

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
9000-0173, Limitations on Pass-Through Charges**

A. JUSTIFICATION

1. Administrative Requirements. FAR 52.215-22, Limitations on Pass-Through Charges—Identification of Subcontract Effort, requires 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, FAR 52.215-23, Limitations on Pass-Through Charges, 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. Uses of information. 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. Consideration of information technology. 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. 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. There are no other sources for this information.

5. If the collection of information impacts small businesses or other entities, describe methods used to minimize burden. The information collection associated with 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. 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. Special circumstances for collection. 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. Efforts to consult with person outside the agency. A notice was published in the Federal Register at 77 FR 69440, on November 19, 2012. Comments were received from a single respondent. An analysis of these comments 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 Reduction Act (PRA), agencies can request OMB approval of an existing information collection. The PRA requires that agencies use the Federal Register notice and comment process, to extend OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to FAR 52.215-22 and FAR 52.215-23. This clause requires offerors submitting a proposal for a contract, task order, or delivery order to provide certain information on its projected subcontracting activities with its proposal. Absent the reporting under this clause, the Government would be vulnerable to charges from prime contractors related to subcontract activity which did not provide commensurate or even any value to the contract.

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. The respondent stated the estimate of a half hour per response per respondent is understated, and that a more realistic estimate would be in the range of 40 to 80 hours per

response. For this reason, the respondent provided that the agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007-006. The respondent also provided that the burden of compliance with the information collection requirement outweighs any potential utility of the extension.

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, and although, the respondent provided estimates of responses and burden hours, the estimates cannot be confirmed with any degree of certainty to totally rely on the information. However, it is determined that an upward adjustment is warranted at this time based upon consideration of the information provided in the public comment.

The information collection requirement has been revised to reflect an overall increase in the total public burden hours.

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 disclosed only to the extent consistent with prudent business practice, current regulations, and statutory requirements.

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

12 & 13. Estimated total annual public hours and cost burden. Based on FY 2012 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, is as follows:

- For civilian agencies, FPDS-NG shows 3,017 contracts awarded to 2,258 unique vendors were applicable to the clauses associated with this information collection.
- For DOD, FPDS-NG shows 1,376 contracts awarded to 1,119 unique vendors were applicable to the clauses associated with this information collection.
- It is further estimated that 3 responses would be submitted in response to a solicitation that includes the applicable clauses.

This equates to a total of 4,393 contracts awarded to 3,377 unique vendors. Based on discussions with subject matter experts, it was determined that 4,393 contract awards was a sufficient baseline for estimating the number of solicitations that would include the applicable clause. It is estimated that 3 responses would be submitted in response to a solicitation that included the applicable clauses, for a total of 13,179 estimated respondents per year.

The number of responses per respondent is estimated at one. It is also determined that the estimated time required to read and prepare a response is increased from 60 minutes to 120 minutes. This determination is based on the consideration of public comments. Computations are provided below.

Estimated respondents/yr.....	13,179
Responses annually.....	<u>x 1</u>
Total annual responses.....	13,179
Estimated hrs/response.....	<u>x 2.0</u>
Estimated total burden/hrs.....	26,358
*Average wages + overhead	<u>x \$48.95</u>
Estimated cost to the public.....	\$1,290,224.10

* Based on a GS-12, step 1 (equivalent), salary plus 36.45 percent burden per OMB Circular A-76.

14. Estimated cost to the Government. 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:

Annual Reporting Burden and Cost

Total annual responses.....	13,179
Review time per response.....	<u>x 1.0</u>
Total burden hours.....	13,179
*Average wages/hr. with benefits & overhead.....	<u>x \$48.95</u>
Total Government cost.....	\$645,112.05

* Based on a GS-12, step 1, salary plus 36.45 percent burden per OMB Circular A-76.

15. Explain reasons for program changes or adjustments reported in Item 13 or 14. This submission requests an extension of OMB approval of an information collection in the FAR. The information collection requirement in the FAR remains unchanged. However, a reassessment of the FAR clauses associated with this information collection was performed.

It was determined that there is no centralized database in the Federal Government that maintains information regarding the use of the clauses at FAR 52.215-22 and FAR 52.215-23. Therefore, subject matter experts were consulted to obtain additional information that helped in estimating the revised public burden. The parameters for this information collection were defined based on the prescription from the applicable clauses. It was determined that the types of contracts associated with this information collection are:

(1) For civilian agencies, cost-reimbursement type contracts and the total estimated contract or order value exceeds the simplified acquisition threshold (SAT).

(2) For DoD, the total estimated contract or order value exceeds the threshold for obtaining cost or pricing data in 15.403-4 (\$700,000); and the contract type is expected to be any contract type except—

(i) A firm-fixed-price contract awarded on the basis of adequate price competition;

(ii) A fixed-price contract with economic price adjustment awarded on the basis of adequate price competition;

(iii) A firm-fixed-price contract for the acquisition of a commercial item;

(iv) A fixed-price contract with economic price adjustment, for the acquisition of a commercial item;

(v) A fixed-price incentive contract awarded on the basis of adequate price competition; or

(vi) A fixed-price incentive contract for the acquisition of a commercial item.

It is determined that an overall increase in the information collection is warranted, based on FY 2012 data generated from FPDS-NG; an increase in the estimated hours per response; and an adjustment to the applicable average hourly wage for both the public and the Government, from \$33.50 in the last approved collection to the present \$48.95.

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

17. Approval not to display expiration date. Approval is not sought to not display the expiration dates for OMB approval of the information collection.

18. Explanation of exception to certification statement. 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.