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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0094]

[Docket 2016-0053; Sequence 11]

**Submission for OMB Review; Debarment and Suspension and
Other Responsibility Matters**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning debarment and suspension. This request also incorporated two other related information collection requirements ("Information Regarding Responsibility Matters" and "Prohibition on Contracting with Inverted Domestic Corporations—Representation and Notification"), which will be cancelled upon approval of this clearance. A notice was published in the Federal Register at 81 FR 8719 on February 22, 2016. One comment was received.

DATES: Submit comments on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally, submit a copy to GSA by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000-0094, Debarment and Suspension and Other Responsibility Matters". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0094, Debarment and Suspension and Other Responsibility Matters" on your attached document.

- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Flowers/IC 9000-0094, Debarment and Suspension.

Instructions: Please submit comments only and cite Information Collection 9000-0094, Debarment and Suspension and Other Responsibility Matters, in all correspondence related to this collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Office of Acquisition Policy, at 202-219-0202 or via email at cecelia.davis@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

1. Suspension and Debarment.

The FAR requires contracts to be awarded to only those contractors determined to be responsible. Instances where a firm, its principals, or subcontractors, have been indicted, convicted, suspended, proposed for debarment, debarred, or had a contract terminated for default are critical factors to be considered by a Government contracting officer in making a responsibility determination. FAR 52.209-5 and 52.212-3(h), Certification Regarding Responsibility Matters, and FAR 52.209-6, Protecting the Government's Interest when

Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, require the disclosure of this and other information relating to responsibility.

2. Information Regarding Responsibility Matters (transfer from OMB Clearance Number 9000-0174).

The Federal Awardee Performance and Integrity Information System (FAPIIS) was developed to meet the statutory requirement to develop and maintain an information system that contains specific information on the integrity and performance of covered Federal agency contractors and grantees. FAPIIS provides users access to integrity and performance information from the FAPIIS reporting module in the Contractor Performance Assessment Reporting System (CPARS), as well as proceedings information and suspension/debarment information from the Central Contractor Registration (CCR) and the Excluded Parties List System (EPLS) functions in the System for Award Management (SAM).

The prescription at FAR 9.104-7(b) requires contracting officers to insert the provision at 52.209-7, Information Regarding Responsibility Matters, in solicitations where the resultant contract value is expected to exceed \$550,000. This provision contains a check box to be completed by the offeror indicating whether or not it has current active Federal contracts and grants with total value greater than \$10,000,000. If the offeror indicated that it has current

active Federal contracts and grants with total value greater than \$10,000,000, then the offeror must enter certain responsibility information into FAPIIS.

FAR 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters, requires each contractor that checked in the provision at 52.209-7 that it has current active Federal contracts and grants with total value greater than \$10,000,000, to update responsibility information in FAPIIS on a semiannual basis, throughout the life of the contract.

3. Prohibition on Contracting with Inverted Domestic Corporations—Representation and Notification (transfer from OMB clearance number 9000-0190)

FAR 52.209-2 and 52.212-3(n), Prohibition on Contracting with Inverted Domestic Corporations—Representation, is prescribed at 9.108-5(a) for use in each solicitation for the acquisition of products and services (including construction). The provision requires each offeror to represent whether it is, or is not, an inverted domestic corporation or a subsidiary of an inverted domestic corporation.

FAR 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations, is prescribed for use at FAR 9.108-5(b) for use in each solicitation and contract for the acquisition of products and services (including

construction). This clause requires the contractor to promptly notify the contracting officer in the event the contractor becomes an inverted domestic corporation or a subsidiary of an inverted domestic corporation.

B. Discussion and Analysis,

The analysis of the public comment is summarized as follows:

One response was received. The commenter supports the efforts to contract with only responsible parties and to assure contracting officers engage in appropriate due diligence to support this effort.

Comment: According to the respondent, the Federal Government has drastically underestimated the burden associated with compiling and reporting the requisite information by failing to take into account the offeror's obligation to assure that the information provided is current, accurate, and complete. It also fails to account for the requirement to update the information no less than semi-annually.

Response: FAR 52.209-7 requires the contractor to enter information into FAPIIS and FAR 52.209-9 requires the contractor to update this information semi-annually. The initial burden estimate for FAR 52.209-9 does take into account entering the information semi-annually. However, based on the comment, an adjustment was made from .5 hours to 1 hour per response, for FAR 52.209-9. The change

doubles the initial burden estimate for that clause to allow more time for this action.

Comment: The commenter stated that the Government may have understated the recordkeeping burden by several orders of magnitude. The number of recordkeepers does not equal the number of respondents and is unclear as to why. One cannot reasonably expect an offeror to provide the required information and certify it as current, accurate, and complete without maintaining the requisite litigation, employment, and corporate records.

Response: In this situation, the estimate for recordkeeping is based on the number of offerors submitting data into FAPIIS, whether or not they receive an award. This provision requires that for each solicitation where the resultant contract value is expected to exceed \$550,000, the offeror responds in paragraph (b) as to whether or not it has active Federal contracts that total more than \$10,000,000. Only if the offeror responds affirmatively is there any further information collection requirement. The recordkeepers maintain the company's information internally. This explains the difference between the number of respondents and the number of recordkeepers.

Comment: According to the commenter, the requirement to provide "Information Regarding Responsibility Matters" under 52.209-7 violates Executive Order 13610, Identifying and

Reducing Regulatory Burdens, in that it is a redundant collection of information and fails to maximize the re-use of data that are already collected. The commenter states that FAR clauses 52.209-5 and 52.209-7 request for information overlaps and yet is different enough to create substantial additional burden and confusion for offerors evaluating instance of litigation under both standards.

Response: FAR 52.209-7 is a statutory clause that requires the Government to collect information that is loaded into FAPIIS. The clause must be implemented as intended. Some of the information being collected may seem redundant but it has different criteria. It is not identical information and used differently. Furthermore, the thresholds are different.

FAR 52.209-5 implements policy guidance on debarment, suspension and ineligibility. FAR 52.209-5 is a certification that is placed in all solicitations when the contract value is expected to exceed the simplified acquisition threshold and covers 3 years. FAR 52.209-7 goes in solicitations expected to exceed \$550,000 and covers 5 years and requires that the information be placed into FAPIIS (as required by statute).

Comment: The existence of FAR 52.209-5 and 52.209-11 obviate the need for FAR 52.209-7 because all three clauses use offeror's litigation history as an indicator of it

present responsibility.

Response: These data requirements are different. One major difference between these clauses is that FAR 52.209-7 collects data to be added into FAPIIS. The others do not. Therefore, FAR 52.209-7 has a different requirement intent and needed.

Comment: FAR 52.209-7 requires offerors to report information on matters so old they are no longer relevant to present responsibility.

Response: The statute that this clause is based requires that it collects 5 years of data.

C. Annual Reporting and Recordkeeping Burden

Annual Reporting Burden.

Respondents: 486,000.

Responses Per Respondent: 2.55.

Total Annual Responses: 1,239,602.

Hours Per Response: 0.34.

Total Burden Hours: 415,687.

Annual Recordkeeping Burden.

Recordkeepers: 5,080.

Hours per Recordkeeper: 100.

Total Annual Recordkeeping hours: 508,000.

Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will

have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202-501-4755. Please cite OMB Control No. 9000-0094, Debarment and Suspension and Other Responsibility Matters, in all correspondence.

Dated: October 13, 2016.

Lorin S. Curit,
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Office of Governmentwide Acquisition Policy,
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