



May 28, 2013

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

Attn: Hada Flowers IC 9000-0174 // Information Regarding Responsibility Matters

RE: Information Collection 9000-0174, Information Regarding Responsibility Matters

Dear Ms. Flowers:

On behalf of the Technology Association of America, Inc.¹ (“TechAmerica”), I am pleased to submit the following comment to FAR; Information Collection; OMB Control Number 9000-0174, Information Regarding Responsibility Matters, to the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration (“the Agencies”) published in the *Federal Register* at 78 FR 18593 on March 27, 2013 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 Agencies’ estimate of the public burden of performing the information collection requirements. In short, the Agencies’ estimate does not accurately reflect the public burden because it is based on invalid assumptions and a flawed methodology. Consequently, TechAmerica opposes granting the Agencies’ 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 Agencies’ 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.”² Granting the Agencies’ request for an extension of its

¹ TechAmerica is the leading voice for the U.S. technology industry – the driving force behind productivity growth and job creation in the United States and the foundation of the global innovation economy. Representing premiere technology companies of all sizes, we are the industry’s only trade association dedicated to advocating for the ICT sector before decision makers at the state, federal and international levels of government. With offices in Washington, D.C., Silicon Valley, Brussels and Beijing, as well as regional offices around the U.S., we deliver our members top tier business intelligence and networking opportunities on a global scale. We are committed to expanding market opportunities and driving the competitiveness of the U.S. technology industry around the world. Learn more about TechAmerica at www.techamerica.org.

² Paperwork Reduction Act, 44 U.S.C. § 3501.

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 Agencies have 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 Agencies that are collecting the information. The Agencies’ 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.”³ 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.”⁴ The Agencies have 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 Agencies Do 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

³ *Id.*

⁴ 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/inforeg/icb/2011_ICB_Data_Call.pdf; President Barack Obama, “Toward a 21st 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/inforeg/icb/2011_ICB_Data_Call.pdf.

information, as well as the time spent developing, compiling, recording, reviewing, and providing the information.⁵

We respectfully submit that the Agencies have 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 Agencies in this request is insufficient and confusing.

Specifically, the Agencies’ estimate that 25,065 respondents will be subject to the initial response requirements annually, that they will submit 5 responses each, and that they will spend 0.1 hours per response unless respondents trigger an additional information collection requirement. Respondents with contracts and grants greater than \$10 million trigger the additional collection requirement.

As a threshold matter, we note this information collection is not following regular order, but is soliciting comments during an emergency extension period OMB granted in March.⁶ We appreciate and reiterate OMB’s comment, “The agency is reminded that it should have in place an internal planning process so that completion of the public notification and comment period required by 5 CFR 1320 occurs prior to an information collection's expiration date.”⁷ Regular order allows the Agencies and the public to have a meaningful and on-the-record dialogue on information collection extensions.

The Act and implementing regulations explicitly instruct the Agencies to consider past information collection data in extension requests and we commend the Agencies for using the Federal Procurement Data System (FPDS) to determine the number of unique vendors with contracts valued over \$500,000. Similarly, the Agencies imply that they used actual numbers for the number of proposals received per solicitation. However, we are unclear as to why the Agencies abandoned this approach when estimating the number of unique vendors with total current, active Federal contracts and grants with total values greater than \$10,000,000. If actual data is unavailable, the Agencies are required to do more than just declare, “It is estimated.” Who is estimating? What assumptions are they making? The public is entitled to a complete “specific, objectively supported estimate of burden,” not a partial one.

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

⁵ 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.

⁶ “Notice of Office of Management and Budget Action,” March 27, 2013 *available at* <http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=9000-0174#> download the first “Approved” document next to the 3/27/2013 “Conclusion Date.”

⁷ *Id.*

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.

The Agencies' 0.1 hours (6 minutes) estimate for the initial information collection that a firm has over \$10,000,000 in current, active Federal grants and contracts is reasonable. We agree that the collection should be easy to understand, compile and report. Therefore, a very large companies will have contracting software and know that their grants and contracts well over that threshold; they will need very little time. A very small company or new vendor will need more than 6 minutes to read the clause and understand the requirement even if once they understand the requirement, they know will be able to determine that they are well under the threshold. In sum, a six minute average is reasonable.

The *total* burden hour estimate for the latter information collection requirement (506,313 hours⁸) seems reasonable, but as the Agencies have not provided a "specific, objectively supported estimate of burden" or clear explanation of its methodology, the exact burden estimate is unclear and the allocation is confusing. According to the notice's text,

"[The Agencies] have used an average burden estimate of 100 hours to enter the company's data into the Web site. This time estimate also includes the average annual recordkeeping time necessary per respondent to maintain the company's information internally."

The first sentence conflates the understanding, monitoring, collecting and enter data into the phrase "enter the company's data into the Web site." The second sentence clarifies that the 100 hours is meant to be much more expansive than merely entering the data. However, the table then contradicts the text by assigning the 100 hours to the "recordkeeping burden" and then recognizing that entering the data will also take additional time, especially as the data must be entered into the new System Awards Management (SAM) system. As we have commented previously, any change within SAM requires at least *one hour* of time: even one update will force the respondent to confirm the accuracy of every page, i.e. scroll down to the bottom and agree to *every* screen. In sum, we respectfully submit that the public is left without a clear picture of the burden or how the Agencies arrived at 506,313 hours.

C. The Collective Burden of Compliance with the Information Collection Requirement Greatly Exceeds the Agencies' 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

⁸ 78 FR 18593 at 18594, 506,313 hours is the sum of the 5,013 hours of Additional Annual Reporting and the 501,300 hours of Annual Recordkeeping for respondents that exceed the \$10,000,000 threshold.

information collections.⁹ 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.”¹⁰ OMB found that, of these four causes, adjustments “accounted for most of the overall decrease in Federal paperwork burden in FY 2010.¹¹

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.¹² 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 Agencies estimate. 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.

While the Agencies are 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 Agencies 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 Agencies' 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

⁹ *Supra* note 5 at iv.

¹⁰ *Supra* note 5 at 2.

¹¹ *Id.* at 6.

¹² See attachment.

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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 Agencies have 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 Agencies' current estimate has failed to consider the time necessary for collection and review of the information prior to submission. Because the Agencies have 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 Agencies' request should be denied.

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

Respectfully submitted,

A handwritten signature in black ink that reads "A.R. Hodgkins" with a stylized flourish at the end.

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