

**Supporting Statement for Information Collection 9000-0179,
FAR Case 2010-010; Service Contractor Reporting Requirement, Proposed rule**

A. Justification

1. Administrative requirements. Under FAR Case 2010-010, Service Contract Inventory Reporting, the FAR is being updated to collect information on service contractors. Therefore, this is a request for a new information collection requirement for Federal Acquisition Regulation (FAR) part 4, Administrative Matters. Furthermore, this request covers the burden hours related to the requirement at FAR subpart 4.17, Service Contractor Reporting Requirements, and its associated clause and solicitation provision.

2. Uses of this information. Civilian agencies required by the FAIR Act (Pub. L. 105-270) to submit inventories of Government personnel will also be required to submit to OMB annually an inventory of service contracts. House Report 111-366 notes, in connection with section 743 of Division C of the Consolidated Appropriations Act for Fiscal Year 2010 (Pub. L. 111-117), that, “in the absence of complete and reliable information on the extent of their reliance on service contractors, Federal agencies are not well-equipped to determine whether they have the right balance of contractor and in-house resources needed to accomplish their missions. Therefore, this rule intends to supplement agency annual service contract reporting requirements with the contractor provided service contract reporting information.

The information is to be submitted pursuant to the new clause and solicitation provision addressed in this justification. Certain prime service contractors will provide annually—

- a. The contract number, and, as applicable, order number;
- b. The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract;
- c. The number of contractor direct labor hours expended on the services performed during the previous Government fiscal year; and
- d. Data reported by subcontractors.

The prime contractor shall require each first-tier subcontractor performing under the contract to provide annually-

- a. The subcontract number (including subcontractor name and if available, DUNS number; and

- b. The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

In order to invoice the government for time-and-material/labor-hour (T&M/LH) and cost-reimbursement contracts, contractors already track labor hours expended, so the rule will cover T&M/LH and cost-reimbursement contracts over the simplified acquisition threshold.

In an effort to keep the reporting burden to the absolute minimum on civilian agencies and their service contractors, a phased-in approach will be used for fixed-price contract awards. Fixed price contracts will be covered if the estimated total value is at or above \$5 million in FY 2012, \$2.5 million in FY 2013, \$1 million in FY 2014 and \$500,000 in FY 2015 and thereafter.

For indefinite-delivery contracts, including but not limited to, indefinite-delivery indefinite-quantity (IDIQ) contracts, Federal Supply Schedule (FSS) contracts, Governmentwide Acquisition contracts (GWACs), and multi-agency contracts, reporting requirements will be determined based on the expected dollar amount and type of the orders issued under the contracts.

Existing indefinite-delivery contracts will be bilaterally modified within six months of the effective date of the final rule if sufficient time and value remain on the base contract, which is defined as: (1) a performance period that extends beyond October 1, 2012, and (2) \$5 million or more remaining to be obligated to the indefinite-delivery contract.

3. Consideration of information technology. Improved information technology will be used to the maximum extent practicable in obtaining this information. Contractors will report data directly into a Service Contract Reporting Portal.

4. Efforts to identify duplication. As a matter of policy, the Civilian Agencies Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) review the FAR to determine whether adequate language already exists. This information collection does not duplicate any other requirement.

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

1. Every contractor, whether a large or small business, holding a contract that is predominantly for services above the specific thresholds, with one of the agencies (other

than the Department of Defense) covered by the Federal Activities Inventory Reform (FAIR) Act of 1998 (Public Law 105-270), is required to report this information.

2. The report can be made directly into a website that will be provided in the contract.

3. The report is required to be submitted only once a year.

4. Although the law requires additional data regarding the services performed for FAIR Act agencies, every effort has been made to obtain the required data from existing sources that collect information on contractors and from sources other than contractors.

6. Describe consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently. If the information is not obtained from the applicable contractors, then agencies will be unable to comply with the annual services inventory reporting requirements and analysis that are mandated by law (Section 743 of Division C of Pub. L. 111-117).

7. Special circumstances for collection. There are no special circumstances that require the collection to be conducted in any manner listed in 5 CFR 1320.5(d)(2).

