

OMB Form 83-1– SUPPORTING STATEMENT

Limitations on Subcontracting Reporting (OMB Control Number 3245-0400)

OMB granted pre-approval of this information at the proposed stage of the related rule contingent on no substantive changes being made at the final rule stage. As discussed in Paragraph 8 below, SBA did not receive any comments and the information collection has not been changed.

A. Justification

1. Circumstances necessitating the collection of information.

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.

Congress has expressed its strong support for small business government contracting, and has provided agencies with numerous tools to set aside acquisitions for exclusive competition among, or in some cases award contracts on a sole source basis to: Small Business Concerns (SBCs), 8(a) Business Development Program Participants, Historically Underutilized Business Zone (HUBZone) small businesses, Women Owned Small Businesses, Economically Disadvantaged Women-Owned Small Businesses, and Service-Disabled, Veteran-Owned small businesses. 15 USC 631(a), 637(a), (m), 644(a), (j), 657a, 657f. As a condition of these preferences, small businesses are limited in their ability to subcontract to other-than-small business concerns to ensure that small businesses perform a certain percentage of the work. 15 USC 657s. These limitations on subcontracting (LOS) appear in solicitations and contract clauses for small business set aside and sole source awards. As part of their contract administration responsibilities, Contracting Officers are responsible for monitoring compliance with contract terms and conditions, including these LOS clauses. Federal Acquisition Regulation (FAR) 1.602-2.

In addition, section 46 of the Small Business Act, 15 U.S.C. 657s, provides:

- If awarded a contract under section 8(a), 8(m), 15(a), 31, or 36 [15 USCS § 637(a), 637(m), 644(a), 657a, or 657f], a covered small business concern--
- (1) in the case of a contract for services, may not expend on subcontractors more than 50 percent of the amount paid to the concern under the contract;
 - (2) in the case of a contract for supplies (other than from a regular dealer in such supplies), may not expend on subcontractors more than 50 percent of the amount, less the cost of materials, paid to the concern under the contract;
 - (3) in the case of a contract described in paragraphs (1) and (2)--
 - (A) shall determine for which category, services (as described in paragraph (1)) or supplies (as described in paragraph (2)), the greatest percentage of the contract is awarded;
 - (B) shall determine the amount awarded under the contract for that category of services or supplies; and
 - (C) may not expend on subcontractors, with respect to the amount determined under subparagraph (B), more than 50 percent of that amount; and
 - (4) in the case of a contract which is principally for supplies from a regular dealer

in such supplies, and which is not a contract principally for services or construction, shall supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted--

(A) by the Administrator, after reviewing a determination by the applicable contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required by the contract; or

(B) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

These supply/performance requirements are currently in FAR clauses 52.219-3, 52.219-4, 52.219-6, 52.219-7, 52.219-14, 52.219-18, 52.219-27, 52.219-29, and 52.219-30. Contracting officers must be able to request information that would demonstrate whether the small business concern complied with the requirements during contract performance. While contracting officers currently possess the authority to request a small business to demonstrate compliance with the limitations on subcontracting, SBA is now clarifying this authority in its regulations because several reports from the U.S. Government Accountability Office (GAO) have concluded that there is insufficient monitoring of compliance with these performance requirements: “Contract Management; Increased Use of Alaska Native Corporations’ Special 8(a) Provisions Calls for Tailored Oversight,” GAO-06-39, April 2006; “8(a) Subcontracting Limitations, Continued Noncompliance with Monitoring Requirements Signals Need for Regulatory Change,” GAO-14-706, September 2014; and “Federal Contracting Monitoring and Oversight of Tribal 8(a) Firms Need Attention,” GAO-12-84, January 2012; “VA Needs to Address Implementation Challenges and Strengthen Oversight of Subcontracting Limitations,” GAO-18-648, October 2018. On a case by case basis, the Contracting Officer will determine the type of information that is required to show compliance with these requirements but generally the information could include: a copy of the subcontract, a statement of whether the subcontractor is a similarly situated entities, identification of subcontractor, dollar amount of subcontract, and costs to be excluded from the LOS calculation (e.g., for contracts for supplies, materials).

2. How, by whom, and for what purpose information will be used.

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 from the current collection.

Contracting officers administering a contract or order awarded pursuant to a small business set aside, small business program set-aside, or sole source action would use the information to determine whether the contractor is complying with clauses in the contract through periodic surveillance, reviews and evaluations (see FAR 42.3).

3. Technological collection techniques.

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/or the decision/or adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The information can be submitted electronically by e-mail to the contracting officer or by any other means acceptable to the contracting officer and the SBC.

4. Avoidance of duplication.

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

The information to be collected in support of LOS compliance will only be collected if it is not already available to the contracting officer.

5. Impact on small businesses or other small entities.

If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.

This collection of information will not have a significant economic impact on a substantial number of small entities. The requirement to submit evidence of compliance to the Contracting Officer will only apply to an estimated 18,500 small business contracts, or approximately ten percent of the total number of small business sole source and set-aside contracts awarded in a fiscal year. As proposed, the information collection will only apply where compliance is not evident to the contracting officer or where the contracting officer may have concerns. Generally, the information is of the type that is maintained in the ordinary course of business, and since the information will be submitted electronically, the burden on small businesses will be reduced.

