

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
OMB CONTROL NO. 9000-0018
FEDERAL ACQUISITION REGULATION PART 3:
IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

FAR sections affected: 52.203-2, 52.203-7, 52.203-13, and 52.203-16

A. Justification.

1. Administrative requirements.

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration are combining OMB Control Nos. for the Federal Acquisition Regulation (FAR) by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the revision and extension of OMB Control No. 9000-0018 and combines it with the previously approved information collections under OMB Control No. 9000-0091, with the new title "Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest." Upon approval of this consolidated information collection, OMB Control No. 9000-0091 will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000-0018.

This clearance covers the information that offerors and contractors must submit to comply with the following FAR part 3 requirements:

- **FAR 52.203-2, Certificate of Independent Price Determination.** This solicitation provision requires offerors to include with their offer a certification that their prices have been arrived at independently, have not been or will not be knowingly disclosed, and have not been submitted for the purpose of restricting competition.
- **FAR 52.203-7, Anti-Kickback Procedures.** This contract clause requires contractors to report in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General possible violations of 41 U.S.C. Chapter 87, Kickbacks. The clause also requires the contractor to notify the contracting officer when monies are withheld from sums owed a subcontractor under the prime contract, when the contracting officer has directed the prime contractor to do so to offset the amount of a kickback.
- **FAR 52.203-13, Contractor Code of Business Ethics and Conduct.** This contract clause requires contractors and subcontractors to report to the agency Office of the Inspector General when the Contractor has credible evidence that a principal, employee, agent, or subcontractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C., or a violation of the Civil False Claims Act (31 U.S.C. 3729-3733).
- **FAR 52.203-16, Preventing Personal Conflicts of Interest.** This contract clause requires contractors and subcontractors to obtain and maintain from each employee a disclosure of interests that might be affected by the task to which the employee has been assigned under the contract. Contractors and subcontractors must report to the contracting officer any personal conflict of interest violation by an employee and the proposed corrective/follow-up actions to be taken. In exceptional circumstances, the contractor may request the head of the contracting activity approve a plan to mitigate a personal conflict of interest or waive the requirement to prevent personal conflicts of interest.

2. Uses of information. The information collected is used by the Government as follows:

- **FAR 52.203-2, Certificate of Independent Price Determination.** Prior to making an award, a contracting officer will ensure the offeror has provided the certification. An offer will not be considered for award where the certificate has been deleted or modified. Federal agencies will report to the Attorney General for investigation any deletions or modifications of the certificate and suspected false certificates.
- **FAR 52.203-7, Anti-Kickback Procedures.** The Federal agency will use the information reported by contractors to investigate suspected violations. The notification to the contracting officer of a withholding of payment to a subcontractor is used to help the contracting officer ensure the amount of a kickback is appropriately offset.
- **FAR 52.203-13, Contractor Code of Business Ethics and Conduct.** The Federal agency will use the information reported by contractors to investigate suspected violations.
- **FAR 52.203-16, Preventing Personal Conflicts of Interest.** The information is used by the contractor and the contracting officer to identify and mitigate personal conflicts of interest.

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 contractor may submit the information collection requirement electronically.

4. Efforts to identify duplication. These requirements are issued under the 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. Collection on a basis other than solicitation-by-solicitation or contract-by-contract is not practical.

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

8. Efforts to consult with persons outside the agency.

A. A 60-day notice was published in the *Federal Register* at 85 FR 75325, on November 25, 2020. No comments were received.

B. A 30-day notice was published in the *Federal Register* at 86 FR 8359, on February 5, 2021.

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, current regulations, and statutory requirements.

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 following estimates of public hour and cost burdens are based on historical award data available in the Federal Procurement Data System (FPDS) for fiscal years (FY) 2017 through 2019. In addition, the referenced rates of pay used to estimate the public cost are from the Office of Personnel Management (OPM) 2020

General Schedule (GS) Salary Table for the Rest of the United States or the Rates of Basic Pay for the Executive Schedule, effective January 2020 (available at <https://www.opm.gov/>), plus a 36.25 percent fringe and overhead burden factor mandated by Office of Management and Budget (OMB) memorandum M-08-13 for use in public-private competition (see <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2008/m08-13.pdf>), rounded to the nearest whole dollar.

