

January 20, 2015

Ms. Hada Flowers
General Services Administration
Regulatory Secretariat Division (MVCB)
1800 F Street NW
Washington, DC 20405.

Re: Information Collection; OMB Control No. 9000–0142, Past Performance Information

Ms. Flowers,

The Information Technology Alliance for Public Sector (“ITAPS”)¹ is pleased to submit the following comments on the Federal Acquisition Regulation (FAR), OMB Control No. 9000-0142, Past Performance Information. These comments are offered in response to a request by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration (the “Agency”), originally published in the *Federal Register* at 79 FR 68683 on November 18, 2014, for public comment regarding an extension of an information-collection requirement previously approved by the Office of Management and Budget (“OMB”).

As stated in the *Federal Register*, “Past performance information regarding a contractor’s actions under previously awarded contracts is relevant information for future source selection purposes. The information collection requirements at FAR 15.304 and 42.15 remains the same; however, the public burden has been adjusted downward. The estimated responses used to calculate the burden is based on the availability of data on FY 2014 awards from existing systems (FPDS and CPARS).” The information collection helps agencies to determine future award decisions, and thus is an important part of the contract lifecycle.

We believe that granting the extension for this particular information-collection requirement would be inconsistent with the Paperwork Reduction Act (the “Act”). The Act is designed to, among other ends, “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,” and to “improve the quality and use of Federal information to strengthen decision making, accountability and openness in Government and society.”² As explained below, the Agency’s estimate is substantially understated and should be revised upwards. The Agency’s unrealistic estimate deprives OMB of the opportunity to assess whether the Agency has adequately justified the requirement. We respectfully oppose granting an extension to the Agency for these reasons, as set forth in greater detail below.

¹ The IT Alliance for Public Sector (ITAPS), a division of the Information Technology Industry Council (ITI), is an alliance of leading technology companies offering the latest innovations and solutions to public sector markets. With a focus on the federal, state, and local levels of government, as well as on educational institutions, ITAPS advocates for improved procurement policies and practices, while identifying business development opportunities and sharing market intelligence with our industry participants. Visit itaps.itic.org to learn more.

² 44 U.S.C. §3501

A. The Agency continues to employ a fundamentally flawed methodology in estimating the burden for this information collection requirement.

The Act defines the public burden of an information collection as “the time, represented as hours spent by the public responding to Federal information collections,” and dictates that in estimating the public burden, 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 developing, compiling, recording, reviewing, and providing the information.”³ The Act therefore requires that the Agency estimate the burden of not only completing the paperwork, but also of the entire scope of activities associated with the response, including the time required to collect the information that must be reported. The Federal Register notice suggests that the Agency failed to account for the full scope of the burden associated with this information-collection requirement. We respectfully submit, therefore, that the Agency has not faithfully applied the definition of “public burden” nor fully complied with its obligations under the Act and the implementing regulations in 5 C.F.R. Part 1320.⁴

The notice in the Federal Register published an estimate of 2 hours per response. The estimate of two hours per response in the information collection grossly underestimates the hours it takes for contractors to respond to source selection requirements related to past performance. We recommend increasing the estimate to an average of 25 hours and as much as 160 hours per response. The government's estimate appears to take into account only the time it takes to fill out the response form. It neglects to take into account the time it takes to prepare those responses. A number of individuals may be needed to analyze and determine the full scope of the statement of work (SOW) alone to insure and determine relevant past performance for submission. For instance, size and complexity of the requirements must be considered as well as what tools and systems will be required, applicable labor categories, and in some cases, security clearance requirements. In addition to these specific contract and program requirements, there are often requirements for coordination with corporate entities on issues related to small business utilization, show cause and cure notices, CPARS and other required information. The time to collaborate, collect, assess and report all of this is grossly underestimated at two hours.

Notwithstanding the coordination of the information, two hours would be an insufficient estimate of the logistical time it takes to actually prepare the required documents, the transmittal letters, envelopes, delivery requirements, etc., that often are associated with these past performance requirements. Many past performance questionnaire (PPQ) requirements include a requirement for vendors to submit a log of PPQ efforts with their proposal. This effort requires not only additional time to complete the PPQ forms, submittal envelopes, and tracking logs but also requires coordination time with the government customer.

The estimate fails to consider the growing burden of self assessments on contractors. More and more requests for proposal (RFPs) are now requiring that the offeror submit self-assessments. These self-assessments require vendors to document their own performance on a contract in much the same way that a PPQ would document the customer's assessment of our performance. This requires collecting and documenting information on performance in a number of areas including cost, schedule, technical performance, customer satisfaction, etc. that again require large amounts of time to be spent on coordination.

³ Information Collection Budget of the United States Government for Fiscal Year 2014, Office of Management and Budget, Office of Information and Regulatory Affairs, Ch. 1. http://www.whitehouse.gov/omb/inforeg_infocoll#icbusg.

⁴ 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)).

Vendors have suggested that the time varies widely based on the size and complexity of the contract. One example of a more complex contract estimate can be found in Figure 1 below. The estimates based on a “typical” 3-5 references with questionnaires for an RFP with a 30-day turn. Some of the ranges are broad due to the variability in number and complexity of requirements, the service/ technology areas of relevance, availability of referenceable accounts, availability of existing/reusable content, etc.

