

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
9000-00XX, Limitations on Pass-Through Charges
FAR Case 2008-031**

A. JUSTIFICATION

1. This is a request for emergency approval of a new information collection requirement. The FAR Council is issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 852 of the National Defense Authorization Act (NDAA) for Fiscal Year 2007 (Public Law 109-364) as well as Section 866 of the NDAA for Fiscal Year 2009 (Public Law 110-417). This legislation requires Department of Defense (DoD) as well as all other federal agencies to prescribe regulations to minimize excessive pass-through charges by contractors from subcontractors, or of tiers of subcontractors, that add no or negligible value, and to ensure that neither a contractor nor a subcontractor receives indirect costs or profit/fee (*i.e.*, pass-through charges) on work performed by a lower-tier subcontractor to which the higher-tier contractor or subcontractor adds no, or negligible, value. Section 866 of the NDAA for FY2009 requires that the regulations be amended by 1 October 2009 to incorporate this legislative requirement.

To enable contracting officers to verify that pass-through charges are not excessive, this FAR revision creates a new provision at 52.215-22 requiring offerors submitting a proposal for a contract, task order, or delivery order to provide the following information with its proposal:

(1) The percent of effort the offeror intends to perform and the percent expected to be performed by each subcontractor.

(2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed—

(i) The amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and

(ii) A description of the value added by the offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract—

(i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and

(ii) A description of the value added by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

In addition, if the amount of the effort to be subcontracted by the contractor or a subcontractor changes from the amount identified in the proposal such that it exceeds 70 percent of the total cost of work to be performed, a new clause created under this FAR revision at 52.215-23 requires contractors to provide a description of the value added by the contractor or subcontractor, as applicable, as related to the subcontract effort.

The following categories of contracts are excluded from this information collection requirement:

(1) Firm-fixed-price contracts awarded on the basis of adequate price competition.

(2) Fixed-price contracts with economic price adjustment, awarded on the basis of adequate price competition.

(3) Firm-fixed-price contracts for the acquisition of a commercial item.

(4) Fixed-price contracts with economic price adjustment, for the acquisition of a commercial item.

2. This information is required to ensure that pass-through charges under these contracts and subcontracts are not excessive, in accordance with Section 852 of Public Law 109-364 as well as Section 866 of Public Law 110-417. Contracting officers will use the information to assess the value added by a contractor or subcontractor in relation to proposed, billed, or claimed indirect costs or profit/fee on work performed by a subcontractor.

3. Improved information technology will be used to the maximum extent practicable. Where offerors or contractors have automated systems that contain the information needed to report this requirement, they may submit the information in formats that are compatible with the automated systems.
4. This information collection does not duplicate any other requirement.
5. The information collection associated with small businesses is the minimum consistent with applicable laws, Executive Orders, regulations, and prudent business practices.
6. Less frequent collection would not permit Contracting Officers to ensure that pass-through charges on contracts and subcontracts are not excessive and, therefore, would not permit effective compliance with Section 852 of Public Law 109-364 as well as Section 866 of Public law 110-417.
7. Collection is consistent with the guidelines in 5 CFR 1320.5(d). The information will not be collected in a manner that requires an explanation of special circumstances.
8. Public comments will be solicited in the Federal Register as required by 5 CFR 1320.8(d). A subsequent information collection package, to be submitted under regular processing timeframes, will address any comments received on the information collection portion of the FAR rulemaking.
9. No payment or gift will be provided to respondents, other than remuneration of contractors under their contracts.
10. The information collected will be disclosed only to the extent consistent with prudent business practice, current regulations, and statutory requirements. No assurance of confidentiality is provided to respondents.
11. No sensitive questions are involved.
12. Based on fiscal year 2008 data regarding the types of contracts to which this information collection applies, it is estimated that the requirement for an offeror to identify the percent of effort it intends to perform, and the percent

to be performed by each subcontractor, will apply to 25,380 proposals per year. Of these, it is estimated that 25,000 will indicate subcontracting of 70 percent or less; and that 380 will indicate subcontracting in excess of 70 percent and will require the additional indirect cost and profit/fee and value-added information applicable to the subcontracted work. In addition, it is estimated that the requirement to notify the Government after award, regarding previously unidentified subcontracting effort exceeding 70 percent, will apply to approximately 380 contracts per year. The estimated time for reporting of this information is 30 minutes for subcontracting effort of 70 percent or less; and 1 hour for subcontracting effort of more than 70 percent, whether reported with the proposal or after contract award. Computations are provided below.

	Subcontracting		
	<u>70 percent or less</u>	<u>More than 70 percent</u>	<u>Total</u>
		<u>Pre Award</u>	<u>Post Award</u>
Number of respondents:	25,000	380	380*
Responses per respondent:	1		1
Total responses:	25,000	760	25,760
Hours per response:	.5	1	.5147515
Total hours:	12,500	760	13,260
Average wages**:	\$36.71	\$36.71	\$36.71
Total public cost:	\$458,875	\$27,900	\$486,775

* These 380 respondents are included with the 25,000 respondents that reported subcontracting of 70 percent or less before contract award and, therefore, do not increase the total number of respondents.

** Based on a GS-11, step 5 (equivalent), salary plus 36.45 percent burden per OMB Circular A-76.

13. The FAR Council does not estimate any annual cost burden apart from the hour burden in Item 12.

14. Data was estimated using data from the Federal Procurement Data System (FPDS) for FY 2008.

15. It is estimated that it will take the Government 1 hour to review and process the information in each response. The estimated annual cost to the Government is as follows:

Total responses: 25,760.

Hours per response: 1.

Total hours: 25,760.

Average wages: \$36.71*

Total Government cost: \$945,650.

* Based on a GS-11, step 5, salary plus 36.45 percent burden per OMB Circular A-76.

15. This is a new information collection requirement.

16. Results of this information collection will not be tabulated or published.

17. The FAR Council does not seek approval to not display the expiration dates for OMB approval of the information collection.

18. There are no exceptions to the certification accompanying this Paperwork Reduction Act submission.

B. Collections of Information Employing Statistical Methods

Statistical methods will not be employed.