

SUPPORTING STATEMENT
Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 204.17,
Service Contracts Inventory and Associated Clause (OMB Control No. 0704-0519)

A. JUSTIFICATION

1. Need For the Information Collection

10 U.S.C. 2330a, as amended by section 812 of National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017, requires the Department of Defense (DoD) to establish a data collection system to provide certain management information with regard to each purchase of services by a Military Department or Agency that is in excess of \$3 million for services in the following service acquisition portfolio groups: logistics management services, equipment-related services, knowledge-based services, and electronics and communications services. See DFARS Case 2018-D063, Data Collection and Inventory for Services Contracts.

This information collection covers the burden hours related to the requirement at DFARS subpart 204.17, Service Contracts Inventory, and its associated clause, 252.204-7023, Reporting Requirements for Contracted Services. The new basic DFARS clause 252.204-7023 and an alternate I clause have been created to advise applicable contractors of the requirements for reporting data in the System for Award Management (SAM). The basic clause is used in solicitations and contracts, except solicitations and resultant awards of indefinite-delivery contracts, and task orders placed under a non-DoD contract. The alternate I clause is used in solicitations and resultant awards of indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements that meet the service contract reporting thresholds and criteria.

The basic clause and its alternate I require a contractor to report annually, in SAM, on the services performed under the contract or order, during the preceding Government fiscal year. Specifically, the contractor is required to report: the total dollar amount invoiced for services performed during the preceding fiscal year, and the number of direct labor hours, including subcontractor hours (when applicable), expended on services performed during the previous Government fiscal year.

2. Use of the Information

The information collection will provide DoD with the ability to identify and report annually to Congress, in accordance with 10 U.S.C. 2330a, on the inventory of contractor service contract actions. As an adjunct, the information will support DoD's total force management and in making strategic workforce planning and budget decisions pursuant to 10 U.S.C. 129a.

3. Use of Information Technology

Information technology is used to collect the covered information to the maximum extent (100%). DoD uses the Federal Procurement Data System (FPDS), an existing source of contract information for the Federal Government, to provide a majority of the information required by 10 U.S.C. 2330a. The data that is not available in FPDS is entered by the contractor in SAM, which

is an information system used Governmentwide to collect contractor information and also used to gather service contract data for the rest of the Federal Government under a similar, but not identical, statute (approved under OMB Control Number 9000-0097, Federal Acquisition Regulation Part 4 Requirements).

4. Non-duplication

As a matter of policy, DoD reviews the Federal Acquisition Regulation (FAR) to determine if adequate language already exists. This request for information applies solely to DoD, in accordance with the requirements of 10 U.S.C. 2330a.

5. Burden on Small Business

The burden applied to small businesses is the minimum consistent with applicable laws, Executive Orders, regulations, and prudent business practices. The information collection requirement has been narrowly tailored to maximize the use of existing records already maintained by contractors and by the Government. To further minimize the impact, DoD is adopting the existing system and process used by the rest of the Government to obtain the requisite information from contractors, which maintains a familiar and consistent reporting requirement for contractors. The information is collected electronically once a year; help-desk support and user guides are available for SAM; and reporting requirements will be limited to a small number of data elements to facilitate ease of reporting and minimize contractor burden. In addition, the NDAA for FY 2017 limits the application of the data reporting to contracts and orders that exceed a specified dollar threshold and are predominately for specific services.

6. Less Frequent Collection

Without collecting this information on an annual basis, DoD will be unable to ensure proper reporting of contract data to permit compliance with the statutory annual reporting requirements contained in 10 U.S.C. 2330a, as amended.

