

# PUBLIC SUBMISSION

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Federal Acquisition Regulation (FAR) Information Collections - 2016

**Comment On:** FAR-2016-0053-0013

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Debarment and Suspension and Other Responsibility Matters (OMB Control No. 9000-0094)

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## Submitter Information

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**Submitter's Representative:** Al Holcomb

**Organization:** Johnson and Johnson Health Care Systems Inc

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## General Comment

See attached file(s)

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## Attachments

Debarment and Suspension

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*Johnson & Johnson* HEALTH CARE SYSTEMS INC.

April 22, 2016

General Services Administration,  
Regulatory Secretariat Division (MVCB)  
1800 F Street  
NW Washington, DC 20405  
Attn: Ms. Hada Flowers/IC 9000-0094  
Debarment and Suspension

Dear Ms. Flowers,

Johnson & Johnson Health Care Systems, Inc., ("JJHCS") on behalf of Johnson & Johnson Family of Companies ("J&J"), is pleased to have the opportunity to submit the following considerations in response to the notice for information collection with request from the Office of Management and Budget (OMB) for public comments to review and approve an extension of a previously approved information collection requirement concerning the Central Contractor Registration database.

J&J is the world's most comprehensive and broadly-based health company, with products and services for the consumer, pharmaceutical, and medical device markets. J&J's fundamental objective is to care for the world, one person at a time, by embracing research and science – bringing innovative ideas, products and services to advance the health and well-being of people. J&J companies offer an array of commercially available off-the-shelf health care products available to the federal government through the Federal Supply Schedule and other government contracting instruments, in addition to contracting with the federal government for research and development services.

We applaud the efforts of the Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) to contract only with responsible parties and to assure Contracting Officers engage in appropriate due diligence in support of that effort. We offer the following comments in the hopes of minimizing the burden imposed by these and other similar requirements so that responsible offerors are not discouraged from participating in federal procurements.

**1. The federal government has drastically underestimated the burden associated with compiling and reporting the requisite information.**

- a. The government understates the burden of the reporting requirement by failing to take into account the offeror's obligation to assure that the

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information provided is current, accurate, and complete<sup>1</sup>. It also fails to account for the requirement to update the information no less than semi-annually. FAR 52.209-9. In order to provide the required data, J&J companies perform the following steps at least twice each year:

- i. Confirm corporate name, divisions, predecessor companies, and owning companies;
- ii. Review litigation history for each identified entity, coordinating with outside counsel and other stakeholders as appropriate to evaluate whether any particular case is reportable under the regulatory standard. If it is, prepare a summary that balances the need to provide sufficient information to enable a responsibility determination with the restrictions on word count in the SAM system;
- iii. Identify company principals, educate them on the reporting requirement, and ascertain as to whether they have information about any potentially reportable events.

In addition to these discrete steps, J&J companies also perform regular reviews of the suspension and debarment databases to assure compliance, regularly train their personnel on the standards and reporting requirements, and conduct periodic compliance reviews.

- b. The government may have understated the recordkeeping burden by several orders of magnitude. The number of recordkeepers does not equal the number of respondents and it is unclear as to why. One cannot reasonably expect an offeror provide the required information and certify it as current, accurate, and complete without maintaining the requisite litigation, employment, and corporate records.

**2. The requirement to provide "Information Regarding Responsibility Matters" under 52.209-7 violates Executive Order 13610, *Identifying and Reducing Regulatory Burdens*, in that it is a redundant collection of information and fails to maximize the re-use of data that are already collected.**

- a. The government already receives information about the litigation history of offerors through the submission required by FAR 52.209-5, "Certification Regarding Responsibility Matters." Indeed, the overlap between FAR 52.209-5 and FAR 52.209-7 is abundant, and yet just different enough to create substantial additional burden and confusion for offerors as we evaluate each instance of litigation under both standards.

<sup>1</sup> See FAR 52.204-13, which renders a "Contractor [...] responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data."

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- b. The existence of FAR 52.209-5 and a third litigation disclosure requirement, the new FAR 52.209-11, "Representation of Corporations Regarding Delinquent Tax Liability" obviate the need for FAR 52.209-7, because all three clauses use offeror's litigation history as an indicator of its present responsibility.
- c. FAR 52.209-7 requires offerors to report information on matters so old they are no longer relevant to present responsibility. Indeed, Contracting Officers are instructed at FAR 52.209 that "Since FAPIIS may contain information on any of the offeror's previous contracts and information covering a five-year period, some of that information may not be relevant to a determination of present responsibility, e.g., a prior administrative action such as debarment or suspension that has expired or otherwise been resolved, or information relating to contracts for completely different products or services.

We offer the above comments in the spirit of collaboration for improvements in the database for Federal Government Acquisitions and to further the mutual interests and objectives of the Government and J&J. We appreciate the opportunity to comment on this notice. We hope that these comments will be helpful in development of the final rule.

Very truly yours,

*Colleen Menges*

Colleen Menges

Director, Government Contracts