

U.S. Department of the Treasury
Office of the Procurement Executive
SUPPORTING STATEMENT
OMB CONTROL NUMBER 1505-0107
Regulation Agency Protests

A. JUSTIFICATION

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The Federal Acquisition Regulation (FAR); 48 CFR Chapter 1 provides general procedures on handling protests submitted by contractors to federal agencies. This regulation provides detailed guidance for contractors doing business with acquisition offices within the U.S. Department of the Treasury (Treasury) to implement the FAR. FAR part 33.103, Protests to the agency prescribes the policies and procedures for filing protests to the agency. Treasury's internal procedures implement the FAR requirements without requiring additional recordkeeping or the submission of additional information.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

Per FAR 33.103(d)(3), agency level protests are addressed to the contracting officer (CO) or other official designated to receive protests. Per Department of the Treasury Acquisition Procedures (DTAP) 1033.103(d)(3)(i) the CO must immediately notify the BCPO and legal counsel, providing the latter with a copy of the protest. Information contained in the agency level protest is used to investigate and issue an agency decision on the procurement. Failure to collect this information would result in delayed and/or ineffective resolution of agency level protests.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

Agency protest information is contained in each individual solicitation, and provides the specified contracting officer's name, email, and mailing address that the offerors would use to submit its agency protest to. The automated processing envisioned by the agency statement for this collection was that the offeror would use email or facsimile to submit its agency protest to the specified Government point of contact contained in the solicitation. Since the responses must meet specific timeframes, a centralized mailbox or website would not be an expeditious or practical method of submission. The use of contracting officer's email or facsimile is the best solution and commonly used by other agencies in processing agency protests.

The FAR does not specify the format in which the contractor should submit protest information. However, most offerors use automated word processing systems to facilitate preparation of material to be submitted. It is common place within many of Treasury Bureaus for submissions to be electronic as a result of implementation of e-Government initiatives.

Treasury does not provide any specific assurances of confidentiality beyond what is provided for in the U.S.C. and FAR. 5 U.S.C. § 574(a) governs the confidentiality of neutrals in dispute resolution process permitted by FAR 33.103(c). 5 U.S.C. § 552 governs Freedom of Information Act requirements. FAR Part 4 governs administrative matters relating to the contract file.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in item 2 above.

U.S. Government Accountability Office (GAO) bid protest regulations provide that protests may be filed with the GAO if the protestor does not receive satisfaction from the agency. The format for protests submitted to an agency generally follows the format provided in GAO's regulations (see 4 CFR 21.1) to avoid duplication of effort. Altogether, the information to be included in the submission of a protest to the agency is specified in the FAR 33.103 which standardizes Federal procurement practices and eliminates unnecessary duplication

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

Information collection may or may not involve small businesses or other small entities, depending on the particular acquisition for which an agency level protest has been received. The burden applied to small businesses and other small entities is the minimum, consistent with the goals of achieving timely resolution of the agency level protest.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Information is not collected on a regular basis. It is collected only when vendors or offerors choose of their own volition to file a protest to an agency. The information is requested so that the Government will be able to evaluate agency protests effectively and timely. Failure to collect this information would result in delayed and/or ineffective resolution of agency protests.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner

- **requiring respondents to report information to the agency more often than quarterly;**

- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances that would cause the information collection to be conducted in a manner outside the procedures in the FAR and the GAO's Bid Protest Rules.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On Jan 29, 2020 (85 FR 5278), a notice was published in the *Federal Register* soliciting public comment on this information collection and no comments were received. This information collection contains no periodic and/or repetitive reporting requirements. Respondents are those vendors or offerors who choose to file protests to the agency related to a specific acquisition.

- 9. Explain any decision to provide any payment or gift to respondents, other than remunerations of contractors or grantees.**

There are no payments or gifts made to respondents, other than settlement of the protestor's claims, if ruling of the agency level protest was in favor of the protestor.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The guidelines and principles described in the GAO Bid Protest Rules, the FAR, and the federal rules on disclosure and other federal procurement policy are used to assure confidentiality.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Questions of a personal or private nature are not asked as part of a protest.

12. Provide estimates of the hour burden of the collection of information. The statement should

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.**

Based on actual protest activity, Treasury anticipates an estimated five (5) protests per year, and estimates that each protest involves a burden of two (2) hours, for a total annual burden of ten (10) hours.

The two hours are estimated as one hour for clerical and one half hour for technical and professional support.

Occupation	Base Hourly Wage	Benefits (44% of base wage)	Fully-Loaded Rates	Burden Hours	Total Burden
Clerical	\$20.82	\$9.16	\$29.98	1	\$29.98
Technical	\$33.57	\$14.77	\$48.34	0.5	\$24.17
Professional/Legal	\$59.11	\$26.00	\$85.11	0.5	\$42.56
Total Labor Cost Per Response					\$96.61
*Bureau of Labor Statistics, May 2019 National Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat.htm#23-0000					

Protests per Year	Hours per Response	Total Burden Hours	Total Burden Costs
5	2	10	\$ 483.05

13. Provide an estimate for the total annual cost burden to respondents or record-keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

There are no anticipated non-labor costs associated with developing and filing a protest.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate costs estimates from Items 12, 13, and 14 in a single table.

Given that the size and complexity of each protest, the government’s response is dependent upon the particular acquisition and the contractor’s objections to aspects of the transactions, such as the methodology used, timeliness of receipt, location receipt, mishandling receipt, etc. A description of the response methods used could range from a single-paged typed document to a detailed submission of multiple pages with computations, statements, etc. which would depend on the situation, opinions, and objections presented by the protestor. Federal acquisition solicitations are not entirely repetitive in nature, so there are no set standard recurring annual costs associated with protest responses. Assuming an average of ten hours of staff time per response at a GS-15 grade level, the total Federal cost would be \$5,573.¹

¹ Federal cost calculated by taking hourly rate for a GS-15, step 1 in the Washington, DC region (\$68.38) and increasing it by 63% to account for benefits. The fully loaded wage rate is \$111.46/hour. 10 hours per protest x 5 protests/year x \$111.46 = \$5,573. <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary->

15. Explain the reasons for any program changes or adjustments.

There is a reduction in the number of estimated responses based on the actual number of protests received over the last three years.

16. For collection of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

There is no planned publication of this information collection for statistical purposes.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

There are no forms associated with this information collection. Therefore, Treasury has been approved not to display the expiration date for OMB approval of the information collection.

18. Explain each exception to the certification statement.

There are no exceptions to the certification statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection does not employ statistical methods.