7. Paperwork Reduction Act Guidelines

There are no special circumstances that require the collection to be conducted in a manner that is inconsistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultation and Public comments

a. For the purpose of calculating respondent burden, DoD subject matter experts associated with service contract policy were consulted regarding this information collection.

b. This information collection is consistent with the guidelines in 5 CFR 1320.6. In accordance with 5 CFR 1320.8(d), public comments were solicited in the *Federal Register* on June 5, 2014 (79 FR 32522) in proposed rule 2012-D051. Seventeen respondents submitted comments in response to the proposed rule. In addition, public comments were solicited again in the *Federal Register* on June 5, 2020 (85 FR 34575) in proposed rule 2018-D063. Three

respondents submitted comments in response to this proposed rule. In response to the public comments, DoD has made the following changes to this information collection:

- DoD has adopted the service contract reporting process used by other Federal agencies and no longer requires contractor reporting in the Enterprise-wide Contractor Manpower Reporting Application (ECMRA). This change enables DoD to use FPDS to obtain a majority of the information required by 10 U.S.C. 2330a. FPDS does not provide data on the direct labor hours expended and dollar amounts invoiced for contracted services. Therefore, the final rule requires applicable contractors to enter the labor hours and dollar amounts in SAM, which is the process used by other Federal agencies, in accordance with FAR subpart 4.17.
- To relieve burden and minimize impact for contractors and subcontractors, the final rule requires contractors to report the total number of hours worked (both contractor and subcontractor) under the contract for the entire fiscal year and does not require a breakdown of those hours by employee type or by subcontractor. The requirement to report subcontractor data is limited to first-tier subcontractors, consistent with the FAR requirement for service contract reporting. The rule leaves the process for collecting subcontractor data up to the discretion of each contractor; it does not prescribe a specific methodology that contractors must use to gather this data on applicable subcontracts, or prescribe a reporting requirement for subcontractors via the flow-down of the contract clause.
- The estimated burdens for respondents and responses published in proposed rule 2021-D051 have been updated to reflect the revised requirements of 10 U.S.C. 2330a, as amended.

Summaries of the public comments received in response to proposed rule 2012-D051 are provided below, with DoD's responses. The comments are summarized by topic, not by respondent. The summaries and responses were published in proposed rule 2018-D063.

1. Exemptions

Comment: Several respondents recommended that the rule exempt certain areas including: Research and development projects; architect and engineering services; telecommunications and transmission and internet; and actions using criteria similar to the Service Contract Labor Standards exemptions in FAR 22.1003–4(d)(1).

Response: This rule implements 10 U.S.C. 2330a, as amended by section 812 of the NDAA for FY 2017, which requires reporting for only four service acquisition portfolio groups: Logistics management services, equipment related services, knowledge-based services, and electronics and communications services. No further exemptions are available under the law.

Comment: Several respondents recommended that contracted services that meet the definition of commercial items be exempt from ECMRA reporting.

Response: The intent of the statute is to enhance DoD's ability to manage the total force, inclusive of military, civilian, and contractor personnel. Specifically, section 2330a requires the military departments and defense agencies to ensure that the inventory of contracts for services required by the statute is used to inform strategic workforce planning decisions under 10 U.S.C. 129a, develop budget justification materials for services in accordance with 10 U.S.C. 235, and ensure services contracts are not for the performance of inherently governmental functions. An exception for services that meet the definition of a commercial item would exclude significant sums expended by DoD on commercial service acquisitions intended to be covered by the law. Therefore, services meeting the definition of a commercial item are not exempt from the reporting requirement.

Comment: Several respondents recommended that firm fixed-price service contracts be exempt from the ECMRA reporting requirement, because these contracts acquire services in their entirety, not as individuals (full-time equivalents).

Response: In accordance with paragraph (b) of 10 U.S.C. 2330a, the data required to be collected under the statute includes service contracts and orders that contain firm fixed-prices for the specific tasks to be performed. Therefore, firm fixed-price contracts for the applicable services are not exempt under the proposed rule.

Comment: One respondent recommended that the rule exempt DoD intelligence community agency contracts, because the existing exemption for "classified services" is not sufficient to cover the exempt contracts entered into by DoD intelligence community agencies.

Response: The statute does not provide for exemptions to the reporting requirement; therefore, the proposed rule does not provide for exemptions, in order to comply with the law.