Figure 1

Stage of Past Performance Process	Activities	Estimated # Hours (Hours vary based on complexity of pursuit, number of references; these estimates are based on average 3-5 references with a 30-day turn)
Understand Requirements	<ul style="list-style-type: none"> Read and understand RFP and SOW Develop questions for government 	4 – 5 hours per RFP/Amendment; more if RFP is very large or complex
Identify Potential References	<ul style="list-style-type: none"> Conduct research Develop evaluation matrix of candidate references Conduct meetings to review candidates 	24 - 40 hours
Select References	<ul style="list-style-type: none"> Refine evaluation matrix Data calls to accounts for additional info needed for team to decide which reference to pursue Contact reference accounts to validate relevance and obtain permission to use them Participate in discussions to review and select references to pursue 	24 – 40+ hours; varies greatly depending on number of references required
Complete Write up	<ul style="list-style-type: none"> Obtain template, write draft, work with account to validate and complete write-up Work with pursuit team to strengthen relevancy where possible Larger number of references Many or unique requirements to be addressed Lots of pages are required We must also manage references 	8 – 16 hours per reference (depends on uniqueness of requirements, complexity of requirements for relevancy/scope/size, number of pages, and whether we also manage subs’ references)

	from subs.	
Prepare, Present, and Track Questionnaire	<ul style="list-style-type: none"> • Work with accounts to prepare/pre-populate Past Performance Questionnaires (PPQs) • Continue to communicate with accounts to track PPQ status • Keep pursuit team apprised of PPQ status 	~20 hours over a period of up to 2 weeks
Review and Submit Write-up	<ul style="list-style-type: none"> • Recover color review comments • Validate content changes with accounts • Work with accounts for any additional details or info needed • Manage and incorporate references from subs 	30 – 40 hours
Total Estimate		110 – 161 hours

We respectfully request the government increase the estimated burden associated with this information collection.

B. An extension would entrench the Agency’s faulty methodology and remove incentives for Paperwork Reduction Act compliance.

The Agency’s insistence in continuing to employ its flawed methodology for estimating the burden of its information-collection requirements, notwithstanding evidence that this methodology has resulted in unrealistic estimates in the past, shows that granting the extension will only encourage the Agency to continue to use the same problematic approach.

In the past, including in connection with FAR Case 2007-006, the Agency both acknowledged that the initial estimate was unrealistically low while also defending the methodology that it used to develop the unrealistic estimate. The Agency’s position is untenable. Its acknowledgment that the estimate was flawed was essentially an admission that the methodology that it used to develop that estimate also was flawed. Yet the Agency continues to rely upon the same problematic approach to estimating the burden associated with the information collection requirements that it imposes. The Agency, in turn, has relied on these understated burden estimates to shield its information collection requirements from meaningful scrutiny from OMB under the Act.

We believe that if an accurate assessment of the burden were developed, OMB would recognize that the Agency has not justified the requirement. While President Obama has consistently stressed the importance of minimizing the costs of compliance with regulations, with the issuance of Executive Orders designed to “get rid of absurd and unnecessary paperwork requirements that waste time and money,”⁵ the Agency has not adopted practices that coincide with the President’s direction. In fact, the Agency’s methodology runs directly counter to the President’s

⁵ Executive Orders [13563 and 13579](#) and Presidential Memorandums “[Minimizing Paperwork and Reporting Burdens](#),” “[Toward a 21st Century Regulatory System](#),” “[Regulatory Flexibility, Small Business, and Job Creation](#).”

mandates, obscuring the real cost of the information collections that it is imposing. We are concerned that granting the requested extension would only serve to embolden the Agency to continue to disregard its statutory obligation to conduct a reasonable assessment of the burden associated with the information collection requirements that it promulgates so that OMB can conduct an informed analysis under the Act.

C. Granting the extension would violate at least the spirit of the Paperwork Reduction Act.

As discussed above, the Agency's drastic underestimation of the burden of compliance with this information collection requirement is a problem that stems from the Agency's flawed methodology. The methodology is masking an even more troubling underlying problem related to the Agency's insistence on issuing costly and cumbersome information collection requests, many of which appear to be unnecessary. By developing an unrealistic estimate of the compliance burden, the Agency sets unreasonable expectations of the respondent for turnaround time which disguises the true cost of the responses, hiding them from the taxpayer. Faulty estimates mislead the waiver granters into a false sense that the cost of completing these information collections is a small price to pay for the information the government is receiving. . This may have a particularly pronounced effect on small businesses, which generally tend to have fewer resources, including personnel, and thus may not be capable of responding to information requests quickly, or for whom a reshuffling of employees, in a scramble to fulfill information collections, could mean a devastating stoppage in work.

CONCLUSION

In sum, the Agency's methodology for estimating the public burden of information-collection requirements is flawed and the Agency continues to employ this methodology, despite admitting that the methodology has repeatedly produced highly unrealistic estimates. Additionally, the Agency's use of this inaccurate methodology would only continue, and possibly be exacerbated, if OMB grants the extension request. Lastly, granting the requested extension would violate the Paperwork Reduction Act by foregoing the Agency's responsibility to adopt practices that maximize value for the public while minimizing paperwork-related requirements for respondents.

For these reasons, we respectfully oppose granting the requested extension of the information-collection requirement. Should you have any questions, please contact Erica McCann at emccann@itic.org. We again thank you for the opportunity to offer our input on the matter.

Respectfully submitted,



A.R. "Trey" Hodgkins, III
Senior Vice President
IT Alliance for Public Sector