

**SUPPORTING STATEMENT  
FOR PAPERWORK REDUCTION ACT SUBMISSION  
OMB CONTROL NO.9000-0096  
PATENTS**

**FAR Sections Affected: 52.227-2, 52.227-6, 52.227-9**

**A. Justification.**

1. **Administrative requirements.** This submission requests a revision and renewal of OMB control number 9000-0096, Patents. This clearance covers the information that offerors and contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

a. **52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement.** This clause requires contractors to notify the Government of any allegations of patent or copyright infringement arising during the performance of the contract. The clause requires contractors to furnish, when requested by the contracting officer, all evidence and information in the contractor's possession regarding such a claim or suit. This clause flows down to subcontractors.

b. **52.227-6, Royalty Information.** This provision requires offerors 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, number of units, and total dollar amount of royalties. Also, the contracting officer may ask the offeror to provide a copy of the current license agreement identifying claims to specific patents.

c. **52.227-9, Refund of Royalties.** This clause requires contractors to furnish the contracting officer, before final payment under a contract, a statement of royalties paid or required to be paid in connection with performing the contract. The clause requires contractors to notify the contracting officer if the contractor is relieved, within 3 years after final payment under the contract, from payment of royalties included in the final contract price. This clause flows down to subcontractors.

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.** These requirements are issued under the 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 because the information collected concerns the offeror's proposed solution for a specific solicitation.

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. A 60-day notice was published in the *Federal Register* at 84 FR 57020, on October 24, 2019. No comments were received.

B. A 30-day notice was published in the *Federal Register* at 85 FR 710, on January 7, 2020.

9. **Explanation of any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.** Not applicable.

10. **Describe assurance of confidentiality provided to respondents.** This information is disclosed only to the extent consistent with prudent business practices, current regulations, and statutory requirements.

11. **Additional justification for questions of a sensitive nature.** No sensitive questions are involved.

12 & 13. **Estimated total annual public hour and cost burden.**

There is no centralized database in the Federal Government that maintains information regarding notices or claims of patent or copyright infringement, solicitation responses that contain costs or charges for royalties, or statements of royalties paid or required to be paid by contractors. Therefore, data was extrapolated from the Federal Procurement Data System (FPDS) 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.

a. **52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement.**

- According to FPDS data in fiscal year 2019, there were 13,270 unique contractors that received awards greater than the simplified acquisition threshold (\$250,000<sup>1</sup>), 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 0.15% of the total number of unique contractors receiving contracts with this clause, or, rounded to the nearest whole number, 20 (13,270 x .0015).
- It is also estimated that each contractor will have three subcontractors for a total of 60 unique subcontractors.
- It is estimated that 80 unique contractors would be required to submit a statement of royalties paid (20 prime contractors + 60 subcontractors).
- Two burden hours are estimated per response to monitor claims of patent or copyright infringement and to 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.....	80
Responses annually per respondent.....	<u>1</u>

<sup>1</sup> The National Defense Authorization Act for Fiscal Year 2018 (NDAA FY18) (Public Law 115-91) (Section 805) increased the simplified acquisition threshold to \$250,000. FAR Case 2018-004 was opened to implement the appropriate statutory changes in the FAR that are compelled by section 805 of the NDAA FY18. However, 23 agencies have issued deviations and governmentwide systems have already been updated to use the new threshold ahead of the FAR.

Total annual responses.....		80
Estimated hrs/response.....	x	<u>2</u>
Estimated total burden hours.....		160
Hourly rate*.....	x	<u>\$66</u>
Estimated cost to the public.....		\$10,560

**b. 52.227-6, Royalty Information.**

- According to FPDS there were 1,686 contracts awarded to 1,024 unique contractors Governmentwide in fiscal year 2019 where certified cost or pricing data were obtained. Offerors are only required to provide royalty payment information in proposals when the royalty payment exceeds \$250. Subject matter experts have previously estimated that approximately 1 percent of such unique contractors proposed costs or charges for royalties totaling more than \$250 on an annual basis, or, rounded to the nearest whole number, 10 (1,024 \* .01).
- 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. This estimate includes the time 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.....		10
Responses annually per respondent.....	x	<u>1</u>
Total annual responses.....		10
Estimated hrs/response.....	x	<u>1</u>
Estimated total burden hours.....		10
Hourly rate*.....	x	<u>\$66</u>
Estimated cost to the public.....		\$660

**c. 52.227-9, Refund of Royalties.**

- According to FPDS data in fiscal year 2019, there were 6,921 unique contractors that received awards greater than the simplified acquisition threshold, which could have included this clause. Subject matter experts estimate that approximately 0.25 percent of those such unique contractors would be required to submit a statement of royalties paid, or, rounded to the nearest whole number, 17 (6,921 \* .0025).
- It is also estimated that each contractor will have three subcontractors for a total of 51 unique subcontractors.

- It is estimated that 68 unique contractors would be required to submit a statement of royalties paid (17 prime contractors + 51 subcontractors).
- 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.....		68
Responses annually per respondent.....	x	<u>1</u>
Total annual responses.....		68
Estimated hrs/response.....	x	<u>1</u>
Estimated total burden hours.....		68
Hourly rate*.....	x	<u>\$66</u>
Estimated cost to the public.....		\$4,488

**d. Summary of estimated total annual public hour and cost burden**

Estimated respondents/yr.....		158
Total annual responses.....		158
Estimated total burden hours.....		238
Hourly rate*.....	x	<u>\$66</u>
Estimated cost to the public.....		\$15,708

\*Based on the OPM GS-13/step 5 salary (\$48.17 an hour) plus 36.25% fringe and overhead burden rate, the one mandated by OMB memorandum M-08-13 for use in public-private competition, rounded to the nearest dollar, or \$66 an hour. Reference Salary Table 2019-RUS, Effective January 2019, found at [www.opm.gov](http://www.opm.gov).

**14. Estimated cost to the Government.**

Responses per year.....		158
Reviewing time/response (hours).....	x	<u>1</u>
Review time per year (hours).....		158
Hourly rate*.....	x	<u>\$66</u>
Estimated cost to the Government .....		\$10,428

**15. Explain reasons for program changes or adjustments reported in Item 13 and 14.** The increase of responses from 107 to 158 and the associated increase in estimated burden hours from 126 to 238 is an adjustment due to use of the most current data available.

**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.