

OMB Case 0704-0321
SUPPORTING STATEMENT

A. JUSTIFICATION

1. This is a request for an extension of OMB Clearance Number 0704-0321, which will expire on November 30, 2012. This request covers the following requirements for the collection of information relating to Defense Federal Acquisition Regulation Supplement (DFARS) part 232.502-4-70(a), Progress Payments for Foreign Military Sales (FMS) Acquisitions, and the related clause at 252.232-7002, Progress Payments for Foreign Military Sales Acquisitions (see Tab A). The Arms Export Control Act requires, in the absence of a special Presidential Finding, that the U.S. Government purchase military equipment for foreign governments using foreign funds and without any charge to U.S. appropriated funds. In order to comply with this requirement, the Government needs to know how much to charge each country as progress payments are made for foreign military sales (FMS) purchases. The Government can only obtain this information from the contractor preparing the progress payment request. The clause at 252.232-7002, requires a contractor whose contract includes FMS requirements to submit a progress payment request with a supporting schedule that clearly distinguishes the contract's FMS requirements from U.S. contract requirements.

a. DFARS 252.232-7002(a) requires contractors to submit a separate progress payment request for each progress payment rate.

b. DFARS 252.232-7002(b) requires contractors to submit a supporting schedule showing -

(i) The amount of each request distributed to each country's requirements; and

(ii) Total price per contract line item applicable to each separate progress payment rate.

c. DFARS 252.232-7002(c) requires contractors to identify in each progress payment request the contract requirements to which it applies (i.e., FMS or U.S.).

d. DFARS 252.232-7002(d) requires contractors to calculate each request on the basis of the prices, costs (including

costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies.

e. DFARS 252.232-7002(e) requires contractors to distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

2. The customary progress payment rates for DoD contracts, as prescribed in DFARS part 232, are 80 percent for large business concerns, 90 percent for small business concerns, and 95 percent for small disadvantaged business concerns. The information generated by the progress payment submission requirements of DFARS part 232 is used by contracting officers to maintain an audit trail and permit verification of calculations. The Government also uses this information to determine how much to disburse to the contractor. Absent this information, the Government would be unable to pay the FMS portion of the progress payment request, thereby breaching its contractual duties, with subsequent damages payable to the contractor; the Disbursing Officer would commit a statutory violation in wrongfully disbursing U.S. funds contrary to the Congressional instructions for payments for FMS work; or the U.S. Government would violate its fiduciary duty to the foreign country whose funds are improperly disbursed for some other country's purchases.

3. Improved information technology is used to the maximum extent practicable. A procedure has been implemented that allows Contractors to submit, and DoD to process, progress payments electronically. This method of collection was adopted to reduce input errors and increase cash flow.

4. As a matter of policy, DoD reviews the Federal Acquisition Regulations (FAR) to determine if adequate language already exists. The language in DFARS 252.232-7002 applies solely to DoD and is not considered duplicative of the language in the FAR. Similar information is not readily available.

5. The burden applied to small businesses is the minimum consistent with applicable laws, Executive orders, regulations, and prudent business practices.

6. The information will be collected no more than once per month, but may be collected less frequently depending on the

frequency of the contractor's submission of progress payment requests. The monthly limitation is imposed by FAR 52.232-16, Progress Payments, which is a required clause in contracts under which the Government will provide progress payments based on costs.

7. Collection of this information does not require any of the characteristics of collection cited at 5 CFR 1320.5(d) (2).

8. Collection is consistent with the guidelines in 5 CFR 1320.6. Public comments were solicited in the Federal Register on September 24, 2012 (77 FR 58817) (See Tab D), and no comments were received.

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

10. This information is disclosed only to the extent consistent with statutory requirements, current regulations and prudent business practices.

11. No sensitive questions are involved.

12. Estimate of public burden. The only affected entities are those who choose to sell goods and services through FMS arrangements and obtain progress payments type of financing. We estimate that the total cost to the public is as follows:

Number of respondents ¹	381
Responses per respondent ²	x <u>12</u>
Total annual responses	4,572
Hours per response ³	x <u>.5</u>
Total hours	2,286
 Cost per hour ⁴	 x <u>\$50.92</u>

¹ This number is based on FPDS-NG data for new contract awards made during fiscal years 2010 and 2011 valued at greater than \$25,000 that allow FMS Progress Payments. The total number of awards for those two fiscal years was divided by two to calculate the average of the two years.

² Because the responses are requests for payment initiated by the contractor, we estimate the responses per respondent to be the maximum allowed by the Progress Payment clause at 52.232-16.

³ The hours per response consist of the estimated marginal increase in internal accounting or management activity necessary to distribute the contractor incurred costs to customer countries, for progress payment purposes, when a contract contains FMS requirements.

⁴ Based on General Schedule (GS) pay for a GS-12, step 5 salary for 2012 plus 36.25% Civilian Position Full Fringe Benefit Cost Factor for 2012 per OMB Memo M-08-13 dated March 11, 2008 (\$37.37 X 136.25% = \$50.92).

Total annual cost to respondents	\$116,403.12
Number of recordkeepers	381
Hours per recordkeeper ⁵	x 12
Total recordkeeping hours	4,572
Cost per hour ⁶	x \$25.14
Total annual cost for recordkeeping	\$114,940.08
Total public burden hours	6,858
Total annual estimate of public burden	\$231,343.20

13. We estimate that there are no non-recurring expenses (e.g., capital and start-up, or operation and maintenance costs). The clause at DFARS 252.232-7002 is authorized for use when the clause at FAR 52.232-16, Progress Payments, is used as a method of contract financing and the contract includes FMS requirements. Paragraph(f) of 52.232-16 states that "The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause." Our assessment is that this system and related controls are normally in place prior to obtaining a contract for FMS supplies and services since they are required in order for the contractor to receive progress payments for U.S. supplies and services. Therefore, there is no additional non-recurring charge needed to establish or substantially revise the accounting system already in place.

14. Annual cost to the Government. The time estimates are based on receiving, reviewing, and analyzing the information submitted by the contractor. We estimate that the time associated with this task is 1 hour per response.

Number of respondents	381
Responses per respondent	x 12
Total Annual responses	4,572
Hours per response	x 1
Total hours	4,572
Cost per hour ⁷	x \$50.92

⁵The recordkeeping hours consist of the estimated time necessary to maintain the information internally. Most companies already have accounting practices for tracking incurred costs; therefore, the government estimates an increase of 12 hours per year for tracking the costs to each foreign country.

⁶ Based on General Schedule (GS) pay for a GS-7, step 5 salary for 2012 plus 36.25% Civilian Position Full Fringe Benefit Cost Factor for 2012 per OMB Memo M-08-13 dated March 11, 2008 (\$18.45 X 136.25% = \$25.14).

⁷ Based on General Schedule (GS) pay for a GS-12, step 5 salary for 2012 plus 36.25% Civilian Position Full Fringe Benefit Cost Factor for 2012 per OMB Memo M-08-13 dated March 11, 2008 (\$37.37 X 136.25% = \$50.92).

Total amount

\$232,806.24

15. The estimate of public burden hours has changed due to an increase in the number of new awards valued at greater than \$25,000.00 that were made during fiscal years 2010 and 2011 containing FMS progress payment requirements.

16. Results of this collection will not be published.

17. We do not seek approval not to display the expiration date for OMB approval of the information collection.

18. There are no exceptions to the certification accompanying this Paperwork Reduction Act submission.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical methods will not be employed.