

Federal Acquisition Regulation (FAR)
Certain Federal Acquisition Regulation Part 28 Requirements
OMB Control No. 9000-0001
Justification - Part A Supporting Statement

FAR sections affected: 52.228-1, 52.228-2, 52.228-13, 52.228-14, 52.228-15, 52.228-16, Standard Forms (SF) 24, 25, 25-A, 25-B, 28, 34, 35, 273, 274, 275, 1414, 1415, 1416, and 1418

Overview of Information Collection:

- This justification supports clearance of an extension of the collection and consolidating it with OMB control number 9000-0045.

There are no program changes. The FAR requirements remain the same. The Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) are combining OMB Control Nos. by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. This 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 extension of OMB Control No. 9000-0001 and combines it with the previously approved information collections under OMB Control No. 9000-0045, with the new title "Certain Federal Acquisition Regulation Part 28 Requirements". Upon approval of this consolidated information collection, OMB Control No. 9000-0045 will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000-0001. This extension includes adjustments to the burden due to use of the latest data available in the Federal Procurement Data System (FPDS) and the calendar year 2023 OPM GS wage rates for the rest of the United States as explained in item 15.

1. Need & Method for the Information Collection. This clearance covers the information that offerors or contractors must submit to comply with the following FAR requirements:
 - a. **FAR 52.228-1, Bid Guarantee.** This provision (or clause) requires offerors or contractors to furnish a bid guarantee in

the proper form and amount when a performance bond or a performance and payment bond is also required. (SF 24, Bid Bond; SF 34, Annual Bid Bond).

- b. **FAR 52.228-2, Additional Bond Security.** This clause requires contractors to furnish additional bond security under certain circumstances. This clause is used both for construction and other than construction contracts. (SF 1414 Consent of Surety and SF 1415, Consent of Surety and Increase of Penalty).
- c. **FAR 52.228-13, Alternative Payment Protections.** This clause requires contractors to submit one of the payment protections listed in the clause by the contracting officer, in construction contracts greater than \$35,000 but not exceeding \$150,000.
- d. **FAR 52.228-14, Irrevocable Letter of Credit.** This clause requires offerors or contractors to provide certain information when they intend to use an irrevocable letter of credit (ILC) in lieu of a required bid bond, or to secure other types of required bonds such as performance and payment bonds. This clause is required in solicitations and contracts when a bid guarantee, or performance bond, or performance and payment bonds are required.
- e. **FAR 52.228-15, Performance and Payment Bonds-Construction.** This clause requires contractors to provide performance and payment bonds in construction contracts exceeding \$150,000 (SF 25, Performance Bond; SF 25-A, Payment Bond; SF 25-B, Continuation Sheet (for SF's 24, 25, and 25-A); SF 273, Reinsurance Agreement for a Bonds Statute Performance Bond; SF 274, Reinsurance Agreement for a Bonds Statute Payment Bond).
- f. **FAR 52.228-16, Performance and Payment Bonds-Other Than Construction.** This clause requires contractors to furnish performance and payment bonds for other than construction contracts exceeding the simplified acquisition threshold only in certain circumstances. (SF 35, Annual Performance Bond; SF 275, Reinsurance Agreement in Favor of the United States; SF 1416, Payment Bond for Other Than Construction Contracts; SF 1418, Performance Bond for Other Than Construction Contracts).
- g. **Standard Form (SF) 28, Affidavit of Individual Surety.** This form is used by all executive agencies, including DoD, to obtain information from individuals wishing to serve as sureties to Government bonds. Offerors and contractors may use an individual surety as security for bonds required under a solicitation or contract for supplies or services (including construction). It is an elective decision on the part of the offeror or contractor to use individual sureties instead of other available sources of surety or sureties for Government bonds.

