems of records, resulting in the possibility of improper release of personally identifiable information.
- It would impede the Government's ability to comply with the Privacy Act of 1974, which prescribes fair information

practices for how Federal agencies collect, maintain, use, and disseminate personal information.

7. Special circumstance for collection. Collection is consistent with the guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency.

DoD, GSA, and NASA provided notification of the applicability of the Paperwork Reduction Act and requested approval for a new information collection requirement in 76 FR 63896, as part of FAR Case 2010-013, published on October 14, 2011. Two respondents commented on the annual burden estimate.

Comment:

The respondents stated that the annual burden estimate with respect to the public's Paperwork Reduction Act reporting burden was understated. The respondents believed that (a) requiring contractors to conduct their own privacy training and (b) requiring re-training every year created a greater burden on contractors.

Response:

In response to the concerns expressed by these respondents, it is noted that this information collection requirement does not address the burden associated with conducting the initial or subsequent annual privacy training. Rather, it focuses solely on the obligation of Federal contractors' to maintain documentation showing that the required privacy training was completed by the employee and, upon request, provide completion documentation to the contracting officer.

In this regard, the same philosophy expressed in the Federal Register Notice for the proposed rule holds true for the final rule as well, i.e., the recordkeeping requirements are considered to be minor, and a contracting officer will request documentation only when necessary to ensure effective management and oversight. However, since the analysis used in the proposed rule did not encompass contracts involving the acquisition of commercial items, the methodology used to derive the estimated hourly and cost burden described in the proposed rule has been revised in the final rule (see paragraph 12 for further details).

Discussion of this issue and the revised estimate of the public burden hours for this information collection requirement can be found in section VI of the Federal Register Notice of the final rule. No additional changes to the FAR text were necessitated by this comment.

A 30-day notice was published in the Federal Register at 81 FR 78595 on November 8, 2016. No comments were received.

9. Explanation of any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees. 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, current regulations, and in accordance with the requirements of the Freedom of Information Act.

11. Additional justification for questions of a sensitive nature. No sensitive questions are involved.

12 & 13. Estimated total annual public hour burden.

Public Recordkeeping and Reporting Hourly Burden

Information generated from the Federal Procurement Data System (FPDS), fiscal year (FY) 2015, has been used as the basis for determining the number of contractors involved in the (1) design, development, maintain or operate a system of records; (2) have access to a system of records on individuals, or (3) handle of personally identifiable information. The analysis focused on selected Product Service Codes (PSCs) in the following Categories: Category A-Research and Development; Category B-Special Studies/Analysis, not R&D; Category C-Architect and Engineering Services; D-Information and Technology and Telecommunications; Category G-Social; Category H-Quality Control, Testing and, Inspection; Category J-Maintenance, Repair, and Rebuilding of Equipment; Category K-Modification of Equipment; Category L-Technical Representative; Category M-Operation of Government-Owned Facility; and R-Support, Professional/Administrative/Management); Category N-Installation of Equipment; Category Q-Medical; Category R-Support, Professional/Administrative/Management; and Category U-Education/Training.

Examination of this data reveals that the number of unique vendors that received contract awards in the targeted PSC's in FY 2015 is 31,901. The number of potential subcontractors in the selected PSCs was calculated by using a ratio of 2:1, subcontractors to prime contractors, which equates to 63,802.

The recordkeeping requirements associated with the clause will apply to a limited number (33.25 percent) of contractors

whose contract performance involves one or more of the selected PSCs. The estimated number of contractors (recordkeepers) that will be impacted by this rule is approximately 31,821 (31,901 + 63,802 X .3325). The estimated hourly burden expended per record keeper per contract award is 3.1 hours (6 records per record keeper X .50 (30 minutes) per record). The estimated annual recordkeeping burden is calculated as follows:

Number of Record keepers:	31,821
Hours per record keeper:	<u>x 3.1 hrs.</u>
Est. annual recordkeeping burden hours:	97,471 hrs.

Estimated annualized cost to the public for recordkeeping:

Total recordkeeping burden hours:	97,471 hrs.
Averages wages (\$23.25 D.L. + 36.25% OH):	<u>x \$ 31.68*</u>
Est. annual public recordkeeping cost:	\$3,087,700

Total Public Reporting Burden

The public reporting burden is associated with the occasional request by the contracting officer for the contractor to provide training documentation as necessary to ensure effective management and oversight. Referring back to the total number of record keepers, 31,821, it is estimated that approximately 2.5 percent (.025) will be required to submit completion documentation for an employee. All told, the total number of respondents that annually will be required to submit training completion documentation is 796 (31,821 X .025). The preparation time associated with this effort is 0.25 hours (15 minutes) per submission (report). The calculation for annualized public reporting cost is as follows:

Number of Respondents:	796
Responses per respondent:	<u>1</u>
Number of Responses:	796
Preparation hours per response:	<u>x 0.25</u>
Estimated total annual hourly burden:	200 hrs.
Averages wages (\$23.25 + 36.25% OH)*:	<u>x \$ 31.68*</u>
Est. annual public reporting cost:	\$ 6,300.00

Estimated total combined annualized public Record keeping and reporting burden hours:	<u>97,670 hrs.</u>
(97,471 hrs. + 200 hrs.)	

Estimated total annualized public recordkeeping and reporting cost (\$3,087,700 + \$6,300):	<u>\$3,094,000.**</u>
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*Based on the equivalent of a FY 2016 GS-9, Step 5, of \$23.25, plus overhead of 36.25% (approximately \$8.43). Wage rates used reflect the general schedule ranges published by the Office of Personnel Management on its Web site and do not include locality pay adjustments. The estimated cost per response is \$7.91.

**Note: The calculations and amounts for the estimated public burden have been revised to reflect updates that occurred subsequent to the notice published at 79 FR 68248 on October 14, 2014, with respect to—

- The inclusion of commercial item contracts;
- The use of FY 2015 FPDS data; and
- Changes resulting from the A-130 revisions.

14. Estimated cost to the Government.

Responses:	796
Average hours per response:	$\times \underline{1 \text{ hr.}}$
Total response burden hours:	796 hrs.
Averages wages (\$23.25 + 36.25% OH):	$\times \underline{\$ 31.68^*}$
Estimated Annual Government Burden:	\$25,201.00**

*Based on the equivalent of a FY 2016 GS-9, Step 5, of \$23.25, plus overhead of 36.25% [\$8.43], rounded to the nearest dollar. Wage rates used reflect the general schedule ranges published by the Office of Personnel Management on its website and do not include locality pay adjustments.

**Note: The calculations and amounts shown for the estimated burden to the Government reflect updates that occurred subsequent to the Notice published at 79 FR 68248 on November 14, 2014, with respect to—

- The consideration of commercial item contracts;
- The use of FY 2015 FPDS data; and
- Changes resulting from the A-130 revisions.

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

16. Outline plans for published results of information collection. There are no plans to publish the results of this collection of information.

17. Approval not to display expiration date. DoD, GSA and NASA are not seeking such approval.

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.