Comment: One respondent recommended that, due to the difficulty in tracking labor for service contracts where contractor employees may spend only small fractions of their time servicing the Government contract (such as refuse collection and software as a service), the rule should be changed to exempt such contracts by using the criteria similar to the Service Contract Labor Standards exemptions (see FAR 22.1003-4(d)(1)).

Response: Title 10 U.S.C. 2330a, as amended by section 812 of the NDAA for FY 2017, now limits data collection to four service acquisition portfolio groups: Logistics management services, equipment related services, knowledge-based services, and electronics and communications services. Under this proposed rule, only service contracts with a total estimated value exceeding \$3 million that are for services in one of the four portfolio groups must be reported in SAM.

Comment: One respondent questioned whether Congress intended DoD to report contracts for services that are integrally related to supplies, or contracts where the services are a relatively small dollar value in relation to the supplies.

Response: Title 10 U.S.C. 2330a requires the collection of data on “each purchase of services by a military department or Defense Agency” that meets a certain dollar threshold and is for certain services. The proposed rule clarifies that the requirement applies to contracts or orders that have a total estimated value, including options, exceeding \$3 million and are for services in one of the four service acquisition portfolio groups.

2. Expansion of Reporting Requirement

Comment: Two respondents suggested that the ECMRA reporting requirement be extended to contracts for services valued at or below the simplified acquisition threshold (SAT). Doing so would be consistent with the congressional intent in 10 U.S.C. 2330a for DoD to provide a total inventory of contracted services.

Response: Title 10 U.S.C. 2330a(a), as amended by section 812 of the NDAA for FY 2017, now only requires the collection of data on service contracts, under certain portfolio groups, that exceed \$3 million. This proposed rule implements the statutory threshold. Applying the rule to service contracts below \$3 million is not necessary to implement the statute and would impose an unnecessary burden on the public and DoD.

Comment: One respondent suggested that the final rule clarify that services provided ancillary to a lease or rental contract (such as auto repair and maintenance services incidental to a vehicle lease) are subject to ECMRA reporting requirement. The respondent also recommended that the final rule clarify that the ECMRA reporting requirements apply to contracts for destruction, demolition, and removal.

Response: Title 10 U.S.C. 2330a(a), as amended by section 812 of the NDAA for FY 2017, specifies that the service acquisition portfolio group for equipment related services is included in the required reporting group. It is expected that contracts for equipment-related services with a total estimated value, including options, exceeding \$3 million will be reported in SAM.

3. Duplicative of Existing Systems

Comment: Two respondents indicated that the rule is duplicative of the existing FAR rule on service contract reporting that applies to civilian agencies (see FAR subpart 4.17). Respondents stated that there should not be two parallel systems, one for civilian agencies and another for defense agencies, because this situation causes confusion and compliance problems within industry.

Response: FAR subpart 4.17 does not apply to DoD. This proposed rule enables DoD to fulfill its obligation under 10 U.S.C. 2330a. Since publication of the proposed rule under 2012–D051, DoD has adopted the use of FPDS to collect a majority of the required data, in an effort to standardize the reporting process for contractors across the Federal Government.

Comment: Several respondents suggested that the ECMRA system is duplicative of other Government systems, such as FPDS, which can also be used to estimate the data

provided in the annual inventory of contracts for services.

Response: DoD has adopted the service contract reporting process used by other Federal agencies and no longer requires contractor reporting in ECMRA. This proposed rule will enable DoD to use FPDS to obtain a majority of the information required by 10 U.S.C. 2330a. FPDS does not provide data on the direct labor hours expended and dollar amounts invoiced for contracted services. Therefore, this proposed rule requires applicable contractors to enter the labor hours and dollar amounts in SAM, which is the process used by other Federal agencies, in accordance with FAR subpart 4.17.

Comment: Two respondents suggested that the separate instances of ECMRA (Army, Navy, Air Force, and other DoD agencies) be combined into one DoD-wide ECMRA system.

Response: The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM.

Comment: Two respondents suggested that the rule is duplicative of existing DoD reporting requirements, such as: (1) The Army's contractor manpower reporting requirement; and (2) the Secretary of Defense Memorandum entitled "Enterprise-wide Contractor Manpower Reporting Application," dated November 2012, that requires all new contracts for services to include a contract line item for contractor manpower reporting and a requirement in the performance work statement for contractor manpower reporting.