TOTAL ANNUAL PUBLIC BURDEN

Reporting	Responses	Hours	Cost
52.203-2	341,208	85,302	\$6,824,160
52.203-7	100	2,000	\$236,000
52.203-13	412	24,720	\$2,916,960
52.203-16	299	11,680	\$945,040
TOTAL	342,019	123,702	\$10,922,160

Recordkeeping	Recordkeepers	Hours	Cost
52.203-16	8,391	503,460	\$28,697,220

Public Burden	Responses	Hours	Cost
TOTAL	342,019	627,162	\$39,619,380

A. REPORTING

- FAR 52.203-2, Certificate of Independent Price Determination.** This provision is prescribed at FAR 3.103-1 for inclusion in solicitations for a firm-fixed price contract or fixed-price economic price adjustment contract, unless the acquisition is: (1) made using simplified acquisition procedures; (2) at the request for technical proposals under two-step sealed bidding procedures; or (3) for utility services for which rates are set by law or regulation. This provision does not apply to commercial items. On average, the Government awards 30,744 covered contracts and orders to 9,478 unique vendors per year. On average, the Government receives 11 offers on each solicitation for the covered awards, approximately 338,184 responses per year. Assuming the number of unique respondents is the same as the number of unique awardees

each year, the number of responses per respondent is approximately 36 (338,184/9,478). It is estimated that an average of 15 minutes will be required for offerors to research, prepare, and submit the required information.

Estimated respondents/year.....	9,478
Responses annually.....	x <u>36</u>
Total annual responses.....	341,208
Estimated hours/response.....	x <u>0.25</u>
Estimated total burden/hours.....	85,302
Hourly rate*.....	x <u>\$80</u>
Estimated cost to public.....	\$6,824,160

* Because the certification likely requires the involvement of legal and management, the estimate uses a rate equivalent to a GS-14/step 5 salary (\$58.54/hour) plus the 36.25 percent burden factor (\$21.22/hour), rounded to the nearest whole dollar. The estimated cost per response is \$20.

- **FAR 52.203-7, Anti-Kickback Procedures.** This clause is prescribed at FAR 3.502-3 for inclusion in contracts and orders that exceed \$150,000, other than those for commercial items. This clause also flows down to subcontracts that exceed \$150,000. It is estimated that 100 contractors or subcontractors may report a suspected violation of the Kickback statute in a given year. According to subject matter experts with experience in an Office of the Inspector General, this estimate is probably on the high side. The time required to compile documents and prepare information is estimated at 20 hours per allegation reported.

Estimated respondents/year.....	100
Responses annually.....	x <u>1</u>
Total annual responses.....	100
Estimated hours/response.....	x <u>20</u>
Estimated total burden/hours.....	2,000
Hourly rate*.....	x <u>\$118</u>
Estimated cost to public.....	\$236,000

* Because the notification of potential criminal violations likely requires the involvement of higher-level legal and

management, the estimate uses a rate equivalent to a Level III Senior Executive salary (\$86.97/hour) plus the 36.25 percent burden factor (\$31.53/hour), rounded to the nearest whole dollar. The estimated cost per response is \$2,360.

- **FAR 52.203-13, Contractor Code of Business Ethics and Conduct.**

This clause is prescribed at FAR 3.1004(a) for inclusion in solicitations and contracts that exceed \$6million and the performance period is 120 days or more. By law, the clause applies to contracts for commercial items and contracts awarded both inside and outside the United States. The requirements of the clause at FAR 52.203-13 also flow down to subcontracts that have a value in excess of \$6 million, and a performance period of greater than 120 days. On average, the Government awards 17,495 covered contracts and orders to 7,728 unique vendors per year. It is estimated that four (4) percent of contractors will report a violation of Federal criminal law with regard to performance or award of a Government contract or subcontract (309 prime contractors). It is further estimated that one third (~0.33) of those reports will involve a subcontractor providing necessary information to a prime contractor (103 subcontractors). It is estimated that an average of 60 hours will be required for a contractor or subcontractor to research, prepare, and submit the required information.

Estimated respondents/year.....	412
Responses annually.....	<u>1</u>
Total annual responses.....	412
Estimated hours/response.....	<u>60</u>
Estimated total burden/hours.....	24,720
Hourly rate*.....	<u>\$118</u>
Estimated cost to public.....	\$2,916,960

* Because the notification of potential criminal violations likely requires the involvement of higher-level legal and management, the estimate uses a rate equivalent to a Level III Senior Executive salary (\$86.97/hour) plus the 36.25 percent burden factor (\$31.53/hour), rounded to the nearest whole dollar. The estimated cost per response is \$7,080.

- **FAR 52.203-16, Preventing Personal Conflicts of Interest.** This clause is prescribed at FAR 3.1106 for inclusion in contracts that: (1) exceed the simplified acquisition threshold; and (2) include a requirement for services by contractor employee(s) that involve performance of acquisition functions closely associated with inherently governmental functions for, or on behalf of, a Federal agency or department.

Reporting of Violations and Follow-Up. On average, the Government 5,700 covered contracts and orders to an average of 2,797 unique vendors per year. It is estimated that five (5) percent of these covered contracts may involve a violations of Federal criminal law with regard to performance or award of a Government contract that should be reported (approximately 285 contracts). Development and issuance of the initial violation report and any follow-up corrective action reports are estimated to require an average of 40 hours of effort.

