

**Supporting Statement**  
**Department of Energy Procurement Package**  
**OMB Control Number 1910-4100**

This supporting statement provides additional information regarding the Department of Energy request to amend the existing clearance for the above named package of information collections imposed by the Department of Energy Acquisition Regulation (DEAR) codified at Chapter 9 of Title 48 of the Code of Federal Regulations. The DEAR is authorized by section 644 of the Department of Energy Organization Act, 42 U.S.C. 7254, as well as section 205(c) of the Federal Property and Administrative Services Act, 40 U.S.C. 486(c). The DEAR implements and supplements the Federal Acquisition Regulation authorized by the Office of Federal Procurement Policy Act, 41 U.S.C. 405. To the extent that a procurement burden is first imposed by the Federal Acquisition Regulation, it will be justified and cleared by the General Services Administration for Government wide use. If a procurement burden is imposed by the Department of Energy Acquisition Regulation, the burden will be justified and cleared by DOE as part of this Paperwork Reduction Act submission.

This amendment to OMB Control Number 1910-4100 supports DOE plans to implement compliance enforcement mechanisms in the form of 1 business systems clause and 5 related clauses that requires the contractor to have acceptable business systems that comply with system criteria. The contractor will be required to have acceptable business systems for cost estimating, accounting, earned value management, purchasing and property management. When a contractor business system is unacceptable, it has a significant deficiency which is a shortcoming in the system that materially affects the ability of DOE officials to rely upon information produced by the system that is needed for management purposes. When a contractor's business system contains identified significant deficiencies, the contracting officer will be able to withhold a percentage of payments until the significant deficiencies are corrected in accordance with the applicable system clause.

**A. Justification**

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.**

The Department of Energy is the second largest procurement organization in the Federal Government. Responsible management of these large contracts requires diligent contract administration and the collection of certain information as specified in certain of the solicitation provisions and contract clauses of the Department of Energy Acquisition Regulation, codified as Title 48, Chapter 9 of the Code of Federal Regulations.

The Department of Energy Organization Act, 42 U.S.C. 7254, states that the Secretary of Energy is authorized to prescribe such procedural and administrative rules as may be deemed necessary and appropriate to administer and manage the functions vested in the Department

and to enter into and perform contracts, leases, cooperative agreements and other similar transactions with public agencies and private organizations and persons as may be deemed necessary and appropriate.

Here is an overview of the 6 business systems clauses. The clauses are: (1) 952.242-71, Contractor Business Systems; (2) 952.242-72, Accounting System Administration; (3) 952.215-71, Cost Estimating System Requirements; (4) 952.244-71, Contractor Purchasing System Administration; (5) 952.245-40, Contractor Property Management System Administration; and (6) 952.234-71, Earned Value Management System.

The use of the 952.234-71, Earned Value Management System clause is in lieu of the FAR 52.234-4, Earned Value Management System. The difference between these two clauses is if there are identified significant deficiencies in the system, payments may be withheld. The 952.234-71 clause has the initial and final determination reviews which the Government may withhold payments, in conjunction with the Contractor Business Systems clause.

The Contractor Business Systems clause provides terms and conditions on how significant deficiencies are reported to the contractor, the final determination process for withholding payments, and the process to reinstate withheld payments after significant deficiencies are corrected. *In order to withhold any payments related to identified significant deficiencies, this clause must be in the contract along with related business system clauses, e.g., estimating, accounting, earned value management, purchasing system or property management.* There is no paperwork burden from this clause. The 5 related business system clauses have the burden.

Each business systems clause (5 clauses total) provides terms and conditions on an acceptable system to include system criteria, notification of significant deficiencies (initial determination and final determination), and process to withhold payments. In order to withhold any payments related to one or more identified significant deficiencies, the specific system clause must be in the contract along with related contractor business systems clause.

The notification of significant deficiencies requires the contracting officer to send to the contractor an initial determination. If the initial determination identified one or more significant deficiencies, the contractor has 30 days to respond to this notice. The contracting officer reviews the contractor's response and sends final determination to indicate if the deficiencies remain and require the contractor to respond within 45 days on how the contractor will correct the deficiencies. If the contractor fails to make the corrections, the contracting officer will withhold payments in accordance with the contractor business systems clause.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The information collected by this package is used by the Department's program, financial, and procurement personnel to evaluate proposals and administer contracts. These collections

are used to exercise management oversight and control of the Department's management contractors operating the Department's major facilities and other contractors furnishing goods and services. The information received from the current collection has been used for the administration of these contracts.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.**

Contractors are authorized to submit information to the Department electronically, e.g., Internet, E-mail, computer disk, or facsimile. In some instances, such as submission of proposals and scientific reporting, the Department has provided Web based tools to facilitate submission of information. Most recently the Department has extended these electronic submission procedures to its Procurement and Financial systems. The burden on contractors is reduced by tools such as the Vendor Inquiry Payment Electronic Reporting System (VIPERS) which allows vendors to submit their invoices and supporting data electronically.

