



October 26, 2012

Via Regulation.gov  
General Services Administration  
Regulatory Secretariat (MVCB)  
1275 First Street NE  
Washington, DC 20417

Attn: Hada Flowers/ /IC 9000–0026, Change Order Accounting

**RE: Federal Acquisition Regulation (FAR); Information Collection 9000-0026, Change Order Accounting**

Dear Ms. Flowers:

On behalf of the Technology Association of America, Inc.<sup>1</sup> (“TechAmerica”), I am pleased to submit the following comment to FAR; Information Collection; Change Order Accounting, which the Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) (collectively the “Agency”) published in the *Federal Register* at 77 FR 51804 on August 27, 2012 and requested public comment regarding an extension of a previously approved information collection requirement from the Office of Management and Budget (“OMB”). This comment will address the Agency’s estimate of the public burden of performing the information collection requirements. In short, the Agency’s estimate does not accurately reflect the public burden because it is based on invalid assumptions and a flawed methodology. Consequently, TechAmerica opposes granting the Agency’s requested extension under the Paperwork Reduction Act (the “Act”).

**A. An Extension of the Information Collection Requirement Would Violate the Fundamental Purposes of the Paperwork Reduction Act.**

Granting the Agency’s request for an extension would contradict the fundamental purposes of the Act. Congress intended that the Act would “minimize the paperwork burden . . . resulting from the collection of information . . . and ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government.”<sup>2</sup>

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<sup>1</sup> The Technology Association of America (TechAmerica) is the leading voice for the U.S. technology industry, the driving force behind productivity growth and jobs creation in the United States and the foundation of the global innovation economy. Representing approximately 1,000 member companies of all sizes serving clients in the public and commercial sectors of the economy, it is the industry’s largest advocacy organization. It is also the technology industry’s only grassroots-to-global advocacy network, with offices in state capitals around the United States, Washington, D.C., Europe (Brussels) and Asia (Beijing). Learn more at [www.TechAmerica.org](http://www.TechAmerica.org).

<sup>2</sup> Paperwork Reduction Act, 44 U.S.C. § 3501.

Granting the Agency's request for an extension of its previously approved information collection requirement would contravene these essential purposes by continuing to significantly underestimate the paperwork burden imposed by this requirement. We believe that if an accurate assessment of the reporting burden were conducted, the Office of Management and Budget ("OMB") would recognize that the Agency has not met its high burden under the Act to justify the paperwork requirements. Further, the Act correctly notes that information collection creates a burden not only on the entity submitting the information, but also imposes administrative and cost burdens on the Agency that is collecting the information. The Agency's actions in this request are inconsistent with the Act's intended purpose to "minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information."<sup>3</sup> With the Government continuing to face increased budget constraints, it is more important now than ever to minimize these costs. For these reasons, President Obama has issued a number of Executive Orders and memoranda seeking to "get rid of absurd and unnecessary paperwork requirements that waste time and money."<sup>4</sup> The Agency has expended considerable amounts of its scarce resources in seeking this extension, and if the extension is granted, it would extend and perhaps increase the cost to the Government without sufficient justification. Instead of expanding or retaining information collection requirements, agencies should be seeking to create savings by reducing or eliminating such requirements.

## **B. The Agency Does Not Accurately Estimate the Public Burden an Extension of the Information Collection Requirement Would Create.**

The Act defines the public burden an extension of the information collection would create:

Burden is the time, represented as hours spent by the public responding to Federal information collections. When an agency estimates and seeks to reduce the paperwork burden it imposes on the public, the agency must consider the time that an individual or entity spends reading and understanding a request for information, as well as the time spent