8. Efforts to consult with persons outside the agency. An initial notice soliciting public comments on the information collection was published in the Federal Register at 76 FR 22070, on April 20, 2011, as part of a proposed rule under FAR Case 2010-0010. One respondent considered the methodology used to calculate the hours needed to prepare responses and the reporting requirement estimates in the Paperwork Reduction Act (PRA) submission to be grossly underestimated.

The Councils have reviewed the comment and believe the estimated time to report per contract is reasonable at one hour to calculate the data and one hour to enter the data at www.sam.gov. The estimated 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, and although, the

respondent indicated the burden is underestimated, the estimated burden remains unchanged. 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 remuneration of contractors or guarantees. No payment or gift will be provided to respondents, other than remuneration of contractors under their contracts.

10. Describe assurance of confidentiality provided to respondents. The information collected will be publicly available, as required by Section 743 of Division C of Pub. L. 111-117.

11. Additional justification for questions of a sensitive nature. This proposed rule is requesting information about the labor hours and the total amount invoiced. The information collected is not considered sensitive, but the statute does require it to be made publicly available.

12. Estimated total annual public hour burden. Estimate of public burden.

The clauses are prescribed at FAR 4.1705, Contract clauses, for use in contracts that are predominantly for services awarded on or after the effective date. The clause and its alternate require submission of information that will enable the agency to prepare an annual inventory of services performed on behalf of the agency and collect information on the costs associated with the reporting burden.

Because this is a new information collection requirement, historical data is not available. Further, the ceiling amount for certain service contracts to include in the reporting requirement for fixed price contracts will be phased in over four years (see paragraph 2. above). Therefore, data from Fiscal Year (FY) 2009 was used, the most recent year for which data is available, as a baseline for the number of affected service contracts, excluding DoD service contract awards.

The Federal Procurement Data System (FPDS) was the source for the data used in this justification. If the first year's reporting thresholds had been implemented in FY 2009, the requirement would have covered 17,120 fixed-price service contracts over \$5 million and 6,725 cost-reimbursement, time-and-materials, and labor-hour service contracts above the simplified acquisition threshold. Therefore, the total number of contracts on which reports would have been submitted is 23,845.

Only one report is required for each contract annually, and we estimate that it will take approximately 2 hours to prepare and submit the report.

Respondents	23,845
Responses/respondent	<u>x 1</u>
Responses	23,845
Hours per response	<u>x 2</u>
Total hours	47,690
Cost per hour	<u>x \$30*</u>
Total annual cost to public	\$1,430,700

*Cost per hour is based on OPM 2010 salary tables for the equivalent of a GS-9 step 5 of \$22.57, plus overhead of 33 percent, rounded to the nearest dollar, or \$30 an hour.

13. Estimated total annual public cost burden. None.

14. Estimated cost to the Government. Reporting by service contractors occurs once a year. The data are reported directly into a website without going through the Government agency holding the service contract. The agency contracting officer must (a) ensure that the clause is included in the contract as appropriate and (b) verify that the contractor has submitted the report in a timely manner. These requirements are estimated to add 2 hours each year to verify contractor compliance. Ensuring the clause is included in the covered contracts is a current contracting officer responsibility to properly structure contracts and administer contract performance.

The Government will review the data submitted by contractors and use that data to supplement the agency’s annual inventory of service contractors. The costs associated with the agency annual inventory reporting requirement are the result of the overall statutory requirement and not specifically incurred as a result of the contractor information collection. Therefore, we estimate that 40 hours of labor will be required per agency per year for the annual service contract reporting added to the 2 hours each year to verify contractor compliance. The system development requirements associated with this rule are being incorporated into a current system development and integration process, and the costs to incorporate data collection for this rule are minimal and embedded in the overarching system integration cost. The annual cost to the Government to comply with this information collection requirement will be \$1400 for annual report labor hours.

15. Explain reasons for program changes or adjustment reported in Item 13 or 14. There are no program changes in this submission. This is a new information collection requirement that pertains to individual contracts.

16. Outline plans for published results of information. The statute requires the information to be made publicly available on agency website and OMB's website. Results of this information collection may also be tabulated, summarized and published in agency annual reports to OMB.

17. Approval not to display expiration date. Not applicable because this information is not being collected on a form.

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

B. Collections of Information Employing Statistical Methods
Statistical methods will not be employed.