

**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 used 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 81 FR 43607, on July 5, 2016. No comments were received. A 30-day notice was published in the *Federal Register* at 81 FR 70423 on October 12, 2016.

9. Explanation of any decision to provide any payment or gift to respondents, other than re-enumeration 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. 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. This clause is used in all solicitations that include the clause at 52.227-1, Authorization and Consent, which is used in solicitations and contracts except that the clause is optional when using simplified acquisition procedures and is prohibited when both complete performance and delivery are outside the United States.

- According to the Federal Procurement Data System (FPDS), in fiscal year 2015, there were 26,445 contract awards (greater than the simplified acquisition threshold) made to 12,977 unique vendors, which could have included this clause. Contractors, however, only notify the Government when there is a claim of patent or copyright infringement.

- Based on prior estimates from subject matter experts, the number of notices or claims of patent or copyright infringement was estimated to be received from nineteen respondents (.15% of the total number of unique vendors receiving contracts with this clause).
- 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.....	19
Responses annually per respondent.....	<u>x 1</u>
Total annual responses.....	19
Estimated hrs/response.....	<u>x 2</u>
Estimated total burden/hrs.....	38
Average wages + overhead	. x <u>\$58*</u>
Estimated cost to public.....	\$2,204

ii. 52.227-6 Royalty Information.

This provision requires contractors to submit royalty payment information, totaling more than \$250, in proposals where cost and pricing data is required, 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.

- According to FPDS there were 2,693 contracts awarded Governmentwide in fiscal year 2015 where certified cost or pricing data were obtained. Offerors are only required to provide royalty payment information in proposals when the payment exceeds \$250. Subject matter experts have previously estimated that approximately 48 respondents proposed costs or charges for royalties totaling more than \$250 on an annual basis.
- One burden hour is estimated per response to disclose the requested information in the proposal including such items as the amount of royalty, the patent numbers, and a brief description of the component on which the royalty is paid. 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.....		48
Responses annually per respondent.....	x	<u>1</u>
Total annual responses.....		48
Estimated hrs/response.....	x	<u>1</u>
Estimated total burden/hrs.....		48
Average wages + overhead	. x	<u>\$58*</u>
Estimated cost to public.....		\$2,784

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. The clause may also be used in cost-reimbursement contracts where agency approval of royalties is necessary to protect the Government's interest. 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 Federal Business Opportunities (FedBizOpps), since FPDS does not capture data to support this reporting requirement. The FedBizOpps website was searched for the prior year (May 1, 2015 - May 18, 2016) for the inclusion of clause 52.227-9. This clause was found in a total of four solicitations and one award notice. Some solicitations are attached as separate documents in FedBizOpps and it is not possible to use the system's keyword search function to locate them. To compensate, award notices were searched to identify those awards that included the clause but did not have a corresponding solicitation notice published on FedBizOpps as indicated in the solicitation search results. This resulted in one award notice that was not related to the four solicitations posted during this period. Additionally, FAR 5.102(a)(5), 5.202, and 5.301 provide exceptions to posting of solicitations and award notices. It is estimated there are approximately four additional solicitations and one award per year that are exempt from publication on FedBizOpps and not previously accounted for. Accordingly, it is estimated that there were a total of 10 actions that could contain the clause during the prior one-year period (four solicitations and one award notice, which were posted on FedBizOpps, plus an estimated four additional solicitations and one award not posted to FedBizOpps).

- It is further estimated that each of the eight solicitations would result in approximately one contract award each, or eight contract awards in addition to the two awards, resulting in a total of 10 contracts to 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 unique vendors (10 primes + 30 subcontractors), 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 respondent, resulting in approximately 40 responses per year.
- One burden hour is 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>1</u>
Estimated total burden/hrs.....		40
Average wages + overhead	. x	<u>\$58*</u>
Estimated cost to public.....		\$2,320*

* Based on the OPM salary table for calendar year 2016, we estimated an hourly rate equivalent to a GS-13, Step-7, or \$42.46 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 \$58.

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

Estimated respondents/yr.....		107
Responses annually per respondent.....	x	<u>1</u>
Total annual responses.....		107
Estimated hrs/response.....	x	<u>1.17</u>
Estimated total burden/hrs.....		126
Average wages + overhead	. x	<u>\$58*</u>
Estimated cost to public.....		\$7,540

The estimated cost per response is \$70.46.

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

Annual Reporting Burden and Cost

Reviewing time/hr.....		1
Responses/yr.....	x	<u>126</u>
Review time/yr.....		126
Average wages + overhead	x	<u>\$58*</u>
Total Government cost.....		\$7,540

* Based on the OPM salary table for calendar year 2016, we estimated an hourly rate equivalent to a GS-13, Step-7, or \$42.46 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 \$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, resulting in a minor increase in the estimated burden hours from 104 hours to 126. 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 Procurement Data System and the Federal Business Opportunities website to estimate 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.