**4. Describe efforts to identify duplication.**

Twice in the past, DOE has done an extensive review of this information collection package to ensure that it does not duplicate other collections conducted elsewhere in the Department or within the larger Federal procurement community. The first review, in the mid 90s as part of the Clinton era Government Reinvention initiative and in the early days of the Paperwork Reduction process found significant overlap between the Department and Federal collections and led to a 50% reduction in the Department's regulation. A more recent review found no duplication between the Department and other collections. Indeed, to comply with the FAR, we must ensure that the Department of Energy Acquisition Regulation does not duplicate any requirements contained in the Federal Acquisition Regulation. The Federal Acquisition Regulation (FAR) system prohibits the agencies from duplicating requirements originally established in the FAR (See 48 CFR 1.302 and 1.304).

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

The impact of the collection on small businesses is considered in the rulemaking process and steps to minimize the impact are taken to the extent permitted by applicable statutory requirements and other legal and management constraints.

The business systems clauses do not apply to small businesses.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The frequency of collection is dictated by sound management practice, external laws and regulations, and Departmental Directives and requirements. When any of these conditions change to permit reduction in the frequency of collection, the reduction will be made and the contract documents will be changed to reflect the reduction. Not collecting the information or reducing the collection may result in violations of procurement, contractual, safety, health, or environmental statutes or regulations. The health and well being of Federal and contractor employees, as well as Federal property and adjacent communities could be adversely affected. Violations could also lead to criminal or civil penalties.

7. **Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Information collections in this package have been reviewed and justified by Departmental management requirements, statutes, external regulations, interagency requirements, Departmental orders or other internal DOE requirements. The package is consistent with the guidelines.

8. **If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5CFR 320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside DOE to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.**

DOE published a request for comments within the Notice of Proposed Rulemaking, RIN 1991-AC01, at 78 FR 18416, on April 1, 2014. The notice described the collection and invited interested parties to submit comments or recommendations regarding the collection.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

There is no remuneration given for submission of any of the information other than the fact that the expense of responding is treated as an allowable cost.

It should be noted that the costs incurred by DOE contractors in responding to these information collections should generally be allowable costs recovered pursuant to their contracts' cost principles guidance. In this sense they differ from information collections imposed on the general public for which no cost reimbursement is provided. DOE is interested in keeping these information burdens as small as possible to lessen its own costs under these contracts. Only basic management information is collected from contractors to allow the Department to manage and oversee contractor conducted operations.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

Where confidential information is involved in an information collection, the provisions for dealing with this confidential information are set forth in the related Departmental regulations; these are the normal regulations for the handling of management and program information by the Department.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why DOE considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no collections in this package involving questions that are sensitive, personal, or private in nature.

**12. Provide labor hour estimates of the burdens associated with the information collection. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, DOE should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.**

The current collection involves 7,529 respondents with an annual estimate of 896,199 burden hours. These estimates were derived from field office inquiries and the related analysis of subject matter experts.

The amended collection burden associated with the 5 contract clauses will involve 5 respondents with an annual estimate of 152 burden hours. These estimates were derived

from the review of DOE procurement data of current and estimated future contracts and the related analysis of subject matter experts.

Total number of unduplicated respondents: 5  
Reports filed per respondent: 2  
Total annual responses: 10  
Total annual burden hours: 152

Average Burden Per Collection: 15.2 hours  
Per Applicants: 30.4 hours

The total burden currently approved and requested amended hours are 7,529 respondents with an annual estimate of 896,199 burden hours. .  
Total number of unduplicated respondents: 7,534  
Reports filed per respondent: 1.000663658083355  
Total annual responses: 7,539  
Total annual burden hours: 896,351

Average Burden Per Collection: 59.5 hours  
Per Applicants: 119 hours

The overall number of respondents will increase from 7,529 to 7,534 and the total burden hours will increase from 896,199 to 896,351.

**13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information.**

Based on this amendment, the associated cost estimate is \$75 per hour times the 896,351 burden hours for an expense estimated to be \$67,226,325.

**14. Provide estimates of annualized cost to the Federal government.**

The estimated cost to the Government for this collection is \$500,740. This amount was calculated by multiplying the hourly rate for the procurement and program personnel reviewing the responses (\$66.42) by the total number of responses (7,539).

Note -- The cost per hour is based on the General Schedule GS13 Step 5 hourly rate of \$48.75 for 2012, plus 36.25% civilian personnel full fringe benefit rate for 2009 taken from OMB Memo M-08-13 ( $\$48.75 \times 136.25\% = \$66.42$ ).

**15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.**

Contractor business systems and its internal controls are the first line of defense against waste, fraud, and abuse. Weak control systems increase the risk of unallowable and unreasonable cost on Government contracts. When a contract includes these business

systems clauses, it will require the contractor to meet business system criteria for its estimating system, accounting system, earned value management system, purchasing management system, and property management system. When the contractor has acceptable business systems that comply with the terms and conditions of the contract, this will improve contract performance.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

None of the information collected is tabulated or published. The information collected is only used for contract administration purposes.\_

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

The Department is not seeking approval to not display the expiration date for the OMB approval of the information collections contained in this package.

**18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.**

The Department is not requesting any exceptions to the certification statement provided in Item 19 of OMB Form 83-I.

**B. Collections of Information Employing Statistical Methods.**

The Procurement Collection employs no statistical methodology.