

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
OMB CONTROL NO.9000-0095
Commerce Patent Regulations**

FAR Section(s) Affected: 27.303(b)(2), 52.227-11, 52.227-13

A. Justification.

1. Administrative requirements. This submission requests a revision and renewal of OMB 9000-0095, Commerce Patent Regulations. Federal Acquisition Regulation (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, in solicitations and contracts, the clause at FAR 52.227-11, Patent Rights-Ownership by the Contractor, or 52.227-13, Patent Rights-Ownership by the Government.

In accordance with the FAR clauses, a Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, sale, or public use of the invention (52.227-11(c), 52.227-13(e)(1)). The contracting officer may modify 52.227-11(e) or otherwise supplement the clause to require contractors to submit periodic or interim and final reports listing subject inventions (27.303(b)(2)(i) and (ii)). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.227-11, Alternate IV; 52.227-13(e)(1)). In addition, the contractor must require its employees, by written agreements, to disclose subject inventions (52.227-11(e)(2); 52.227-13(e)(4)). The contractor also has an obligation to utilize the subject invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227-11(f)).

2. Uses of information. In accordance with 35 U.S.C. chapter 18 (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. 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 contract-by-contract 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. A 60-day notice was published in the *Federal Register* at 84 FR 56192, on October 21, 2019. No comments were received.
- B. A 30-day notice was published in the *Federal Register* at 84 FR 71947, on December 30, 2019.

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.

Estimated respondents/yr.....		3,379
Responses per respondent.....	X	<u>3.9065</u>
Total annual responses.....		13,200
Estimated hrs/response.....	X	<u>4.0</u>
Estimated total burden hours.....		52,800
Hourly rate*.....	X	<u>\$ 55</u>
Estimated cost to the public.....		\$2,904,000

*Based on the OPM GS-12/step 5 salary (\$40.51 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 \$55 an hour. Reference Salary Table 2019-RUS, Effective January 2019, found at www.opm.gov.

Notes:

- The estimated number of respondents is the number of unique contractors in the Federal Procurement Data System for fiscal years 2016 through 2019 serving as the prime contractor on one or more contracts for research and development at or above the simplified acquisition threshold (\$150,000). This number does NOT distinguish whether there are subcontractors supporting the relevant activities of the prime - the number covers all prime contractors and includes 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 24,998 inventions for 2017. According to data from the National Science Foundation, the U.S. Government (USG) funds 44% of basic research carried out in the United States. Using this percentage, the number of USG-funded inventions would be 10,999. Using the historical trend that 60% of such inventions were under grants, the number of contract inventions at universities would be 4,400 (10,999 x 40%). For this analysis, we also presumed that for-profit contractors typically make 2x the number of university inventions, resulting in an additional 8,800 inventions for a total of 13,200 contractor inventions.
- Responses/Respondent=13,200/3,379 = 3.9065.
- The "hours per response" includes all activities that the respondent engages in to support each response required by the clauses at FAR 52.227-11 or 52.227-13. However, it covers only the portion of those activities that the respondent would not otherwise do in the absence of the clause requirements. It does not include 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 FAR 52.227-11 or 52.227-13. Details:

(i) Invention Disclosures – these are prepared by the contractor in the normal course of business, and 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);	1.0
(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	0.5

than 0.5 hours to prepare and send to the Government especially if iEdison is used;	
(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.

Responses per year.....	13,200
Reviewing time/response (hours).....	<u> 2</u>
Review time per year (hours).....	26,400
Hourly rate*.....	<u> \$55</u>
Estimated cost to the Government	\$1,452,000

15. Explain reasons for program changes or adjustment reported in Item 13 or 14. The decrease of responses from 14,338 to 13,200 and the associated decrease in estimated burden hours from 57,352 to 52,800 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.