

**SUPPORTING STATEMENT FOR PAPERWORK
REDUCTION ACT SUBMISSION 9000-0096, PATENTS**

A. Justification.

1. Administrative requirements. The patent coverage in FAR subpart 27.2 requires the contractor to report each notice of a claim of patent or copyright infringement that came to the contractor's attention in connection with performing a Government contract (sections 27.202-1 and 52.227-2).

The contractor is also required to report all royalties anticipated or paid in excess of \$250 for the use of patented inventions by furnishing the name and address of licensor, date of license agreement, patent number, brief description of item or component, percentage or dollar rate of royalty per unit, unit price of contract item, and number of units (sections 27.202-5, 52.227-6, and 52.227-9).

2. Uses of information. The information collected is to protect the rights of the patent holder and the interest of the Government.

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 is made as infrequently as possible, and only occurs when there is notice or claim of patent or copyright infringement (52.227-2); when the response to a solicitation contains costs or charges for royalties more than \$250 (52.227-6); or before final payment when the contractor

submits a statement of royalties paid or required to be paid (52.227-9).

7. Special circumstances for collection. Collection of information on a basis other than solicitation-by-solicitation is not practical. 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 78 FR 30304, on May 22, 2013. Two respondents submitted comments.

A. Approval to extend this information collection requirement.

Comment: A second respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because the analysis significantly underestimates the paperwork burden imposed by this requirement and has therefore not provided sufficient justification for the requested extension. The respondent further stated that the agency and OMB should assess the need to extend this information collection requirement in the context of assessing the total information collection burden. The respondent further commented that the "collective burden of compliance" required of the Government acquisition community annually totals over 30 million hours. According to the respondent, the collective burden greatly exceeds the agency's estimates and outweighs any potential utility of the extension.

Comment: One respondent noted that this extension should not be granted unless it is a no cost extension to the government. The burden is small and understood prior to contract award.

Response: The criteria for extension of an information collection requirement must be based primarily on the need and use for the required information. It is essential for contractors to report responsibility requirements, regardless of the number of responses. If the agencies have determined that the information is essential to protect the interests of the Government, then the extension should be approved.

B. Accuracy of the data estimates

Comment: One respondent commented that the agency did not accurately estimate the public burden, challenging that the agency's methodology for calculating the burden is insufficient

and inadequate and does not reflect the total burden. The respondent stated that-

- Thirty respondents responding just once annually are grossly understated. Under FAR 52.227-6, Royalty Information, any response to a solicitation containing costs or charges for royalties totaling more than \$250 triggers this information collection.
- [T]he Agencies estimate the hours per response of thirty minutes (.5 hours) is inadequate. Each information collection requirement effectively imposes three separate requirements on the public: (1) the need to monitor whether reporting is required; (2) the need to compile and collect the required information; and (3) the need to disclose that information to the Government.

Response: Based on data extrapolated from the Federal Business Opportunities website (FedBizOpps.gov), and in consultation with subject matter experts, the Councils have increased the number of respondents and the burden hour estimates from 30 to 104 respondents and from .5 hours to 1 hour, and separated out the data. This re-evaluation resulted in slightly upward adjustment from the data previously published in the Federal Register at 78 FR 30304, on May 22, 2013.

C. Collective Burden of Compliance.

Comment: One respondent objects to the overall collective burden imposed by the Government on all respondents.

Response: The Councils cannot effectively address the broad allegations with regard to the accuracy and utility of the entire collective burden imposed on all Federal acquisitions. The Councils can only effectively address each individual collection requirement that is under consideration for OMB approval. The Councils constantly review information collection requirements imposed by the FAR regulations for ways to reduce the burdens and still achieve the objectives of the regulations, whether based on policy or statute.

D. Agencies' estimated burden should be increased

Comment: One 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.

Response: The Council takes serious consideration, during the open comment period, to all comments received and will adjust the paperwork burden estimate based on reasonable considerations provided by the respondents. 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. In this particular instance, the burden was prepared using the burden hour's method taking into consideration the time, effort and financial resources put on the entity submitting the information. This includes 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 hours must also be viewed as 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, it must be noted that the burden includes estimated hours only for those actions which a company would not undertake in the normal course of business. In this instances, the total burden hours were revised slightly upwards.

9. Explanation of any decision to provide any payment or gift to respondents, other than re-enumeration 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.

i. 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.

This clause obligates contractors to notify the government of any allegations of patent or copyright infringement arising during the performance of the contract.

- The estimated number of respondents per year is based on data from FedBizOpps. This website was searched for the last three years (October 1, 2010 through October 1, 2013) for the inclusion of clause 52.227-2. This clause was found in a total of 18 solicitations. Since some solicitations are attached as separate documents in FedBizOpps, and it is not possible to use the system's keyword function to search, it is estimated that there is an additional 18 solicitations not previously accounted for, totaling 36 (18 + 18).
- It is further estimated that each solicitation would result in approximately two contract awards, or 72 (36 * 2) unique vendors. Of the 72 unique vendors, it is estimated that approximately 30% or 20 unique vendors would have claims of patent (or copyright) infringement made against them as a result of their contract work requiring government notification.
- It is estimated that there is an average of one response per contract, resulting in approximately 20 responses per year.
- Two burden hours are estimated per response to monitor claims of patent or copyright infringement and prepare, review, and submit the required notification. It is estimated that this work would be completed by a mid-level program manager and an attorney.