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<sup>3</sup> *Id.*

<sup>4</sup> Executive Order 13563; Executive Order 13579 available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-28.pdf>; "Presidential Memoranda – Regulatory Flexibility, Small Business, and Job Creation," January 18, 2011, available at <http://www.whitehouse.gov/the-press-office/2011/01/18/presidential-memoranda-regulatory-flexibility-small-business-and-job-cre>; "Presidential Memoranda – Administrative Flexibility," January 18, 2011, available at <http://www.whitehouse.gov/the-press-office/2011/02/28/presidential-memorandum-administrative-flexibility>; "Minimizing Paperwork and Reporting Burdens; Data Call for the 2011 Information Collection Budget" available at [http://www.whitehouse.gov/sites/default/files/omb/infocb/2011\\_ICB\\_Data\\_Call.pdf](http://www.whitehouse.gov/sites/default/files/omb/infocb/2011_ICB_Data_Call.pdf); President Barack Obama, "Toward a 21<sup>st</sup> Century Regulatory System," *Wall Street Journal*, January 18, 2011, available at <http://online.wsj.com/article/SB10001424052748703396604576088272112103698.html>; see also "Presidential Memoranda – Regulatory Flexibility, Small Business, and Job Creation," January 18, 2011, available at <http://www.whitehouse.gov/the-press-office/2011/01/18/presidential-memoranda-regulatory-flexibility-small-business-and-job-cre>; "Presidential Memoranda – Administrative Flexibility," January 18, 2011, available at <http://www.whitehouse.gov/the-press-office/2011/02/28/presidential-memorandum-administrative-flexibility>; "Minimizing Paperwork and Reporting Burdens; Data Call for the 2011 Information Collection Budget" available at [http://www.whitehouse.gov/sites/default/files/omb/infocb/2011\\_ICB\\_Data\\_Call.pdf](http://www.whitehouse.gov/sites/default/files/omb/infocb/2011_ICB_Data_Call.pdf).

developing, compiling, recording, reviewing, and providing the information.<sup>5</sup>

We respectfully submit that the Agency has not faithfully applied this definition nor fully complied with its obligations under the Act and the implementing regulations in 5 C.F.R. Part 1320. See 5 C.F.R. § 1320.8 ("This review [of the information collection requirement] shall include ... [a] **specific, objectively supported** estimate of burden, which shall include, in the case of an existing collection of information, an evaluation of the burden that has been imposed by such collection." (emphasis added)). The methodology used by the Agency in this request is insufficient.

Specifically, the Agencies' estimate that only 200 respondents will be subject to this requirement annually is substantially understated. The suggestion that contractors across the Government will only submit 200 change orders subject to accounting requirements annually borders on the absurd. The Federal Register notice indicates that the Agencies reduced the previous estimate based upon "information received from Government organizations most likely to use change order accounting," but it does not disclose what information was received or how it could possibly justify such an unrealistic estimate. 77 FR 51805. We submit that there is no information that could possibly explain such an understated number of respondents.

Just as egregious is the Agencies' estimate of only 30 minutes of effort associated with each response. It is entirely unrealistic to expect that companies could accurately and confidently develop a change order accounting in anything approaching that amount of time. This information-collection requirement relates to the compliance obligations under FAR clause 52.243-6, *Change Order Accounting*. As the Federal Register notice acknowledges, many contracts "are technically complex and incur numerous changes." 77 FR 51805. Contractors must allocate substantial resources to track the costs associated with changes in order to comply with the accounting and information obligations. The estimate of 30 minutes is so understated that it suggests that the Agencies either did not try to develop a reasonable effort or they may not understand the nature of the requirement or the burdens it places on companies. In any event, a more reasonable estimate would be in the range of 40 to 80 hours per response, as satisfying this requirement will demand one to two weeks of a full-time equivalent ("FTE") for most contractors.

Moreover, for this and every information collection exercise the Government imposes, each respondent must not only take time to report the compiled data or

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<sup>5</sup> Information Collection Budget of the United States Government for Fiscal Year 2010, Office of Management and Budget, Office of Information and Regulatory Affairs at 1.

complete the required certification, but must, on a continual basis, monitor whether or not they have a need to collect data at all. If this threshold analysis indicates that such a need exists, the respondent must establish and update mechanisms to capture that data and, at the requisite reporting intervals or instances, compile the data into a format that complies with the reporting requirement. In other words, each information collection requirement effectively imposes three separate requirements on the public: (1) the need to monitor whether reporting is required; (2) the need to compile and collect the required information; and (3) the need to disclose that information to the Government. Each of these requirements demands time of the respondent, but the Agencies' estimate only accounts for the third aspect, which generally is the least time consuming.