2. Use of the Information. The Government retains the bid guarantees, bonds, or alternative payment protections until the contractor's obligation is fulfilled. The contracting officer uses the information on the SF 28 to determine the acceptability of individuals proposed as sureties.
3. Use of Information Technology. Federal agencies use information technology to the maximum extent practicable. Where both the Government agency and contractors are capable of electronic interchange, the offerors and contractors may submit this information collection requirement electronically.
4. Non-duplication. These requirements are issued under the FAR, which has been developed to standardize Federal procurement practices and eliminate unnecessary duplication.
5. Burden on Small Business. The burden applied to small businesses is the minimum consistent with applicable laws, Executive orders, regulations, and prudent business practices.
6. Less Frequent Collection. Collection of information on a basis other than solicitation-by-solicitation or contract-by-contract is not practical.
7. Paperwork Reduction Act Guidelines. Collection is consistent with guidelines in 5 CFR 1320.5(d)(2).
8. Consultation and Public Comments.
 - A. A 60-day notice was published in the *Federal Register* at 88 FR 64433, on September 19, 2023. No comments were received.
 - B. A 30-day notice was published in the *Federal Register* at 88 FR 83130, on November 28, 2023.
9. Gifts or Payment. This collection does not provide any payment or gift to respondents, other than remuneration of contractors.
10. Privacy & Confidentiality. This information is disclosed only to the extent consistent with prudent business practices, current regulations, and statutory requirements.
11. Sensitive Questions. No sensitive questions are involved.
12. Burden Estimate.

Estimated total annual public hour and cost burden.

The following estimates are based on the historical average of FPDS award data for fiscal years 2020 through 2022. For construction contracts, Product and Service Codes beginning with Y and Z2 were utilized. These estimates exclude contracts for the acquisition of commercial products and commercial services.

FAR 52.228-1 Bid Guarantee, and SFs 24 and 34: This provision (or clause) requires a bid guarantee only if a performance bond or a performance and payment bond is also required. Therefore, the total number of unique respondents is based on the sum of respondents per year identified for FAR 52.228-15 and FAR 52.228-16, or 5,560 respondents per year.

FAR 52.228-2 Additional Bond Security, and SFs 1414 and 1415: This clause applies in limited circumstances in both construction contracts and other than construction contracts when bonds are required. The total number of unique entities is based on the sum of unique entities identified for FAR 52.228-15 and FAR 52.228-16. However, this data was analyzed further because this clause is only required when the surety furnished becomes unacceptable to the Government, the surety fails to furnish reports on its financial condition, the contract price is increased so that the bond becomes inadequate, or the irrevocable letter of credit expires. Based on this, the total number of unique entities was filtered based on the reason for contract modification including for additional work, supplemental agreement for work within scope, and change orders. Therefore, the estimated number of respondents per year is 1,649.

FAR 52.228-13 Alternative Payment Protections: This clause only applies to construction contracts exceeding \$35,000 but not exceeding \$150,000. Therefore, the estimated number of respondents per year is 1,480.

FAR 52.228-14 Irrevocable Letter of Credit: Since this clause is used by an offeror or contractor in lieu of the requirements of FAR 52.228-1, 52.228-15, or 52.228-16, instead of in addition to, burden for this clause is not accounted for separately in this information collection.

FAR 52.228-15 Performance and Payment Bonds - Construction, and SFs 25, 25-A, 25-B, 273, and 274: This clause only applies to construction contracts exceeding \$150,000. The estimated number of respondents per year is 2,604.

FAR 52.228-16 Performance and Payment Bonds - Other Than Construction, and SFs 35, 275, 1416, and 1418: This clause applies to non-construction contracts exceeding the SAT (\$250,000) in limited circumstances including for when government property will be provided to the contractor for use in performing the contract, when a contractor merges with another concern, when substantial progress payments are made before the delivery of end items starts, and contracts for dismantling, demolition or removal of improvements. Therefore, the estimated number of respondents per year is 2,956.

In all cases, except for the SF 28, it is estimated that only one response would be submitted annually per respondent. The amount of time required to read, prepare the information, and populate the forms is estimated at one hour per response.

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| Estimated number of respondents/yr..... | 14,249 |
| Responses per respondent..... | <u>x 1</u> |
| Total annual responses..... | 14,249 |
| Estimated hrs/response..... | <u>x 1</u> |
| Estimated annual burden hours..... | 14,249 |
| Hourly rate*..... | <u>x \$67</u> |
| Estimated annual cost to the public..... | \$954,683 |

SF 28, Affidavit of Individual Surety. This form is required when an offeror or contractor chooses to use an individual surety for a bid guarantee, a performance bond, or a payment bond. The number of unique respondents is based on the sum of respondents per year identified for FAR 52.228-1 which includes both the respondents for FAR 52.228-15 and FAR 52.228-16, or 5,560 respondents per year. Of these 5,560 respondents, some could be using corporate sureties under FAR 28.202, individual sureties under FAR 28.203, or pledging the contractor's own assets under FAR 28.204. Based on contracting officers' experience in the field, DoD, GSA, and NASA ("we") estimate that less than 0.1 percent of respondents would use individual sureties to meet the required bonding under contracts. Therefore, we estimate 6 (0.1 percent of 5,560 rounded up to the nearest whole number) respondents would use the SF 28. However, consistent with 5 CFR

1320.3 paragraph c, we estimate the number of respondents per year at 10. We assume two responses per year to account for a revision to the SF 28, if needed. Time required to read and prepare information is estimated at 0.3 hours per response.