Estimated respondents/yr.....	20
Responses annually per respondent.....	<u>x 1</u>
Total annual responses.....	20
Estimated hrs/response.....	<u>x 2</u>
Estimated total burden/hrs.....	40
Average wages + overhead	. x <u>\$70*</u>
Estimated cost to public.....	\$2,800

ii. 52.227-6 Royalty Information.

This provision requires contractors to submit royalty payment information, totaling more than \$250, in proposals to assist with the Government's cost or price analysis and to ensure that the royalty payment is proper. As part of the proposal, a contractor must disclose certain information outlined in the provision including the amount of royalty paid, the patent numbers and a brief description of the component on which the royalty is paid. Also, if requested by the contracting officer, prior to award, the contractor may be asked to provide a copy of the current license agreement identifying claims to specific patents.

- The estimated number of respondents per year is based on data from FedBizOpps. This website was searched for the last three years (October 1, 2010 through October 1, 2013) for the inclusion of clause 52.227-6. This provision was found in a total of eight solicitations. Since some solicitations are attached as separate documents in FedBizOpps, and it is not possible to use the system's keyword function to search, it is estimated that there is an additional 12 solicitations not previously accounted for, totaling 20 (8 + 12).
- It is further estimated that each solicitation would result in approximately two contract awards, or 40 (20 * 2) unique vendors required to submit royalty information with their proposal.
- Of the 40 unique vendors, it is estimated that approximately 10% or 4 unique vendors would be required to submit additional information prior to contract award.
- It is estimated that there is an average of one response per solicitation, resulting in approximately 44 responses per year.
- One burden hours is estimated per response to disclose the requested information in the proposal including such items as the amount of royalty paid, the patent numbers and a brief description of the component on which the royalty is paid, and to submit the required notification. It is estimated that one hour is needed to provide a copy of the current license agreement and redact any proprietary data, and to submit to the government. It is estimated that this work would be completed by a mid-level program manager.

Estimated respondents/yr.....		44
Responses annually per respondent.....	x	<u>1</u>
Total annual responses.....		44
Estimated hrs/response.....	x	<u>1</u>
Estimated total burden/hrs.....		44
Average wages + overhead	. x	<u>\$70*</u>
Estimated cost to public.....		\$3,080

iii. 52.227-9 Refund of Royalties.

This clause establishes requirements for royalty payments to ensure the Government does not overpay royalties in fixed price contracts. Consequently, the contractor is required to furnish the contracting officer a statement of royalties paid in connection with performing the contract. This clause flows down to subcontractors.

- The estimated number of respondents per year is based on data from FedBizOpps. This website was searched for the last three years (October 1, 2010 through October 1, 2013) for the inclusion of clause 52.227-6. This provision was found in a total of one solicitation. Since some solicitations are attached as separate documents in FedBizOpps, and it is not possible to use the system's keyword function to search, it is estimated that there is an additional nine solicitations not previously accounted for, totaling 10 (1 + 9).
- It is further estimated that each solicitation would result in approximately one contract awards, or 10 unique vendors. It is also estimated that each contract will have three subcontractors, for a total of 30 unique subcontractor vendors.
- Of the 40 (10 + 30) unique vendors, it is estimated that approximately 100% or 40 unique vendors would be required to submit a statement of royalties paid.
- It is estimated that there is an average of one response per solicitation, resulting in approximately 40 responses per year.
- 0.5 burden hours are estimated per response to submit a statement of royalties paid or required to be paid by the contract.

Estimated respondents/yr.....		40
Responses annually per respondent.....	x	<u>1</u>
Total annual responses.....		40
Estimated hrs/response.....	x	<u>.5</u>
Estimated total burden/hrs.....		20
Average wages + overhead	. x	<u>\$70*</u>
Estimated cost to public.....		\$1,400*

* Based on the OPM salary table for calendar year 2012, we estimated an hourly rate equivalent to a GS-13, Step-7, or \$51.19 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 \$70.00.

iv. Summary of estimated total annual public hour and cost burden

Estimated respondents/yr.....		104
Responses annually per respondent.....	x	<u>1</u>
Total annual responses.....		104
Estimated hrs/response.....	x	<u>1</u>

Estimated total burden/hrs.....	104
Average wages + overhead	. x <u>\$70*</u>
Estimated cost to public.....	\$7,280

14. **Estimated cost to the Government.** Time required for Government-wide review is estimated at 1 hour per response.

Annual Reporting Burden and Cost

Reviewing time/hr.....	1
Responses/yr.....	x <u>104</u>
Review time/yr.....	104
Average wages + overhead	x <u>\$58*</u>
Total Government cost.....	\$6,032

* Based on the OPM salary table for calendar year 2012, we estimated an hour rate equivalent to a GS-13, Step-1, or \$42.66 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 \$58.

15. **Explain reasons for program changes or adjustments reported in Item 13 and 14.** The information collection requirement in the FAR increased slightly for the estimated number of respondents and responses received annually. Updates were made to the average wages and overhead based on current Office of Personnel Management and Office of Management and Budget rates. There is no centralized database in the Federal Government that maintains information regarding notice or claim of patent or copyright infringement, when a response to a solicitation contains costs or charges to royalties or when a contractor submits a statement of royalties paid or required to be paid. Therefore, data was extrapolated from the Federal Business Opportunities website to determine the number of respondents and responses received annually. To assist in validating this data, subject matter experts in the area of patent law were consulted as well as multiple Federal Supply Schedule contracts were reviewed to determine whether the applicable clauses and provision were included.

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.