

**Federal Acquisition Regulation (FAR)
Addressing DEI Discrimination by Federal Contractors (E.O.
14398)
OMB Control No. 9000-0208
Justification - Part A Supporting Statement**

FAR section affected: 52.222-90

Overview of Information Collection:

- This justification supports emergency clearance of a new information collection to comply with Executive Order (E.O.) 14398, Addressing DEI Discrimination by Federal Contractors, which prohibits contractors from engaging in any racially discriminatory diversity, equity, and inclusion (DEI) activities (91 FR 16147, March 31, 2026).

Section 5 of E.O. 14398 directs the Federal Acquisition Regulatory Council (FAR Council) to issue a deviation regarding agency implementation of the contract clause described in section 3 of the E.O.

The FAR Council is comprised of the Office of Federal Procurement Policy in the Office of Management and Budget (OMB), Department of Defense, General Services Administration, and the National Aeronautics and Space Administration.

1. Need & Method for the Information Collection. This clearance covers the information that contractors must submit in response to the requirements of section 3 of E.O. 14398 as implemented in the following FAR clause:

a. FAR 52.222-90, Addressing DEI Discrimination by Federal Contractors. This clause requires contractors to:

i. Par (b)(2) - Furnish all information and reports, including providing access to books, records, and accounts, as required by the Contracting Officer, for purposes of ascertaining compliance with the clause.

ii. Par (b)(4) - The Contractor will report any subcontractor's known or reasonably knowable conduct that may violate this clause to the Contracting Officer and take any

appropriate remedial actions directed by the Contracting Officer.

iii. Par (b)(5) - The Contractor will inform the Contracting Officer if a subcontractor sues the Contractor and the suit puts at issue, in any way, the validity of the clause.

2. Use of the Information. Federal agencies use the collected information to ensure compliance with E.O. 14398, including section 4 which establishes remedies for noncompliance with the E.O.

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 contractors may submit this information collection requirement electronically. Where contractors have automated systems that contain the information needed to report these requirements, contractors may submit the information or report in formats that are compatible with the automated systems.

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 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 XX FR XXX, on XXX.

B. A 30-day notice was published in the *Federal Register* at XX FR XXX, on XXX.

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 estimated burden is based on consultation with subject matter experts and data from SAM Contract Awards Management (formerly the Federal Procurement Data System now in [SAM.gov](https://sam.gov)).

a. FAR 52.222-90, Addressing DEI Discrimination by Federal Contractors. This clause is prescribed for use in solicitation and contracts, including those for commercial products and commercial services, except those that result in contracts for which the place of delivery or performance is outside the United States. It applies to acquisitions valued above the micro-purchase threshold (currently at \$15,000). The clause flows down to subcontracts, including those for commercial products and commercial services, except those where the place of delivery or performance is outside the United States.

Fiscal Year 2025 SAM Contract Awards Management data¹ shows that 160,508 contracts were awarded to 34,126 unique vendors meeting the above conditions. The clause flows down to subcontracts. An average of three subcontracts per prime contract are estimated for a maximum potential number of 642,032 (160,508 * 4) awards subject to the information collection requirements. However, it is estimated that one percent of all potential awards, or 6,420 (1% of 642,032), will require submission of the information under the clause (annual responses). The number of respondents is estimated as one percent of the maximum potential number of vendors (1% of (34,126 * 4 (to account for 3 subcontractors per prime)) = 1,365). The annual responses per respondent are a mathematical result of dividing the total annual responses by the

¹ Data filters used {Date Signed} (ID) Between 10/1/2024 and 9/30/2025 And {Modification Number} (ID) = "0" And {Principal Place of Performance Country Name}=UNITED STATES And {Award or IDV Type}=PURCHASE ORDER, DEFINITIVE CONTRACT, BOA, BPA, FSS, GWAC, IDC And {Base and All Options Value (Total Contract Value)} > 15000

respondents rounded up to the next whole number (6,420/1,365 = 5).

i. Par (b)(2) - Consistent with OMB Control # 9000-0034, Examination of Records by Comptroller General and Contract Audit, the estimated time per response is 1 hour.

ii. Par (b)(4) - Notice to the contracting officer is estimated at 5 minutes per response.

iii. Par (b)(5) - Notice to the contracting officer is estimated at 5 minutes per response.

The annual public burden is calculated as follows:

Estimated respondents/yr.....	1,365
Responses/respondent.....	<u>x 5</u>
Total annual responses.....	6,825
Estimated hrs/response.....	<u>x 1.167</u>
Estimated total burden hrs.....	7,965
Hourly rate*.....	<u>x \$72</u>
Estimated annual cost to the public.....	\$ 573,480

Note:

The hourly rate is calculated by applying 36.25 percent fringe factor and a 12 percent overhead factor to a base hourly rate and then rounding to the nearest whole dollar. The base hourly rate is derived from the OPM 2026 GS Locality Pay Table for the rest of the U.S. ("Salary Table 2026-RUS"). The fringe factor is derived from OMB memorandum M-08-13. The overhead factor is derived from the OMB Circular No. A-76 Revised Supplemental Handbook.

* For a GS-12/step 5, the base hourly rate is \$48.61 and loaded rounding to the nearest whole dollar is \$72.

13. Estimated nonrecurring costs. Not applicable.

14. Estimated cost to the Government. Time required to review information is estimated at 16 hours per response².

Estimated annual responses.....	6,825
Review time per response (hours).....	<u>x 16</u>
Review time per year (hours).....	109,200

² Consistent with OMB Control # 9000-0034, Examination of Records by Comptroller General and Contract Audit, the estimated Government review time per response is 16 hours.

Hourly rate* x \$72
Estimated annual cost to the Government.....\$ 7,862,400

15. Reasons for changes. This is a new collection.

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.

B. 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.