Response: This rule will replace, not duplicate, the existing Army contract manpower reporting requirement and the requirements in the November 2012 Memorandum from the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness.

Comment: Two respondents suggested that the rule exceeds the scope of congressional intent, because DoD is already using its internal records and systems to achieve the statutory objective of the inventory of contracts for services.

Response: The rule does not exceed the scope of congressional intent, because existing systems and reports do not fully capture all of the data required by 10 U.S.C. 2330a.

4. Flow Down to Subcontracts

Comment: Two respondents suggested that the requirement for subcontract reporting be changed. One respondent suggested that the prime contractor be required only to flow down the clause to subcontractors and relieved of the responsibility of reporting for subcontractors. The other respondent suggested that subcontractor data not be reported at all, as this is inconsistent with commercial practice.

Response: The proposed rule does not contain a requirement to flow down a clause. Instead, this proposed rule requires contractors to include its subcontractor labor hours in

the total number of labor hours the contractor reports annually to SAM. The proposed rule leaves the process for collecting subcontractor data up to the discretion of each contractor.

5. Need for Additional Resources

Comment: One respondent suggested that more resources be provided to the Office of the Under Secretary of Defense for Personnel and Readiness workforce that administers and coordinates the inventory of contracts for services.

Response: This suggestion is beyond the scope of the rule.

6. ECMRA Process

Comment: One respondent noted that the ECMRA interface for the Fourth Estate (other DoD agencies and field activities) is not yet fully operational, in contrast to what is stated in the proposed rule. For example, there is no operational help desk support for Fourth Estate activities. The respondent suggests that the final rule should be delayed until ECMRA is consolidated into a common portal for all DoD agencies, or until the ECMRA instance for Fourth Estate activities is fully resourced.

Response: The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM.

Comment: One respondent questioned how the Government validates data provided by contractors in ECMRA. The respondent suggested that ECMRA be linked to Wide Area WorkFlow and that the contracting officer or the contracting officer's representative be allowed to inspect payroll data in order to validate contractor data entered into ECMRA.

Response: Agencies are responsible for ensuring the contractor submits information in SAM that is reasonable and consistent with available contract information. Agencies may use any contract data available, as appropriate and necessary, to meet this responsibility.

Comment: One respondent suggested that the rule be clearer about how the ECMRA will protect nonpublic data, such as direct labor hours and cost data.

Response: The use of ECMRA is no longer necessary.

Comment: One respondent requested clarification on the procedures to follow when the services under one contract support two or more DoD services or agencies.

Response: This proposed rule requires contractors to enter information in SAM, which is a single system able to collect all requisite data under this rule.

Comment: One respondent suggested that ECMRA should have a built-in capability for an overall point of contact at each agency level who can gather and manage the

ECMRA information and that data be gathered at a centralized location.

Response: The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM, which is a Governmentwide system.

Comment: One respondent noted that it is unduly restrictive to allow only one contractor user per contract to view the data for that contract in ECMRA.

Response: The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM.

Comment: One respondent suggested that the rule should clarify the contractor's responsibilities in the event that the Government-populated information in ECMRA is incorrect.

Response: The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM. Contractors may contact the SAM Helpdesk or the contracting officer in the event that data needs to be updated in SAM.

Comment: One respondent suggested that the requiring activity, and not the contracting officer, be responsible for verifying the contractor's ECMRA compliance is documented.

Response: In accordance with FAR 1.602-2, the contracting officer is responsible for ensuring compliance with the terms of the contract.

Comment: A respondent suggested that a DD Form 1423, Contract Data Requirements List, be included as a requirement in the rule.

Response: The proposed DFARS clauses convey the requirement for contractor reporting to SAM; therefore, a DD Form 1423 is not necessary.

