

Federal Acquisition Regulation (FAR)
Federal Acquisition Regulation Part 3: Improper Business
Practices and Personal Conflicts of Interest
OMB Control No. 9000-0018
Justification - Part A Supporting Statement

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

Overview of Information Collection:

- This justification supports clearance of an extension of the collection.

There are no program changes. The FAR requirements remain the same. 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 2024 OPM 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 and contractors must submit to comply with the following FAR part 3 requirements:

- **FAR 52.203-2, Certificate of Independent Price**

Determination. This 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 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 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 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. Use of the 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. 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 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 89 FR 2952, on January 17, 2024. No comments were received.
 - B. A 30-day notice was published in the *Federal Register* at 89 FR 20655, on March 25, 2024.
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.

The following estimates of public hour and cost burdens are based on historical award data available in FPDS for fiscal years 2020 through 2022.

SUMMARY - COST TO THE PUBLIC				
Reporting	Respondents	Responses	Total Hours	Cost
52.203-2	8786	351,440	87860	\$8,610,280
52.203-7	100	100	2,000	\$290,000
52.203-13	442	442	26,520	\$3,845,400
52.203-16	314	314	12,260	\$1,215,580
Reporting Total	9,642	352,296	128,640	\$13,961,260
Recordkeeping				
52.203-16	9,147	320,145	548820	\$38,417,400
Total Cost to the Public	18,789	352,296	677,460	\$52,378,660

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 acquisitions. On average, the Government awards 31,842 covered contracts and orders to 8,786 unique vendors per year. On average, the Government receives 11 offers on each solicitation for the covered awards, approximately 350,262 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 40 (350,262/8,786). 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.....	8,786
Responses annually.....	x <u>40</u>
Total annual responses.....	351,440
Estimated hours/response.....	x <u>0.25</u>
Estimated total burden/hours.....	87,860
Hourly rate**.....	x <u>\$98</u>
Estimated cost to public.....	\$8,610,280

** Because the certification likely requires the involvement of legal and management, the estimate uses a rate equivalent to a GS-14/step 5.

- **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 products or commercial services. 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>\$145</u>
Estimated cost to public.....	\$290,000

**** 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.

- **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 \$6 million and the performance period is 120 days or more. By law, the clause applies to contracts for commercial products or commercial services 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 18,147 covered contracts and orders to 8,312 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 (332 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 (110 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.....	442
Responses annually.....	x <u>1</u>
Total annual responses.....	442
Estimated hours/response.....	x <u>60</u>
Estimated total burden/hours.....	26,520
Hourly rate****.....	x <u>\$145</u>
Estimated cost to public.....	\$3,845,400

**** 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.

- **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 (\$250,000); 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 awards 5,989 covered contracts and orders to an average of 3,038 unique vendors per year. It is estimated that five (5) percent of these covered contracts may involve a violation of Federal criminal law with regard to performance or award of a Government contract that should be reported (approximately 299 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.....	299
Responses annually.....	x <u>1</u>
Total annual responses.....	299
Estimated hours/response.....	x <u>40</u>
Estimated total burden/hours.....	11,960
Hourly rate**.....	x <u>\$98</u>
Estimated cost to public.....	\$1,172,080

** 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.

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

Estimated respondents/year.....	15
Responses annually.....	x <u>1</u>
Total annual responses.....	15
Estimated hours/response.....	x <u>20</u>
Estimated total burden/hours.....	300

Hourly rate****.....	x	\$145
Estimated cost to public.....		\$43,500

**** 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.

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 (5,989 contracts * 2 = 11,978 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 (3,038/5,989 ~ 0.51). Therefore, it is estimated that the total number of recordkeepers is 9,147 (3,038 prime contractors plus 6,109 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.....		9,147
Estimated records per recordkeeper.....	x	25
Total annual records.....		228,675
Estimated hours/record.....	x	2
Total recordkeeping burden hours.....		457,350
Hourly rate*.....	x	\$70
Estimated cost to public.....		\$32,014,500

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 to review and maintain such records each year is one (1) hour per record.

Estimated recordkeepers.....	9,147
Estimated records per recordkeeper.....	x <u>10</u>
Total annual records.....	91,470
Estimated hours/record.....	x <u>1</u>
Total recordkeeping burden hours.....	91,470
Hourly rate*.....	x <u>\$70</u>
Estimated cost to public.....	\$6,402,900

Note: Fully burdened rates include 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) 2024 General Schedule (GS) 12/step 5 salary for the rest of the United States (\$47.22 per hour) plus the fringe factor and the overhead rate, rounded to the nearest whole dollar (\$70).

** Based on the OPM 2024 GS 14/step 5 salary for the rest of the United States (\$66.36 per hour) plus the fringe factor and the overhead rate, rounded to the nearest whole dollar (\$98).

*** Based on the OPM 2024 GS 15/step 5 salary for the rest of the United States (\$78.05 per hour) plus the fringe factor and the overhead rate, rounded to the nearest whole dollar (\$116).

**** Based on the Level III Senior Executive salary (\$97.75/hour) plus the fringe factor and the overhead rate, rounded to the nearest whole dollar (\$145).

13. Estimated nonrecurring costs. Not applicable.

14. Estimated cost to the Government. The estimated Government processing times are based on consultation with subject matter experts.

SUMMARY - COST TO THE GOVERNMENT			
Requirement	Responses	Total Hours	Cost
52.203-2	351,440	5869	\$410,830
52.203-7	100	2400	\$168,000
52.203-13	442	10608	\$1,039,584

52.203-16	314	12560	\$1,241,680
Totals	352,296	31,437	\$2,860,094

● **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..... 351,440
Review time/response (hours)..... $\times 0.0167$
Review time/year (hours)..... 5,869
Hourly rate*..... $\times \$70$
Estimated cost to the Government..... \$410,830

● **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)..... $\times 24$
Review time/year (hours)..... 2,400
Hourly rate*..... $\times \$70$
Estimated cost to the Government..... \$168,000

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

It is estimated that it takes the Government a total of 24 hours to review and evaluate a reported violation.

Total annual responses..... 442
Review time/response (hours)..... $\times 24$
Review time/year (hours)..... 10,608
Hourly rate**..... $\times \$98$
Estimated cost to the Government..... \$1,039,584

● **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 40 hours to review a reported violation and any follow-up action reports.

Total annual responses.....	299
Review time/response (hours).....	x 40
Review time/year (hours).....	11,960
Hourly rate**.....	x \$98
Estimated cost to the Government.....	\$1,172,080

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

Total annual responses.....	15
Review time/response (hours).....	x 40
Review time/year (hours).....	600
Hourly rate***.....	x \$116
Estimated cost to the Government.....	\$69,600

15. Reasons for changes. There are no program changes. The FAR requirements remain the same. This extension includes adjustments to the public and Government burden estimates based on the following:

- The estimated number of respondents and responses per year is based on FPDS data for the three most recent fiscal years (2020 through 2022).
- The estimated cost per hour is based on use of the current (calendar year 2024) OPM GS wage rates for the rest of the United States or Rates of Basic Pay for the Executive Schedule, as appropriate, that are effective January 2024, found at www.opm.gov.

	2021 Estimate	2024 Estimate	Change in Burden
Number of respondents/record keepers	18,666	18,789	123
Total annual responses	342,019	352,296	10,277

Total burden hours	627,164	677,460	50,296
Total annual cost to public	\$39,619,380	\$52,378,660	\$12,759,280

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.