

**SUPPORTING STATEMENT
HOMELAND SECURITY ACQUISITION REGULATION (HSAR)
Regulation on Agency Protests
(OMB No. 1600-0004)**

A. JUSTIFICATION.

1. Circumstances Making the Collection of Information Necessary

The Federal Acquisition Regulation (FAR) and 48 CFR Chapter 1 provide general procedures on handling protests submitted by contractors to Federal agencies. FAR Part 33.103, Protests, Disputes and Appeals, prescribes policies and procedures for filing protests and for processing contract disputes and appeals. While the FAR prescribes the procedures to be followed for protests to the agency, it allows agencies to determine the method of receipt. DHS will utilize electronic mediums (email or facsimile) for collection of information and will not prescribe a format or require more information than what is already required in the FAR. If DHS determines there is a need to collect additional information outside of what is required in the FAR, DHS will submit a request to the Office of Management and Budget (OMB) for approval.

The prior information collection request for OMB No. 1600-0004 was approved through November 30, 2021 by OMB in a Notice of OMB Action. This justification supports a request for an extension of the approval.

2. Purpose of Use of the Information Collection

The information being collected will be obtained from contractors as part of their submissions whenever they file a bid protest with DHS. The information will be used by DHS officials in deciding how the protest should be resolved. Failure to collect this information would result in delayed resolution of protests.

3. Use of Improved Information Technology and Burden Reduction

Agency protest information is contained in each individual solicitation document, and provides the specified contracting officer's name, email, and mailing address that the contractors would use to submit its response. The FAR does not specify the format in which the contractor should submit protest information. However, most contractors use computers to prepare protest materials and submit time sensitive responses electronically (email or facsimile) to the specified Government point of contact. Since the responses must meet specific timeframes, a centralized mailbox or website would not be a practical method of submission. Submission of protest information through contracting officers' email or through facsimile are the best methods to use to document receipt of protest information, and are the methods most commonly used in the Government protest process.

4. Efforts to Identify Duplication and Use of Similar Information

The information to be included in a contractor's submission of a protest to the agency is specified in the FAR Part 33.103 which standardizes Federal procurement practices and

eliminates unnecessary duplication. Information to be provided by contractors is the same whether the protest is to Government Accountability Office (GAO) (see 4 CFR 21.1) or to the agency. There will be no duplication of information.

5. Impact on Small Business or Other Small Entities

This information collection may involve small business contractors, depending on the particular transaction. The burden applied to small businesses is minimal and consistent with the goals of achieving timely resolution of agency protests.

6. Consequences of Collection the Information Less Frequently

This information is collected only when contractors choose to file a protest. The information is requested from contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file agency level claims.

7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5

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

8. Efforts to Consult Outside the Agency

A 60 Day Federal Register Notice requesting public comments was published at 85 FR 73066 on Monday, November 16, 2020 No comments were received.

A 30 Day Federal Register Notice requesting public comments was published at 86 FR 19003 Monday, April 12, 2021. No comments were received.

9. Explanation of Payments and Gifts to Respondents

There will be no payments or gifts made to respondents for this information collection.

10. Assurance of Confidentiality Provided to Respondents

DHS/ALL/PIA-006 General Contact Lists covers the basic contact information that must be collected for DHS to address these protests. The other information collected will typically pertain to the contract itself, and not individuals. However, all information for this information collection is submitted voluntarily. Technically, because this information is not retrieved by personal identifier, no SORN is required. However, DHS/ALL-021 DHS Contractors and Consultants provides coverage for the collection of records on DHS contractors and consultants, to include resume and qualifying employment information. There is no assurance of confidentiality provided to the respondents.

11. Justification for Sensitive Questions

Questions of a personal or private nature are not asked in agency protests.

12. Estimates of Annualized Burden Hours and Costs

The annualized burden hours and costs to respondents is outlined in the below table. The annual estimated burden is 186 hours and the costs is \$9,780.62.

