

Justification for Collection

9000-XXXX, FAR Case 2009-009

American Recovery and Reinvestment Act—Reporting Requirements - One Time Reporting for Contractor's and First-tier Subcontractor's Five Most Highly Compensated Officers

A. Justification.

1. **Administrative requirements.** This is a request for new information collection requirement concerning the Office of Management and Budget (OMB) Control Number 9000-0XXX, FAR Case 2009-0009 (Interim rule), American Recovery and Reinvestment Act—Reporting requirements.

On February 17, 2009, the President signed Public Law 111-5, the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"), including a number of provisions to be implemented in Federal Government contracts. This interim rule implements section 1512, which is also known as the "Jobs Accountability Act." Paragraph (c) of section 1512 requires contractors that receive awards (or modifications to existing awards) funded in whole or in part by the Recovery Act, to report quarterly on the use of the funds.

The FAR case adds a new subpart 4.15, and a new clause, 52.204-XX that require contractors to report on use of Recovery Act funds. Contracting officers must include the new clause in solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. Commercial item contracts and Commercially Available Off-The-Shelf (COTS) item contracts will be covered, as well as actions under the simplified action threshold.

2. **Use of information.** The objective of the Recovery Act is to create jobs, restore economic growth, and strengthen America's middle class through measures that modernize the nation's infrastructure, enhance America's energy independence, expand educational opportunities, preserve and improve affordable health care, provide tax relief, protect those in greatest need, and provide for other purposes. This rule implements section 1512 of the Recovery Act which requires contractors, as a condition of receipt of funds, to report quarterly on their use of those

funds. These reports will be made available to the public. Combined with the other provisions of the law, the Recovery Act is designed to provide unprecedented transparency to the American taxpayer.

3. Use of information technology. Contractors subject to the clause will be required report quarterly on their use of the Recovery Act funds, using the online reporting tool available at www.FederalReporting.gov.

4. Describe efforts to identify duplication. The rule includes the reporting requirements stipulated by FFATA in FAR Case 2008-039 FFATA flowdown and 2008-037 Financial Disclosure.

These cases are in process and as they are finalized, they will be amended to ensure that they do not duplicate, overlap, or conflict with the requirements of this interim rule.

5. If the collection of information impacts small businesses (item 5 of OMB 83-1) describes any methods used to minimize the burden.

The rule requires Federal prime contractors to respond to all of the reporting requirements, eliminating some of the reporting burden on first-tier subcontractors despite the fact that they will have to provide some information to the prime contractor. Also, all of the reporting elements applied to first-tier subcontractors, a significant percentage of which will be small businesses, are one-time collection burdens. The Government believes that the rule will further minimize the reporting burden on Government contractors, including all small businesses, as well as other businesses, by using existing Federal acquisition/registration systems to pre-populate certain data elements.

6. Describe the Consequences to Federal activities if the collection is not conducted or is conducted less frequently.

If the collection is not conducted or is conducted less frequently, a burden will be placed on agencies' contracting officers to enforce the requirements of the rule, as the public will not have access to the Federal award data, as mandated by the Recovery Act.

A public outcry is likely to be heard if the collection requirements are not met, as the objective of the Recovery Act, to empower the American taxpayer with information on the use of Recovery Act funds.

7. Special circumstances for collection. No special circumstances for collections exist.

8. Efforts to consult with persons outside the agency. Under the procedures established for development of the FAR, agency and public comments for FAR Case 2009-009 will be sought. Any substantive comments received from interested parties outside the agency will be considered in the formation of a final rule.

9. Explanation of any decision to provide any payment or gift to respondents, other than reenumeration of contractors or guarantees. No such payments or gifts are contemplated.

10. Describe assurance of confidentiality provided to respondents. This information is disclosed only to the extent consistent with prudent business practices and current regulations.

11. Additional justification for questions of a sensitive nature. Integrity in contracting is of critical importance, and it is necessary for contractors to report Recovery Act funds. Information of a classified nature is exempted from the reporting requirements.

12. Estimated total annual public hour burden. Any award funded by the Recovery Act will contain the clause at 52.204-XX. This clause requires contractors to report on use of Recovery Act funds. The clause imposes public reporting burden on prime contractors and, in a more limited way, on their first-tier subcontractors. The Federal Procurement Data System (FPDS) indicates that there are 129,331 active and unique prime federal contractors as of February 2009. The estimate for the number of active and unique prime federal contractors that will participate in awards funded by the Recovery Act is 20,013. This is based on using a factor of .16 of 129,331, derived by dividing 129,331 by \$517B in procurement obligations for fiscal year 2008 or by dividing estimated Recovery Act dollars for contracts (estimated between \$60B - \$80B, using

\$80B for calculation purposes) by \$517B. Of the estimated 20,013 Recovery Act prime contractors, it is estimated that 20%, or 4,003, will be small businesses. It should be noted that this is 20% of prime contractors which is not to be confused with the 23% small business contracting goal which is based on dollars and that continues to apply to both Recovery Act spending as well as agencies ongoing procurement spending.