**C. The Collective Burden of Compliance with the Information Collection Requirement Greatly Exceeds the Agency's Estimate and Outweighs Any Potential Utility of the Extension.**

In addition to the burden the information collection in this request imposes on individual respondents, there is an immense collective burden imposed on all respondents. OMB estimates that, in Fiscal Year 2010, the public spent 8.8 billion hours responding to information collections.<sup>6</sup> This estimate is ten percent (10 percent), or one billion hours less than the previous fiscal year. While this reduction seems to represent a victory in furthering the purposes of the Act, it is unlikely these estimates provide an accurate picture of the overall burden. In the same report, OMB identifies four causes of the paperwork burden change: (1) adjustments to agency burden estimates; (2) new statutory requirements; (3) discretionary agency actions; and (4) lapses in OMB approval.<sup>7</sup> OMB found that, of these four causes, adjustments "accounted for most of the overall decrease in Federal paperwork burden in FY 2010."<sup>8</sup>

Based on a review of the acquisition-related Information Collection waiver requests published in the Federal Register between June of 2008 and June of 2011, using the Government's estimates, there are over 30 million total hours, across all respondents, of information collection burden required of the government acquisition community annually.<sup>9</sup> As noted above and highlighted below, the methodology behind these estimates is woefully inadequate, and consequently, the total burden and the associated costs are far higher than the Agency estimates. Such a burdensome paperwork requirement imposes unnecessary expenses for both the Government and the respondents, without demonstrating a clear value to the taxpayer that would justify the additional cost.

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<sup>6</sup> *Supra* note 5 at iv.

<sup>7</sup> *Supra* note 5 at 2.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> See attachment.

While the Agency is under immense pressure to reduce the number of information collection hours it imposes upon the public, it should not avoid its statutory responsibility by providing an artificially low estimate of the burden. We respectfully submit that assessing the impact in a horizontal fashion as part of a total burden on respondents was the intent, if not the letter, of the Act. The Agency should be responsible for assessing the total information collection burden they create and the need for extending this additional burden in that context. Further, OMB should make a comparable cumulative assessment across the entire Federal Government and objectively consider the need to increase or sustain that burden as part of their review of this request.

**D. The Government's Response to the Paperwork Reduction Act Waiver for FAR Case 2007-006 is Instructive on the Total Burden for Respondents.**

As noted above, TechAmerica challenges the methodology behind estimating the burden on each respondent to comply with this information collection requirement. We believe that the Agency's estimated burden hours should be modified in this instance for the same reason that they were modified upward in FAR Case 2007-006. In that case, a final rule contained an information collection requirement that brought it under the authority of the Act. The Government initially estimated a total burden of three hours per response. During the open comment period, only one comment was received; however, that was sufficient to show that a modification of the Government's estimate was necessary. After comment, the Government conceded that the methodology and the resultant estimate did not accurately reflect the total burden, as defined in the Act, imposed upon the company. After modification, the revised burden was sixty hours per response, meaning that the initial annual reporting burden of three hours was off by a factor of twenty.

The Agency has failed in this information collection waiver request to rationalize how it arrived at the estimated burden as required by the Act and the implementing regulations in 5 C.F.R. Part 1320. We submit that the Agency's current estimate has failed to consider the time necessary for collection and review of the information prior to submission. Because the Agency has not effectively measured the burden as defined in the Act under this request nor demonstrated that the burden is justified from the perspective of the taxpayer, Government, the Agency, or the respondents, we respectfully submit that the Agency's request should be denied.

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TechAmerica appreciates this opportunity to comment, and would be pleased to respond to any questions the Agency may have on these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A.R. Hodgkins" with a stylized flourish at the end.

A.R. "Trey" Hodgkins, III  
Senior Vice President