Estimated respondents/year.....	285
Responses annually.....	x <u>1</u>
Total annual responses.....	285
Estimated hours/response.....	x <u>40</u>
Estimated total burden/hours.....	11,400
Hourly rate*.....	x <u>\$80</u>
Estimated cost to public.....	\$912,000

* Because of the likely involvement of legal and management in reporting violations, the estimate uses an hourly rate equivalent to a GS-14/step 5 salary (\$58.54/hour) plus the 36.25 percent burden factor (\$21.22/hour), rounded to the nearest whole dollar. The estimated cost per response is \$3,200.

Mitigation Plan or Waiver Requests. Because requests for approval of a mitigation plan or a waiver for personal conflict of interest violations are only submitted in exceptional circumstances, it is estimated that such requests would be submitted for five (5) percent of the

reported violations (14 requests). Development, internal review, and issuance of the requests are estimated to require an additional 20 hours of effort.

Estimated respondents/year.....	14
Responses annually.....	<u>x 1</u>
Total annual responses.....	14
Estimated hours/response.....	<u>x 20</u>
Estimated total burden/hours.....	280
Hourly rate*.....	<u>x \$118</u>
Estimated cost to public.....	\$33,040

* Because of the likely involvement of higher-level legal and management in requesting these approvals, the estimate uses a rate equivalent to a Level III Senior Executive salary (\$86.97/hour) plus the 36.25 percent burden factor (\$31.53/hour), rounded to the nearest whole dollar. The estimated cost per response is \$2,360.

B. RECORDKEEPING

• **FAR 52.203-16, Preventing Personal Conflicts of Interest.**

It is assumed that there are, on average, two (2) subcontracts for each prime contract subject to the requirements of this clause (5,700 contracts * 2 = 11,400 subcontracts). It is further assumed that the ratio of unique subcontractors to subcontract awards is equivalent to the ratio of unique prime contractors to contract awards (2,797/5,700 ~ 0.49). Therefore, it is estimated that the total number of recordkeepers is 8,393 (2,797 prime contractors plus 5,594 subcontractors).

Employee Disclosures of Interests. It is estimated that, on average, each recordkeeper obtains initial employee disclosures from 25 employees each year. It is estimated that the time to review and maintain such records each year is two (2) hours per record.

Estimated recordkeepers.....	8,391
Estimated records per recordkeeper.....	<u>x 25</u>
Total annual records.....	209,775

Estimated hours/record.....	x	<u>2</u>
Total recordkeeping burden hours.....		419,550
Hourly rate*.....	x	<u>\$57</u>
Estimated cost to public.....		\$23,914,350

* Based on an hourly rate equivalent to a GS-12/step 5 salary (\$41.66/hour) plus the 36.25 percent burden factor (\$15.10/hour), rounded to the nearest whole dollar. The estimated cost per record is \$114.

Employee Disclosures of Interests Updates. It is estimated that, on average, each recordkeeper obtains updates on employee disclosures from 10 contractors or subcontractor employees each year. It is estimated that the time review and maintain such records each year is one (1) hour per record.

Estimated recordkeepers.....		8,391
Estimated records per recordkeeper.....	x	<u>10</u>
Total annual records.....		83,910
Estimated hours/record.....	x	<u>1</u>
Total recordkeeping burden hours.....		83,910
Hourly rate*.....	x	<u>\$57</u>
Estimated cost to public.....		\$4,782,870

* Based on an hourly rate equivalent to a GS-12/step 5 salary (\$41.66/hour) plus the 36.25 percent burden factor (\$15.10/hour), rounded to the nearest whole dollar. The estimated cost per record is \$57.

14. Estimated cost to the Government. The estimated Government processing times are based on consultation with subject matter experts. In addition, the referenced rates of pay used to estimate the Government cost are from the OPM 2020 GS Salary Table for the Rest of the United States, effective January 2020, plus the 36.25 percent fringe and overhead burden factor, rounded to the nearest whole dollar.

• **TOTAL ANNUAL GOVERNMENT BURDEN**

GOVT BURDEN	Responses	Hours	Cost
--------------------	------------------	--------------	-------------

52.203-2	341,208	5,687	\$324,159
52.203-7	100	2,400	\$136,800
52.203-13	412	9,888	\$791,040
52.203-16	299	11,960	\$964,640
TOTAL	342,019	29,935	\$2,216,639

- FAR 52.203-2, Certification of Independent Price Determination.** It is estimated that it takes a contracting officer one (1) minute to verify that the certificate is provided with the offer.