The number of first-tier subcontractors estimated to participate in Recovery Act awards is 60,039. This was derived by estimating three first-tier subcontractors for each prime contractor. Of these 60,039 Recovery Act first-tier subcontractors, it is estimated that 25%, or 15,010, will be small businesses.

Based on the above, the estimated total number of small businesses, prime and subcontractors, to which this rule will apply is 19,013 and the estimated total number of other than small businesses to which this rule will apply is 61,039.

Though Section 1512 requires that the reports be completed by the prime contractor for all data elements, for practical purposes, the prime contractor will have to obtain certain information from their first-tier subcontractors, hence the flow-down requirements of (d)(10) of the clause. Additionally, the information required on the prime contractor award varies from that required for the first-tier subcontract awards. For instance, the elements at paragraphs (d)(1)-(9) are collection burdens associated with the prime contract award while the elements in (d)(10)(i)-(ix) are associated with first-tier subcontracts.

Finally, the elements required by Section 1512 of the Recovery Act are a combination of those that will be updated in each quarterly report, such as jobs created and retained and progress and those that are one-time collection burdens, such as award number and date and all of the reporting requirements for first-tier subcontracts. The following analysis separately estimates the burden associated with one-time reporting elements for prime contractors and first-tier subcontractors to publicly disclose the names and total compensation of each of the contractor's or first-tier subcontractor's five most highly compensated officers, for the calendar year in which the

award was made ((d)(8) and (d)(10)(xi))(see applicability requirements in the clause at (d)(8) and (d)(10)). The parenthetical reference after each reporting element description refers to the FAR clause.

While Section 1512(c)(4) requires reporting on all FFATA data elements, including the compensation information, it limits the prime's reporting responsibility to first-tier subcontractors that meet the applicability requirements. The FAR clause requires this compensation disclosure for prime contractors as well because to exclude prime contractors while requiring disclosure for first-tier subcontractors would be unsupportable given the transparency goals of both FFATA and the Recovery Act.

There are likely to be some prime contractors that already provide public access to the compensation of senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986. For purposes of this analysis, the Government estimates 5% of prime contractors already provide such public access. There are also likely to be some first-tier subcontractors that do not meet either of the revenue thresholds for applicability. For purposes of this analysis, the Government estimates 5% of first-tier subcontractors will not have to disclose compensation information because they do not meet the revenue thresholds.

The hours estimated per response include the time for reviewing instructions, searching existing data sources, gathering the data, and completing the collection of information.

We estimate the total annual public cost burden for these elements to be \$19,392,444, based on the following:

Respondents: 76,049 (20,013 primes-5%=19,012+60,039 first-tier subcontractors-5%=57,037)
Responses per respondent: 1.25 (reflects estimate that 25% of all respondents will have more than one Recovery Act funded award on which to report)
Total annual responses: 95,061
Preparation hours per response: 3
Total response burden hours: 285,183
Average hourly wages: (\$50.00+36.35%overhead): \$68.00
Estimated cost to the public: \$19,392,444

The estimated total annual burden associated with this reporting burden is as follows:

13. **Estimated total annual public cost burden.** We estimate the total annual public cost burden to be the same as indicated above.

14. **Estimated cost to the Government.** Under the rule, the only estimated cost to the Government is the cost to set up and maintain the online reporting tool available at www.FederalReporting.gov, through which contractors will report their use of Recovery Act funds. The Government will not be responsible for inputting data into the website or determining the validity of the data, nor performing oversight or review of contractor information. However, the Government may, from time-to-time, be required to ensure compliance with the requirements of the rule.

The cost for the development, maintenance, and operation of the online reporting tool for four years is estimated to be \$1 Million.

The estimate is based on the application currently use to collect socio-economic plan achievements known as the Electronic Subcontracting Reporting System (eSRS), and reflect the following yearly estimated costs.

First year: \$400K
Second year: \$300K
Third year: \$200K
Fourth year: \$100K

The time required for the Government to have ensure compliance with the reporting requirements, when such action is necessary, is based on the assumption that 1% of the respondents may be notified of their failure comply with the reporting the requirements. The cost is based on the average hourly wage salary of GS 13, plus 100% overhead.

Responses/yr	95,061
Reviewing time/hr	<u>X.01</u>
Review time/yr	951
Average wages \$33/hr. + 32.85% OH)	<u>X \$44</u>
Total Government cost	\$41,844

15. **Explain reasons for program changes or adjustment reported in Item 13 or 14.** Not applicable.

16. **Outline plans for published results of information collection.** Results of this information collection will be published. The Public will be able to access the information through a Government hosted website.

17. **Approval not to display expiration date.** Not applicable.

18. **Explanation of exception to certification statement.** Not applicable.

B. Collections of Information Employing Statistical Methods. Statistical methods are not used in this information collection.