

**SUPPORTING STATEMENT
FOR INFORMATION COLLECTION SUBMISSION
OMB CONTROL NO.9000-0095
Commerce Patent Regulations**

A. Justification.

1. Administrative requirements. FAR subpart 27.3 prescribes policies, procedures, solicitation provisions, and contract clauses pertaining to inventions made in the performance of work under a Government contract or subcontract for experimental, developmental, or research work. Under the subpart, a contracting officer may insert clauses 52.227-11, Patent Rights-Ownership by the Contractor, or 52.227-13, Patent Rights-Ownership by the Government.

2. Uses of information. In accordance with chapter 18 of title 35, U.S.C. (as implemented by 37 CFR part 401), Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies dated February 18, 1983, and Executive Order 12591, Facilitating Access to Science and Technology dated April 10, 1987, it is the policy and objective of the Government to—

(1) Use the patent system to promote the use of inventions arising from federally supported research or development;

(2) Encourage maximum participation of industry in federally supported research and development efforts;

(3) Ensure that these inventions are used in a manner to promote free competition and enterprise without unduly encumbering future research and discovery;

(4) Promote the commercialization and public availability of the inventions made in the United States by United States industry and labor;

(5) Ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and

(6) Minimize the costs of administering patent policies.—

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 on a basis other than solicitation-by-solicitation is not practical.

7. **Special circumstances for collection.** 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 81 FR 24103, on April 25, 2016. No comments were received. A 30-day notice was published in the *Federal Register* at 81 FR 62739 on September 12, 2016. No comments were received.

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

Annual Public Burden and Cost

Estimated respondents/yr.....		3,759
Responses per respondent.....	X	<u>3.8143</u>
Total annual responses.....		14,338
Estimated hrs/response.....	X	<u>4.0</u>
Estimated total burden/hrs.....		57,352
Estimated cost to public (\$46*).....		\$2,638,192

*Using the OPM salary table for calendar year 2016 (Base). We estimated an hourly rate equivalent to a GS-12, step 5, or \$33.72 per hour, plus 36.25 percent overhead burden which is the rate mandated by OMB for A-76 public-private competitions, and rounded to the nearest whole dollar or \$46.00. The estimated cost per response is approximately \$184.

Notes:

- A "respondent" is any individual company that serves as the prime contractor on one or more contract(s) that include(s) at least one of the covered clauses (during any FY). This number does NOT distinguish whether there are subcontractors supporting the relevant activities of the prime - the number covers all prime contractors and subsumes any/all subcontractors that they use for any individual contract(s).
 - A "response" is considered to cover the combined total of all the individual activities that a respondent engages in to support its requirements and responsibilities under the relevant clause(s) with respect to any single subject invention.
 - Estimated total number of inventions. - According to the most recent survey by the Association of University Technology Managers (AUTM), the universities reported 21,856 inventions for FY 2011. Using the percentage of research from the US Government (USG) (65.6%), the number of USG funded inventions would be 14,338. Using the historical trend that 60% of such inventions were under grants, the number of contract inventions would be 5,735. For this analysis we also presumed that for-profit contractors typically make 1.5x the number of university inventions, resulting in an additional 8603 inventions for a total of 14,338 contractor inventions.
 - Responses/Respondent=14338/3759= 3.8143.
 - The "hours per response" includes all activities that the respondent engages in to support each response required by clauses 52.227-11 or 52.227-13. But it covers only the portion of those activities that the respondent would not otherwise do in the absence of the clause requirements (e.g., activities that are required by other clauses or legal requirements, or that are common business practices that the respondent would engage in regardless of whether the activity was covered by one of the relevant clauses).
- Details:

(i) Invention Disclosures – these are prepared by the contractor in the normal course of business, and	1.0
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the only burden is preparing a copy for the Government and sending it to the Government, which is estimated to be 1.0 hour (note that most universities report their inventions through the iEdison reporting system, which would take no more than 0.5 hours);	
(ii) Electing rights - although the contractor may take weeks to elect rights, the additional considerations related to the allocation of rights under the patent rights (PR) clauses, and the communication to the Government should take no more than 0.5 hours.	0.5
(iii) Filing a patent application - although this may take a week to prepare, it is prepared in response to USPTO requirements (based on statutory and regulatory requirements) that are independent to the FAR PR clauses, sending a copy of the application to the Government should take no more than 0.5 hours especially if iEdison is used;	0.5
(iv) Confirmatory license - this should take no more than 0.5 hours to prepare and send to the Government especially if iEdison is used;	0.5
(v) Commercialization reports - agencies generally do not request them and so there is typically no actual reporting burden, however, 0.25 hours is allocated to cover the supporting administrative processes to track and be prepared to report upon USG request;	0.25
(vi) Contracts with employees - since most contractors have agreements with their inventors regarding identification, disclosure, and assignment of rights, regardless of whether the anticipated inventive activity may occur under a federal contract having a PR clause, there is likely no meaningful additional burden imposed by the Government (many universities have invention practices to which all scientific employees agree when they are hired), however, 0.25 hours is allocated to cover the supporting administrative processes to track and be prepared to report upon USG request; and	0.25
(vii) Although not every contract will result in inventions, contractors may still be required to provide interim or final reports	1.0
TOTAL ESTIMATED HOURS	4.0

14. **Estimated cost to the Government.** Time required for Governmentwide review is estimated at 2 hours per response.

Annual Government Burden and Cost

Reviewing time/hr per response.....		2
Responses	x	<u>14,338</u>
Review time/yr.....		28,676

Average wages/hr.....	X	\$46*
Total Government cost.....		\$1,319,096

*Using the OPM salary table for calendar year 2016 (Base). We estimated an hourly rate equivalent to a GS-12, step 5, or \$33.72 per hour, plus 36.25 percent overhead burden which is the rate mandated by OMB for A-76 public-private competitions, and rounded to the nearest whole dollar or \$46.00.

15. Explain reasons for program changes or adjustment reported in Item 13 or 14. This submission requests an extension of OMB approval of an information collection requirement in the FAR. Based on use of the OPM salary table for calendar year 2016, an adjustment was made to the hourly rate for the public and Government personnel preparing, reporting and reviewing the requirements under this collection.

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.