7. Proposed Clause Changes

Comment: One respondent requested clarification regarding the prescription for the clause at DFARS 252.237-70XX with regard to indefinite-delivery, indefinite-quantity contracts. The respondent asked whether the clause must be included only if the expected dollar value of the individual task or delivery orders will exceed the SAT or if the total dollar value of all the task or delivery orders issued under the contract will exceed the SAT.

Response: The rule requires information reporting on each task order that meets the criteria and threshold for service contract reporting. The proposed rule does not require reporting at the contract level for indefinite-delivery contracts. The rule proposes a basic clause that applies to solicitations, contracts (other than indefinite-delivery contracts), and task orders awarded under non-DoD indefinite-delivery contracts; and an alternate clause that applies to DoD issued solicitations and contracts for indefinite-delivery type contracts. The basic clause and the alternate clause implement the reporting requirement for contracts and/or task orders that

have a total estimated value, including options, exceeding \$3 million and are for services in the four specified service acquisition portfolio groups. The basic clause advises contractors to report on the effort performed under the contract or the task order awarded under a non-DoD contract. The alternate clause advises the contractor to report on the effort performed under each task order awarded under a DoD indefinite-delivery contract that meets the criteria and threshold for service contract reporting.

Comment: One respondent suggested that the rule include a link to the product service code (PSC) manual available at www.acquisition.gov, to aid contracting personnel in determining the types of services to which the proposed rule applies or does not apply.

Response: The applicable PSCs will be identified in the DFARS Procedures, Guidance, and Information upon publication of the final rule.

Comment: One respondent suggested that the rule require the contracting officer to prepare a determination designating specifically the services to which the ECMRA reporting requirement would apply.

Response: It is not necessary for the contracting officer to prepare such a determination or provide further clarification to the contractor. This proposed rule only applies the requirement to report in SAM, via the DFARS clause, to those contracts and orders that meet the thresholds and criteria for service contract reporting, as expressed in 10 U.S.C. 2330a.

8. Definition Clarification

Comment: One respondent noted that many terms, including “direct labor hours” and “cost data,” are not defined in the proposed rule.

Response: This proposed rule only uses the term “direct labor hours,” which is defined in FAR 2.101.

Comment: Two respondents recommended that the term “services” be better defined for the purposes of informing both the Government and contractor when the proposed rule applies and when the contractor is responsible for entering data into ECMRA.

Response: This proposed rule only applies the requirement to report in SAM, via the DFARS clause, to those contracts and orders that meet or are expected to meet the thresholds and criteria for service contract reporting, as expressed in 10 U.S.C. 2330a. When awarded a contract, or task order placed under a non-DoD contract, this rule proposes a basic clause to notify contractors of the requirement to report in SAM on the effort performed under the award. When awarded an indefinite-delivery contract under which orders will be placed that may meet the thresholds and criteria for service contract reporting, this rule proposes an alternate clause to notify contractors of the requirement to report in SAM on the effort performed for a task order issued under the contract that meets the service contract reporting thresholds and criteria.

9. Major Rule

Comment: One respondent suggested that the Government reconsider whether this is a major rule. Title 5 U.S.C. 804 defines a major rule as one which the Office of Management and Budget (OMB) determines will cause a major increase in costs or prices for individual industries, or have a significant adverse effect on competition, employment, investment, productivity, or innovation. This rule imposes new reporting requirements, particularly for commercial item contractors that provide professional services and supplies. These contractors would not have been previously subject to the type of manpower reporting required by this rule. For small businesses, the need to build compliant procedures and automated systems could be a barrier to participating in the federal market. This is particularly the case when the cumulative effect of multiple and duplicative data reporting requirements is considered. The ultimate result over time will be a decrease in competition and innovation in the Federal market.

Response: This rule is not a major rule in that it does not have a significant impact on competition, employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign enterprises. Similar reporting requirements for civilian agencies have appeared in FAR subpart 4.17 since 2014, so many contractors already have experience with this type of reporting requirement. The scope of this rule has been decreased, because 10 U.S.C. 2330a, as amended by section 812 of the NDAA for FY 2017, limits data collection to four service acquisition portfolios and applies only to contracts and task orders exceeding \$3 million in total estimated value, including options.

