

**SUPPORTING STATEMENT
FOR INFORMATION COLLECTION SUBMISSION
OMB CONTROL NO.9000-0095**

A. Justification.

1. Administrative requirements. FAR Subpart 27.3 prescribes policies, procedures, solicitation provisions, and contract clauses pertaining to inventions made in the performance of work under a Government contract or subcontract for experimental, developmental, or research work.

2. Uses of information. In accordance with chapter 18 of title 35, U.S.C. (as implemented by 37 CFR part 401), Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies dated February 18, 1983, and Executive Order 12591, Facilitating Access to Science and Technology dated April 10, 1987, it is the policy and objective of the Government to—

(1) Use the patent system to promote the use of inventions arising from federally supported research or development;

(2) Encourage maximum participation of industry in federally supported research and development efforts;

(3) Ensure that these inventions are used in a manner to promote free competition and enterprise without unduly encumbering future research and discovery;

(4) Promote the commercialization and public availability of the inventions made in the United States by United States industry and labor;

(5) Ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and

(6) Minimize the costs of administering patent policies.—

3. Consideration of information technology. We use improved information technology to the maximum extent practicable. Where both the Government agency and contractors are capable of electronic interchange, the contractors may submit this information collection requirement electronically.

4. **Efforts to identify duplication.** This requirement is being issued under the Federal Acquisition Regulation (FAR) which has been developed to standardize Federal procurement practices and eliminate unnecessary duplication.

5. **If the collection of information impacts small businesses or other entities, describe methods used to minimize burden.** The burden applied to small businesses is the minimum consistent with applicable laws, Executive orders, regulations, and prudent business practices.

6. **Describe consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently.** Collection of information on a basis other than solicitation-by-solicitation is not practical.

7. **Special circumstances for collection.** Collection is consistent with guidelines in 5 CFR 1320.6.

8. **Efforts to consult with persons outside the agency.** A notice was published in the *Federal Register* at 77 FR 43082, on July 23, 2012. One respondent submitted public comments on the extension of the previously approved information collection. The analysis of public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Required Act (PRA), agencies can request an OMB approval of an existing information collection. The PRA requires that agencies use the Federal Register notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to the requirements of FAR clauses 52.227-11, Patent Rights-Ownership by the Contractor, or 52.227-13, Patent Rights-Ownership by the Government. The information is used, among other things to: (1) Encourage maximum participation of industry in federally supported research and development efforts; (2) Ensure that these inventions are used in a manner to promote free competition and enterprise without unduly encumbering future research and discovery; (3) Promote the commercialization and public availability of the inventions made in the United States by United States industry and labor; (4) Ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against

nonuse or unreasonable use of inventions; and (5) Minimize the costs of administering patent policies.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. For this reason, the respondent provided that the agency should reassess the total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007-006. The same respondent also provided that the burden of compliance with the agency's information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

The respondent indicated that the number of annual respondents is understated and that the number of respondents is likely at least ten to twenty higher than the Government's estimate of 1200 annual respondents. The commenter also indicated that the number of responses per year was significantly understated at 10 such responses per year and that it would take more than four hours to comply with the requirements contained herein.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007-006 where an adjustment was made from the total preparation hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection.

A comprehensive re-evaluation of the burden associated with this collection has resulted in an upward adjustment in the estimated total annual burden hours from 45,630 to 57,352. The review was conducted by the Government's experts in patent regulations and the Department of Commerce patent regulation processes. As a result of the review, the burden hours were increased by over 25%. The recommended increase by the respondent was not supported by the review. A more detailed breakdown of the review is included in the supporting statement for this collection.

At any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

9. Explanation of any decision to provide any payment or gift to respondents, other than re-numeration of contractors or guarantees. Not applicable.

10. Describe assurance of confidentiality provided to respondents. This information is disclosed only to the extent consistent with prudent business practices and current regulations.

11. Additional justification for questions of a sensitive nature. No sensitive questions are involved.

12 & 13. Estimated total annual public hour and cost burden. A comprehensive re-evaluation of the burden associated with this collection has resulted in an upward adjustment in the estimated total annual burden hours from 45,630 to 57,352. The explanation of the estimate is provided in Item no. 15.

Annual Public Burden and Cost

| | | |
|---------------------------------------|---|---------------|
| Estimated respondents/yr..... | | 3,759 |
| Responses annually..... | x | <u>3.8143</u> |
| Total annual responses..... | | 14,338 |
| Estimated hrs/response..... | x | <u>4.0</u> |
| Estimated total burden/hrs..... | | 57,352 |
| Estimated cost to public (\$49*)..... | | \$2,810,248 |

*Using the OPM salary table for calendar year 2012. We estimated an hourly rate equivalent to a GS-12, or \$35.88 per hour, plus 36.45 percent overhead burden which is the rate mandated by OMB for A-76 public-private competitions, and rounded to the nearest whole dollar or \$49.00.

14. **Estimated cost to the Government.** Time required for Governmentwide review is estimated at 2 hours per response.