Table A: Estimated Annualized Burden Hours and Costs

| Type of Respondent | Form Name / Form Number | No. of Respondents | No. of Responses per Respondent | Avg. Burden per Response (in hours) | Total Annual Burden (in hours) | Avg. Hourly Wage Rate | Total Annual Respondent Cost |
|--------------------|-------------------------|--------------------|---------------------------------|-------------------------------------|--------------------------------|-----------------------|------------------------------|
| Contractor | | 93 | 1 | 2 | 186 | \$52.58 | \$9,780.62 |
| Totals | | 93 | 93 | | 186 | | \$9,780.62 |

- The burden hour estimate is based upon DHS’s FY 2019 report of protest activities submitted to the GAO or the Court of Federal Claims; an estimated average of 1 response per respondent; and an estimated burden of 2 hours for the development of each response/report.
- The average hourly earnings is based upon the U.S. Department of Labor, Bureau of Labor Statistics’ website (www.bls.gov). The wage rate category selected is for [Business and Financial Operations Occupations in 2019](#). The rate is estimated to be \$52.58 (\$37.56 x 1.4), which includes the wage rate multiplier.

13. Estimates of annualized capital and start-up costs.

DHS does not require contractors to purchase software to access any specific system. Information submitted requires the use of basic systems such as Microsoft Office suite. For these reasons, DHS believes there will be no costs associated with annualized capital and start-up costs.

14. Annualized Cost to the Federal Government

The annualized cost to the Federal Government for reviewing all forms submitted by respondents is outlined in the below table. These reviews are conducted by acquisition personnel including contracting officers and technical and legal staff. The annual estimated cost is \$764,088.

Table B: Estimated Annualized Hours and Costs to the Federal Government

| Type of Respondent | Form Name / Form Number | No. of Respondents | Responses per Respondent Annually | Total Annual Responses | Avg. Burden per Response (in hours) | Total Annual Burden (in hours) | Avg. Hourly Wage Rate | Annual Government Costs |
|--------------------|-------------------------|--------------------|-----------------------------------|------------------------|-------------------------------------|--------------------------------|-----------------------|-------------------------|
| Contractor | | 93 | 1 | 93 | 160 | 14,880 | \$51.35 | \$764,088 |
| Totals | | 93 | | 93 | | | | \$764,088 |

- The average burden to the Federal Government to review responses received depends upon the size and complexity of each agency protest, and can vary. The average burden is an estimate based on information received from contracting activities.
- The annual cost estimate is based upon the total estimated annual responses received; an estimated combined total of 160 hours for contracting officers and technical and legal staff to review each response/report; and the approximate hourly rate for a GS-11, Step 4, federal employee located in the District of Columbia, as provided by OPM.gov for 2019, \$51.35, which includes the wage rate multiplier (\$36.68 X 1.4).

15. Explanation of Program Changes or Adjustments

The burden estimates provided in response to Item 12 above are based upon reports of protest activities submitted to the GAO or the Court of Federal Claims in Fiscal Year 2019. No program changes have occurred or changes to the information being collected, however, the burden was adjusted to reflect an agency adjustment decrease of 6 respondents within DHS for Fiscal Year 2019, as well as an increase in the average hourly wage rate.

16. Plans for Tabulation and Publication

There is no planned publication of information for statistical use.

17. Reason(s) Display of OMB Expiration Date is Inappropriate

There are no DHS instruments associated with this collection. There are (3) primary FAR Part 33 clauses that address protests, 52.233-1, -52.233-2, and 52.233-3. DHS Component contracting activities may have templates or local clauses that are used in conjunction with the FAR clauses within solicitations to provide interested parties with protest Agency instructions such as, points of contacts (emails, names & phone numbers.)

18. Exceptions to the Certification of the Paperwork Reduction Act Submissions

Not applicable. There are no exceptions to the certification statement.