10. Initial Regulatory Flexibility Analysis

Comment: Two respondents stated that the proposed reporting system did not have a goal of minimizing the burden to small business and that the constant flow of new regulations to businesses have little regard for the benefit to the Government or burden on businesses.

Response: The burden applied to small businesses is the minimum consistent with applicable laws, Executive orders, regulations, and prudent business practices. The information collection requirement has been narrowly tailored to maximize the use of existing records already maintained by contractors and by the Government. To further minimize the impact, DoD is adopting the existing system and process used by the rest of the Government to obtain the requisite information from contractors, which maintains a familiar and consistent reporting requirement for contractors; and the information is collected electronically, help-desk support and user guides are available for SAM, and reporting requirements will be limited to a small number of data elements to facilitate ease of reporting and reduce contractor burden. In addition, the NDAA for FY 2017 raised the threshold for reporting to \$3 million from the SAT and limited the data reporting to four service acquisition portfolio groups.

11. Paperwork Reduction Act

a. Government Systems Already in Place

Comment: Two respondents stated that the Government has systems in place for collecting the required data and the rule would require duplicative contractor reporting that is not necessary for compliance. Two respondents noted that there will be two rules, one for DoD and the other non-DoD, which could potentially apply under a single contract vehicle and that determining which set of rules apply will be burdensome.

Response: The rule will not require duplicative reporting by contractors. The DoD and non-DoD reporting requirements are based on separate statutes. Further, the information collection requirement associated with this DFARS Case 2018–D063, once cleared by OMB, will supersede the reporting requirements approved under OMB Control Number 0704–0491, entitled “DoD Inventory of Contracts for Services Compliance.” Contracts awarded by DoD, or on behalf of DoD, will contain the proposed DFARS clauses.

b. Paperwork Reduction Act Constraints

Comment: One respondent stated that the rule conflicts with Paperwork Reduction Act constraints on rulemaking, namely that the rule must: (1) Be necessary for the proper performance of the agency; (2) not be duplicative of information otherwise reasonably accessible to the agency; and (3) reduce, to the extent practicable and appropriate, the burden on persons who shall provide information to or for the agency.

Response: The rule complies with the Paperwork Reduction Act. The information collection is necessary in order for DoD to meet the requirement of 10 U.S.C. 2330a, as amended, to collect certain service contract data and report annually to Congress. The rule is not duplicative of information otherwise reasonably accessible to DoD. DoD systems do not currently collect all of the data elements required by the statute.

The information collection requirement has been narrowly tailored to minimize the impact of reporting and maximize the use of existing records already maintained by contractors and by the Government. To minimize the impact, the information will be collected electronically, help-desk support will be provided to users, and reporting requirements will be limited to a small number of data elements.

c. Burden Estimates

Comment: Two respondents commented that the rule underestimates the number of contractors that will be impacted. One respondent indicated that the total estimated number of respondents of 13,269, including 7,962 for small businesses, seems low, since the GSA Schedules alone have 20,000 contractors and 80% of the contractors are small businesses. One respondent stated that the estimate for the total number of annual responses of approximately 54,000 appears low. In addition, several respondents commented that the estimate of an average of 1.4 hours per response is too low, citing reasons such as: (1) The billions of dollars in services for which DoD contracts for annually and the corresponding volume of data required to be entered, (2) the limitation of the ECMRA bulk upload capability, or (3) the impact on response time resulting from the flow down of the reporting requirement to subcontractors. One respondent stated that the burden is disproportionately high for small businesses that are less

likely to have the necessary internal infrastructure.

Response: The estimated burdens for respondents and responses published in the previously proposed rule have been updated to reflect the revised requirements of 10 U.S.C. 2330a, as amended.

Following are summaries of public comments in response to proposed rule 2018-D063 (85 FR 34575, June 5, 2020), with DoD's responses. The comments are summarized by topic, not by respondent. The responses will be published in final rule 2018-D063.

