

Supporting Statement for
OMB Control No. 9000-0045, Bid Guarantees, Performance And Payment Bonds,
And Alternative Payment Protection

FAR Section Affected: 52.228-1, 52.228-2, 52.228-13, 52.228-14, 52.228-15, 52.228-16; Standard Forms (SF) 24, 25, 25A, 25B, 34, 35, 273, 274, 275, 1416, and 1418; FAR Subparts 28.1 and 28.2

A. Justification.

1. Administrative requirements. This justification supports extension of the expiration date of OMB Control No. 9000-0045, Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections.

These regulations implement the statutory requirements of the Miller Act (40 U.S.C. §§ 3131 to 3134), which requires performance and payment bonds for any construction contract exceeding \$150,000 unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. In addition, the regulations implement the notice to 40 U.S.C. § 3132, entitled "Alternatives to Payment Bonds Provided by the Federal Acquisition Regulation," which requires alternative payment protection for construction contracts that exceed \$35,000 but do not exceed \$150,000. Although not required by statute, under certain circumstances the FAR permits the Government to require bonds on other than construction contracts.

FAR clause 52.228-1, Bid Guarantee, as prescribed in FAR 28.101-2, requires the bidder to furnish a bid guarantee in the proper form and amount. (SF 24, Bid Bond; SF 34, Annual Bid Bond).

FAR clause 52.228-2, Additional Bond Security, as prescribed in FAR 28.106-4(a), requires the Contractor to furnish additional bond security under certain circumstances. This clause is used both for construction and other than construction contracts. (SF 1415, Consent of Surety and Increase of Penalty).

FAR clause 52.228-13, Alternative Payment Protections, as prescribed in FAR 28.102-3(b), requires the Contractor 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.

FAR clause 52.228-14, Irrevocable Letter of Credit, as prescribed in FAR 28.204-4, requires offerors 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 bonds, or performance and payment bonds are required.

FAR clause 52.228-15, Performance and Payment Bonds-Construction, as prescribed in FAR 28.102-3(a), requires the contractor to provide performance and payment bonds in construction contracts exceeding \$150,000 (SF 25, Performance Bond; SF 25A, Payment Bond; SF 25B, Continuation Sheet (for SF's 24, 25, and 25A); SF 273, Reinsurance Agreement for a Miller Act Performance Bond; SF 274, Reinsurance Agreements for a Miller Act Payment Bond).

FAR clause 52.228-16, Performance and Payment Bonds-Other than Construction, as prescribed by 28.103-4, requires performance and payment bonds for other than construction contracts. This clause is only used in limited circumstances. (SF 35, Annual Performance Bond; SF 1416, Payment Bond for Other Than Construction Contracts; SF 275, Reinsurance Agreement in Favor of the United States; SF 1418, Performance Bond for Other than Construction Contracts).

2. Uses of information. The bid guarantees, bonds, or alternative payment protections are retained by the Government until the contractor's obligation is fulfilled.

3. Consideration of information technology. We use improved 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.

4. Efforts to identify duplication. These requirements are issued under the FAR which has been developed to standardize Federal procurement practices and eliminate unnecessary duplication.

5. If the collection of information impacts small businesses or other entities, describe methods used to minimize burden. The burden applied to small businesses is the minimum consistent with applicable laws, executive orders, regulations, and prudent business practices.

6. Describe consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently. Collection of information is required in specific circumstances, as statutorily required by the Miller Act. Not conducting or conducting this collection of information less frequently, could subject the Government to substantial losses because this information collection provides the Government with a form of security that the contractor will not withdraw a bid or assures

that the contractor will perform its obligations under the contract. Therefore, collection is conducted only as necessary, on a contract-by-contract basis.

7. Special circumstances for collection. Collection is consistent with guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency. A 60-day notice was published in the *Federal Register* at 84 FR 15224, on April 15, 2019. No comments were received. A 30-day notice published at 84 FR 34892 on July 19, 2019.

9. Explanation of any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees. Not applicable.

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

11. Additional justification for questions of a sensitive nature. No sensitive questions are involved.

12 & 13. Estimated total annual public hour and cost burden.

FAR 52.228-1 Bid Guarantee & FAR 52.228-15 Performance and Payment Bonds - Construction: The estimated number of respondents per year is based on the number of applicable contracts awarded in fiscal year (FY) 2018, the most recent year for which data were available. The Federal Procurement Data System contained actions involving construction (Product Service Codes Y1AA and Y1JZ): 295 contracts for projects over \$150K.

FAR 52.228-2 Additional Bond Security: This clause applies to limited contracts. It is estimated that this clause applies in half of the total number of actions per year (both over \$150,000 and under \$150,000), as described above for 52.228-1 and -15, and below for 52.228.13. Therefore, the estimated number of respondents per year is 188.

FAR 52.228-13 Alternative Payment Protections: This clause only applies to actions at and under the \$150,000 threshold. Therefore, the estimated number of respondents per year is 80. (See explanation under FAR 52.228-1 paragraph.)

FAR 52.228-16 Performance and Payment Bonds – Other than Construction: The estimated number of respondents per year is based the total number of non-

construction government contracts awarded in 2018, that exceeded \$150,000¹. During this time period, the government awarded contracts to 9,607 unique vendors. It is estimated that this clause applies in 2.5% of the actions. Therefore, the estimated number of respondents per year is 240.

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

There is no requirement in the above clauses for recordkeeping; there is only a reporting burden.

Estimated number of respondents	803
Number of responses per respondent per year	x 1
Total annual responses	803
Review time per response (hours)	x 1
Total burden hours	803
Average wages and overhead*	x \$54
Total estimated annual cost to the public	43,362

*Based on the OPM GS-12/step 5 salary (\$39.85 an hour) plus 36.25% burden, rounded to the nearest dollar, or \$54 an hour. Reference Salary Table 2018-RUS, Effective January 2018, found at www.opm.gov.

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

14. Estimated cost to the Government.

Time required for Governmentwide review is estimated at 15 minutes per response.

Total annual responses	803
Review time per response (hours)	x0.25
Total burden hours	200.75
Average wages and overhead*	x \$54
Total estimated annual cost to the Government	\$10,840.50

¹ FAR 28.103-2(a) uses SAT. However, throughout the rest of subparts 28.1 and 28.2, the dollar figure \$150,000 is used. Therefore, the figure \$150,000 is used for the data pull as opposed to the SAT, which was \$250,000 for most of the government and for at least half of FY18.

*Based on the OPM GS-12/step 5 salary (\$39.85 an hour) plus 36.25% burden, rounded to the nearest dollar, or \$54 an hour. Reference Salary Table 2018-RUS, Effective January 2018, found at www.opm.gov.

15. Explain reasons for program changes or adjustments reported in Item 13 or

14. The FAR requirement remains the same for all of these information collections. However, the total annual burden decreased by 171 hours (from 974 hours to 803 hours) due to use of more current fiscal year data.

16. Outline plans for published results of information collections. Results will not be tabulated or published.

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.