

**Supporting Statement:
Contractor Legal Management Requirements
OMB Control Number 1910-5115**

This supporting statement provides additional information regarding the Department of Energy (DOE) request for processing of the proposed information collection, Contractor Legal Management Requirements. The numbered questions correspond to the order shown on the Office of Management and Budget (OMB) Form 83-I, "Instructions for Completing OMB Form 83-I."

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.**

DOE's Contractor Legal Management Requirements, 10 CFR Part 719, which became effective on April 23, 2001, include provisions that impose a collection of information. These regulations were promulgated under authority in section 161 of the Atomic Energy Act of 1954, 42 U.S.C. 2201, the Department of Energy Organization Act, 42 U.S.C 7101, *et seq.*, and the National Nuclear Security Administration Act, 50 U.S.C. 2401, *et seq.* Copies of the relevant sections of these statutes have been attached.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection**

The regulation (Subpart B, § 719.10, *et seq.*) requires covered DOE contractors and subcontractors to submit to DOE counsel a legal management plan within 60 days following execution of a contract if covered costs are to be reimbursed by DOE. (The requirement would not apply to fixed price contracts, cost reimbursement contracts for less than \$100,000,000, and contracts not involving work performed at DOE owned or leased facilities.) The legal management plan must include provision for contractor submission of an annual legal budget that includes cost projections for the matters for which legal costs will exceed \$100,000 and for which a request for DOE reimbursement may be made. The budget detail will depend on the nature of the activities and complexity of the matters included in the budget. Once approved by DOE, the legal management plan, as well as applicable regulations and contract provisions, is used to form the basis for DOE actions on requests from the contractors for reimbursement of litigation and other legal expenses.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The regulation does not specifically preclude or provide for the use of particular automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The legal management plans submitted by DOE contractors must address the items specified in § 719.11, but otherwise the content of the plans is expected to vary because contractors' use of outside legal services will vary.

4. Describe efforts to identify duplication.

This information collection applies to management of programs in DOE and does not duplicate any existing data in DOE or of other agencies.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The collection of information does not adversely impact small businesses or other small entities. DOE facility contractors are large entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The initial submission of a legal management plan, the annual budget, and certification of costs submitted for reimbursement are the minimum requirements for an effective program to oversee and make decisions regarding reimbursement of legal costs. If the information were not collected it would be more difficult to determine the appropriateness of the legal costs and they could increase. DOE's management of contractor legal costs continues to be a matter of interest and in the last 10 years, two GAO reviews and one DOE IG audit were conducted on this subject.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to product valid and reliable results that can be generalized to the universe of study; (f) requiring the use of

statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in stature of regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

This collection of information has been reviewed and justified by Departmental management requirements, statutes, external regulations, Departmental directives, and is collected in a manner consistent with 5 CFR 1320 guidelines..

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5CFR 320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside DOE to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.**

The Department published a 60-day Federal Register Notice and Request for Comments concerning this collection in the Federal Register on July 2, 2010, volume 75, number 127, and page number 38514. The notice described the collection and invited interested parties to submit comments or recommendations regarding the collection. No comments were received.

This information collection differs from collections placed on the general public in that it is placed on DOE contractors. Consultation with outside agencies or persons as to this information collection would not be appropriate. DOE does solicit input from DOE contractors regarding the burden implications of new or revised collections and also solicits their input on ways to reduce the burden of existing collections and still provide DOE contractor management with sufficient information to fulfill their managerial and statutory responsibilities.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift will be provided to respondents, other than remuneration of contractors.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

In the unlikely event that confidential information would be involved in any information collection, the provisions for dealing with this confidential information are set forth in the contract documents and the related Departmental regulations, and the matter would be handled under established procedures.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why DOE considers the questions necessary, the specific uses to be made of the information., the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No information of a sensitive or personal nature will be collected.

12. Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, DOE should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

Respondents & Responses

DOE estimates that the total annual number of respondents and responses will be seven (7). This estimate is based on the estimate that approximately thirty-six (36) contractors will be subject to the requirement to submit a legal management plan; that these contracts are for a five (5) year period; and that in any one year twenty percent (20%) of the total number of covered contractors may be required to submit a plan in any given year. There is also an annual legal budget submission required of all 36 contractors. Thus, the total number of annual responses is estimated to be 7 for the legal management plan and 36 for the annual legal budget portion of the legal management plan.

Burden Hours

The burden hours for this collection are estimated to be approximately 465 to 570 hours on an annual basis. The basis for this estimate is on the estimate that preparation time of the initial plan is 15-30 hours and that 20% of the 36 contractors will need to submit a legal management plan in any given year. The estimate total for the year also includes an estimate of approximately 10 hours for an annual budgetary update, which would be submitted by all of the contractors.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

There are no additional: (1) capital and start-up costs or (2) operation and purchase of service costs associated with these data collections. It should also be noted that costs incurred by DOE contractors in providing the information collections in this package are recovered in their contract fees and payments. In this sense, they differ from information collections imposed on the general public for which no cost reimbursement is provided.

14. Provide estimates of annualized cost to the Federal government.

There is no cost to the Department.

15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.

There are no changes or adjustments.

16. For collections whose results will be published, outline the plans for tabulation and publication.

DOE does not plan to publish the information obtained by this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

DOE is not seeking approval to not display the expiration date for OMB approval of this information collection.

18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.

This collection of information has been reviewed and justified by Departmental management requirements, statutes, external regulations, and Departmental directives, and meets the requirements listed in the “Certification for Paperwork Reduction Act Submissions.”