Annual Government Burden and Cost

| | | |
|-------------------------------------|---|---------------|
| Reviewing time/hr per response..... | | 2 |
| Responses | x | <u>14,338</u> |
| Review time/yr..... | | 28,676 |
| Average wages/hr..... | x | <u>\$49*</u> |
| Total Government cost..... | | \$1,405,124 |

*Using the OPM salary table for calendar year 2012. We estimated an hourly rate equivalent to a GS-12, or \$35.88 per hour, plus 36.45 percent overhead burden which is the rate mandated by OMB for A-76 public-private competitions, and rounded to the nearest whole dollar or \$49.00.

15. **Explain reasons for program changes or adjustment reported in Item 13 or 14.** This submission requests an extension of OMB approval of an information collection requirement in the FAR. A comprehensive re-evaluation of the burden associated with this collection has resulted in an upward adjustment in the estimated total annual burden hours from 45,630 to 57,352. The review was conducted by the Government's experts in patent regulations and the Department of Commerce patent regulation processes. As a result of the review, the burden hours were increased by over 25%. The explanation of the review follows with notes explaining the computations. Based on use of the OPM salary table for calendar year 2012, an adjustment was made to the hourly rate for the public and Government personnel preparing, reporting and reviewing the requirements under this collection.

| | Original, as published | Revised following the review | Deltaⁱ |
|---|---------------------------------------|---|--------------------------|
| Respondentsⁱⁱ | 1,200 | 3759 | 2659 |
| Responsesⁱⁱⁱ per Respondent | 9.75 | 3.8143 v | -4.95 |
| Total Responses | 11,700 | 14,338 ^{iv} | + 2,638 |
| Hours per Response^v | 3.9 | 4.0 vi. | + 0.1 |
| Total Burden Hours | 45,630 | 57,352 | + 11,722 |

NOTES:

- i. Delta = the difference between the Reviewed and the Original.
- ii. For reconsideration, a “respondent” is any individual company that serves as the prime contractor on one or more contract(s) that include(s) at least one of the covered clauses (during any FY). This number does NOT does not distinguish whether there are subcontractors supporting the relevant activities of the prime – the number covers all prime contractors and subsumes any/all subcontractors that they use for any individual contract(s).
- iii. For reconsideration, a “response” is considered to cover the combined total of all the individual activities that a respondent engages in to support its requirements and responsibilities under the relevant clause(s) with respect to any single subject invention.
- iv. Estimated total number of inventions. According to the most recent survey by the Association of University Technology Managers (AUTM), the universities reported 21,856 inventions for FY 2011. Using the percentage of research from the USG (65.6%), the number of USG funded inventions would be 14,338. Using the historical trend that 60% of such inventions were under grants, the number of contract inventions would be 5,735. For this analysis we also presumed that for-profit contractors typically make 1.5x the number of university inventions, resulting in an additional 8603 inventions for a total of 14,338 contractor inventions
- v. Responses/Respondent=14338/3759= 3.8143. (Used In Item 12 & 13 as the hours per completion).
- vi. **For review purpose, the “hours per response” includes all activities that the respondent engages in to support each response required the relevant clause(s). But, it covers only the portion of those activities that the respondent would not otherwise do in the absence of the clause requirements (e.g., activities that are required by other clauses or legal requirements, or that are common business practices that the respondent would engage in regardless of whether the activity was covered by one of the relevant clauses). Details:**

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| (i) Invention Disclosures — these are prepared by the contractor in the normal course of business, and the only burden is preparing a copy for the Government and sending it to the Government, which is estimated to be 1.0 hour (note that most universities report their inventions through the iEdison reporting system, which would take no more than 0.5 hours); | 1.0 |
| (ii) Electing rights - although the contractor may take weeks to elect rights, the additional considerations related to the allocation of rights under the patent rights (PR) clauses, and the communication to the Government should take no more than 0.5 hours. | 0.5 |
| (iii) Filing a patent application - although this may take a week to prepare, it is prepared in response to USPTO requirements (based on statutory and regulatory requirements) that are independent to the FAR PR clauses, sending a copy of the application to the Government should take no more than 0.5 hours especially if iEdison is used; | 0.5 |
| (iv) Confirmatory license - this should take no more than 0.5 hours to prepare and send to the Government especially if iEdison is used; | 0.5 |

| | |
|--|------|
| (v) Commercialization reports – agencies generally do not request them and so there is typically no actual reporting burden, however, 0.25 hours is allocated to cover the supporting administrative processes to track and be prepared to report upon USG request; | 0.25 |
| (vi) Contracts with employees – since most contractors have agreements with their inventors regarding identification, disclosure, and assignment of rights, regardless of whether the anticipated inventive activity may occur under a federal contract having a PR clause, there is likely no meaningful additional burden imposed by the Government (many universities have invention practices to which all scientific employees agree when they are hired), however, 0.25 hours is allocated to cover the supporting administrative processes to track and be prepared to report upon USG request; and | 0.25 |
| (vii) Although not every contract will result in inventions, contractors may still be required to provide interim or final reports | 1.0 |
| TOTAL ESTIMATED HOURS | 4.0 |

16. Outline plans for published results of information collections. Results will not be tabulated or published.

17. Approval not to display expiration date. Not applicable.

18. Explanation of exception to certification statement. Not applicable.

B. Collections of Information Employing Statistical Methods. Statistical methods are not used in this information collection.

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