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| Estimated number of respondents/yr..... | 10 |
| Responses per respondent..... | <u>x 2</u> |
| Total annual responses..... | 20 |
| Estimated hrs/response..... | <u>x 0.3</u> |
| Estimated annual burden hours..... | 6 |
| Hourly rate*..... | <u>x \$67</u> |
| Estimated annual cost to the public..... | \$402 |

Summary of estimated annual cost to the public

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|---|------------------|
| Estimated number of respondents/yr..... | 14,259 |
| Total annual responses..... | 14,269 |
| Estimated annual burden hours..... | 14,255 |
| Total estimated annual cost to the public... | \$955,085 |

* Fully burdened rate includes a 36.25 percent fringe factor (pursuant to the rate provided in OMB memorandum M-08-13 for use in public-private competition), and a 12 percent overhead rate (from A-76 revised supplemental handbook). Based on the Office of Personnel Management (OPM) 2023 General Schedule (GS) 12/step 5 salary for the rest of the United States (\$44.98 per hour) plus the fringe factor and the overhead rate, rounded to the nearest whole dollar (\$67).

13. Estimated nonrecurring costs. Not applicable.

14. Estimated cost to the Government.

FAR 52.228-1, 52.228-2, 52.228-13, 52.228-14, 52.228-15, 52.228-16, SFs 24, 25, 25-A, 25-B, 34, 35, 273, 274, 275, 1414, 1415, 1416, and 1418. Time required for Governmentwide review is estimated at 15 minutes per response.

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| Estimated responses/yr..... | 14,249 |
| Reviewing time (hr)/response..... | <u>x 0.25</u> |
| Review time /yr..... | 3,562.25 |
| Hourly rate*..... | <u>x \$67</u> |
| Estimated annual cost to the Government. | \$238,670.75 |

SF 28. Time required for Governmentwide review is estimated at 1 hour per response.

Estimated responses/yr..... 20
 Reviewing time (hr)/response..... x 1
 Review time /yr..... 20
 Hourly rate*..... x \$67
 Estimated annual cost to the Government.... \$1,340

Summary of estimated annual cost to the Government

Estimated responses/yr..... 14,269
 Review time /yr.....3,582.25
Total estimated annual cost to the Government....\$240,010.75

15. Reasons for changes. There are no program changes. The FAR requirements remain the same. This extension of OMB Control No. 9000-0001 is combined with the previously approved information collection under OMB Control No. 9000-0045. Upon approval of this consolidated information collection, OMB Control No. 9000-0045 will be discontinued because the burden has been accounted for in this extension. This extension includes adjustments to the public and Government burden estimates based on the following:

- o The estimated number of respondents and responses per year are based on averages of historical FPDS data for the three most recent fiscal years (2020 through 2022).
- o The estimated cost per hour is based on use of the calendar year 2023 OPM GS wage rate for the rest of the United States.
- o The burden estimate for the SF 28 uses FPDS data instead of data from the Electronic Document Access system (DoD official contract file system). This is a better measure because it is consistent with the FAR form prescription and the estimates for the other information collection requirements covered under this OMB control number.

| | 2021 Estimate | 2023 Estimate | Change in Burden |
|------------------------|------------------|------------------|---------------------|
| Number of respondents | 6,289 | 14259 | 7,970 |
| Total annual responses | 6,299 | 14269 | 7,970 |
| Total burden hours | 6,285 | 14255 | 7,970 |

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| Total annual cost to public | \$370,803 | \$955,085 | \$584,282 |
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16. Publicizing Results. Results will not be tabulated or published.
17. OMB Not to Display Approval. Approval to *not* display the expiration date for OMB approval of the information collection is not sought.
18. Exceptions to "Certification for Paperwork Reduction Submissions." There is no exception to the certification statement.
19. Surveys, Censuses, and Other Collections that Employ Statistical Methods. Statistical methods are not used in this information collection. A Part B supporting statement is not needed, or required, and therefore was not completed.