6. Consequences if collection of information is not conducted.

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.

If the contracting officer does not collect this information, the small business prime contractor may not perform the required work, and may instead subcontract the work to ineligible concerns. Thus, ineligible concerns may fraudulently profit from set asides and sole source contract awards that they are not entitled to receive or perform. This may have a deleterious effect on the use of small business set aside and sole source authorities, thereby harming legitimate small business concerns.

7. Existence of special circumstances.

Explain any special circumstances that would cause any 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;

requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has illustrated procedures to protect the information's confidentiality to the extent permitted by law.

The information is already in the possession of the contractor in the normal course of performing a government contract. The relevant data collection will coincide with the performance period of the contract (base or option period) or order (where applicable). 13 CFR § 125.6(e). Contracting Officers may request compliance information whenever there is a concern regarding compliance. There is no set time in the contracting process where an SBC would be required to submit compliance information.

8. Solicitation of Public Comment.

If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice ...soliciting comments on the information collection ... Summarize public comments received; 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 record keeping, disclosure, or reporting format.

As required by the Paperwork Reduction Act and OMB regulations, SBA solicited comments from the public on the related rule, *National Defense Authorization Acts of 2016 and 2017, Recovery Improvements for Small Entities after Disaster Act of 2015, and Other Small Business Government Contracting Amendments* (RIN: 3245-AG86). The proposed rule was published in the Federal Register on December 4, 2018. 83 FR 62516. SBA did not receive public comments on this information collection.

9. Payment or gifts.

Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

There are no payments or gifts given to any respondent.

10. Assurance of confidentiality.

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

Any information and/or documents submitted to a Federal agency after award of a contract are protected to the fullest extent permitted by law, including the Privacy Act and Freedom of Information Act, 5 U.S.C. §552, Trade Secrets Act, 18 U.S.C. § 1836 and the Procurement Integrity Act, 41 U.S.C. §§ 2101-07.

11. Questions of a sensitive nature.

Provide 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 the consent.

The nature of the information that would be required in support of compliance are not of a sensitive nature, as that term is described above; however, certain documents and information

provided may be protected because they are not generally releasable to the public.

12. Estimate of the hourly burden of the collection of information.

Provide estimates of the hour burden of the collection of the information. Also, provide an estimate of the annualized cost to the respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.

This information collection would apply to both small business set-aside and sole-source contracts where the contractor intends to subcontract some portion of the work. Firms would not be required to submit the documentation unless a CO requests it; therefore, not all awarded contracts would be impacted. The calculations below reflect our best estimate of the percentage of small business contracts, where the awardee intends to subcontract a portion of the contract, and which will be subject to a request to verify compliance with the limitations on subcontracting. Accordingly, the total estimated number of respondents for this collection of information is 5,300. The estimated number of responses is 18,500, which is about ten percent of the total number of small business set-aside and sole source awards issued in a fiscal year. At an estimated one hour per submission, the total estimated burden hours are 18,500.

Total number of Respondents:	5,300 respondents
Estimated number of Responses	18,500
Estimated burden hours:	1.0 hour per response
Total estimated annual burden hours:	18,500 responses x 1.0 hour = 18,500 hours

(b) Respondents' cost of burden hours is estimated at \$815,110, which is calculated as follows:

Estimated officer's salary:	\$44.06/hour (based on median pay for accountants and auditors, Bureau of Labor Statistics, ¹ plus labor costs)
Total estimated hour annual cost burden:	18,500 hours x \$44.06/hour = \$815,110

13. Estimate of total annual cost burden for submission.

Provide an estimate of 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.

SBA believes that there are no additional capital or start-up costs, operation and maintenance costs, and purchases of services costs to respondents as a result of this collection of information because there should be no cost in setting up or maintaining systems to collect the required information. As stated in Answer 5, the information requested should be collected and retained in the ordinary course of business.

14. Estimated annualized cost to the Federal government.

Provide estimates of annual costs to the Federal Government. Also, provide a description of the

¹ See <https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm>.

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. (Cost estimates for items 12, 13, and 14 may aggregate in a single table.)

The annualized cost to review and analyze the documents is \$1,036,080, computed as follows: General Schedule (GS)-9—15 salaries, averaged (based on GS-12 Step 5, Rest of United States) is \$44.28/hour for employees reviewing documents and responses, plus labor costs, for a fully-loaded cost of \$57.56/hour.

Average for review of documents:	1.0 hour at \$57.56/hour
Number of responses reviewed:	18,500 responses
Total estimated annual cost:	18,500 responses x \$57.56/hour = \$1,064,860.

15. Explanation of program changes in Item 13 or 14 OMB Form 83-1.
Explain reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I

None; new collection.

16. Collection of information whose results will be published.
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 the information, completion of report, publication dates, and other actions.

The results of this information will not be published.

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

No exceptions are being sought; the expiration date will be displayed.

18. Exceptions to certifications in Block 19 in OMB Form 83-1.
Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-1

This is not applicable.

B. Collections of Information Employing Statistical Methods.

Not applicable; this collection of information does not employ statistical methods.