Total annual responses.....	341,208
Review time/response (hours).....	x 0.0167
Review time/year (hours).....	5,687
Hourly rate*.....	x \$57
Estimated cost to the Government.....	\$324,159

* Based on an hourly rate equivalent to a GS-12/step 5 salary (\$41.66/hour) plus the 36.25 percent burden factor (\$15.10/hour), rounded to the nearest whole dollar.

- FAR 52.203-7, Anti-Kickback Procedures.** It is estimated that it takes the Government 24 hours to review the report of a potential violation.

Total annual responses.....	100
Review time/response (hours).....	x 24
Review time/year (hours).....	2,400
Hourly rate*.....	x \$57
Estimated cost to the Government.....	\$100,800

* Based on an hourly rate equivalent to a GS-12/step 5 salary (\$41.66/hour) plus the 36.25 percent burden factor (\$15.10/hour), rounded to the nearest whole dollar.

- FAR 52.203-13, Contractor Code of Business Ethics and Conduct.** It is estimated that it takes the Government at total of 24 hours to review and evaluate a reported violation.

Total annual responses.....	412
Review time/response (hours).....	x 24
Review time/year (hours).....	9,888
Hourly rate*.....	x \$80
Estimated cost to the Government.....	\$791,040

* Based on the rate equivalent to a GS-14/step 5 salary (\$58.54/hour) plus the 36.25 percent burden factor (\$21.22/hour), rounded to the nearest whole dollar.

- **FAR 52.203-16, Preventing Personal Conflicts of Interest.**

Reporting of Violations and Follow-Up. It is estimated that it will take a contracting officer forty (40) hours to review a reported violation and any follow-up action reports.

Total annual responses.....	285
Review time/response (hours).....	x 40
Review time/year (hours).....	11,400
Hourly rate*.....	x \$80
Estimated cost to the Government.....	\$912,000

* Based on the rate equivalent to a GS-14/step 5 salary (\$58.54/hour) plus the 36.25 percent burden factor (\$21.22/hour), rounded to the nearest whole dollar.

Mitigation Plan or Waiver Requests. It is estimated that it will take the head of the contracting activity forty (40) hours to review a reported violation and any follow-up action reports.

Total annual responses.....	14
Review time/response (hours).....	x 40
Review time/year (hours).....	560
Hourly rate*.....	x \$94
Estimated cost to the Government.....	\$52,640

* Based on the rate equivalent to a GS-15/Step 5 salary (\$68.86/hour) plus the 36.25 percent burden factor (\$24.96/hour), rounded to the nearest whole dollar.

15. Explain reasons for program changes or adjustments reported in Item 13 or 14. The burden associated with the information collection approved under OMB Control Number 9000-0091 for FAR clause 52.203-7 is being consolidated with the other FAR part 3 information collection requirements under this OMB Control Number 9000-0018. The methods for estimating public burden associated with each information collection have been adjusted as follows:

- **Global.** The public and Government costs were calculated using the OPM GS 2020 Salary for the Rest of the United States or Rates of Basic Pay for the Executive Schedule, as appropriate, that are effective January 2020, found at www.opm.gov. In addition, since the prior renewal, the simplified acquisition threshold increased from \$100,000 to \$250,000, reducing the number of solicitations and contracts that are impacted by some of the information collections covered by this OMB Control Number.
- **FAR 52.203-2, Certification of Independent Price Determination.** For this renewal, the FPDS report used an additional parameter of awards that did not use "two step" solicitation procedures, in order to align with the prescription for the provision.
- **FAR 52.203-7, Anti-Kickback Procedures.** For this renewal, the estimated cost per response is based on an hourly rate derived from the Level III Executive Schedule salary divided by 2,087 hours, in lieu of a GS-12/Step 5 salary equivalent, since high-level legal and management personnel are likely involved in reporting violations to an inspector general or the Attorney General.
- **FAR 52.203-13, Contractor Code of Business Ethics and Conduct.** For this renewal, the estimated cost per response is based on an hourly rate derived from the Level III Executive Schedule salary divided by 2,087 hours, in lieu of a flat rate of \$75.

- **FAR 52.203-16, Preventing Personal Conflicts of Interest.** For this renewal, the FPDS report for awards that were subject to FAR 52.203-16 was limited by those coded in FPDS as requiring the performance of functions “closely associated” with inherently governmental functions, in lieu of limiting awards to certain product service codes. In addition, the factor applied to determine what percent of contractors report violations and submit requests for approval of a mitigation plan or waiver was adjusted to correct the impression that each report of a violation results in a request for approval of a mitigation plan or waiver. The hourly rate used to calculate the cost for requests for approval of a mitigation plan or waiver is also now based on a Level III Executive Schedule salary.

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.