1. Exemptions to Rule

Comment: Two respondents recommended that commercial service contracts be exempt from the rule, as companies providing commercial services may not have a system to track labor hours by contract and/or by subcontractor and may need to implement a new system to comply with the rule. Alternately, a respondent recommended that specific contracts or certain types of commercial contracts be exempt from the reporting requirements for the rule.

Response: The statute requires DoD to collect data on specific service purchases in excess of \$3 million, regardless of contract type, and does not provide for exemptions to the reporting requirement. As a result, the rule applies to all contracts that meet the criteria at 10 U.S.C. 2330a(a) and does not provide for exemptions.

2. Usefulness of Data

Comment: A respondent advised that the rule weakens the utility of service contract inventories by limiting them to staff augmentation contracts and contracts closely associated with inherently governmental functions, and preventing the adoption of the Enterprise-wide Contractor Manpower Reporting Application (ECMRA).

Response: The rule implements the statute and supports DoD total workforce management efforts by requiring reporting on contracts valued in excess of \$3 million for logistics management services, equipment-related services, knowledge-based services, or electronics and communications services. The rule does not further limit the reporting requirement to only those contracts that are also staff augmentation contracts or contracts for services closely associated with inherently governmental functions.

The rule also incorporates the policy of Secretary of Defense Memorandum, *Revised Department of Defense Contractor Manpower Reporting Initiative*, dated October 16, 2019, jointly signed by the Under Secretary of Defense (USD) for Acquisition and Sustainment and Acting USD for Personnel and Readiness. The memo requires reporting of manpower data relating to the performance of services be done in the System for Award Management (SAM), instead of ECMRA, in order to be consistent with the existing service contract reporting requirements of the FAR.

Comment: A respondent expressed concern that the rule only requires reporting

on the aggregate labor hours performed under the contract annually and, because of this, DoD will not have the detailed information it needs to determine whether contractors are performing inherently governmental functions.

Response: The rule requires the collection of data that supplements information already available to DoD. The rule assists in the evaluation of DoD's workforce mix and the extent to which the Department's needs are being met through contracted support. It is not necessary to distinguish between the contractor and subcontractor labor hours performed under a contract in order to meet the requirements of the statute or support DoD's total workforce management efforts.

Comment: A respondent expressed concern that the rule's collection of labor data cannot be meaningfully used by officials, as the annual reporting cycle will not produce the timely, relevant data needed to inform decision making.

Response: The rule implements the reporting cycle required by 10 U.S.C. 2330a. The statute requires DoD, by the end of the third quarter of each fiscal year, to prepare an annual inventory of the activities performed during the preceding fiscal year pursuant to staff augmentation contracts and contracts closely associated with inherently governmental functions. To support this requirement, the rule requires contractors to input contract data for the preceding fiscal year in SAM no later than October 31 of each fiscal year. The rule's October 31 deadline facilitates DoD's compilation and submission of the annual inventory and summary before the third quarter of each fiscal year, as required by 10 U.S.C. 2330a.

3. Difficulties Reporting Direct Labor Hour Data

Comment: Two respondents advised that the reporting requirement of the rule may be difficult to meet, because many commercial services are offered at a fixed price and are not broken down into direct labor hours, and subcontractors may consider the data sensitive or proprietary and be hesitant to provide it to contractors. A respondent advised that, as a result of these issues, the rule may create cost and competition implications for the supply chain because contractors may have to create and price contractual requirements to obtain the information from their subcontractors, and the number of available vendors may be restricted if they choose not to provide the data required by the rule.

As an alternative solution, two respondents recommended that the rule limit the collection of data to the list explicitly identified at 10 U.S.C. 2330a(b). Respondents suggested that DoD could apply the methodology used to determine military or civilian full-time equivalents to the data at 10 U.S.C. 2330a(b) in order to fulfill the inventory summary required by 10 U.S.C. 2330a(c).

Response: The statute requires that "the number of contractor employees, expressed as full-time equivalents for direct labor, using direct labor hours and associated cost data collected from contractors" be provided for each contract included in the annual inventory. This information is not included in the list of data at 10 U.S.C. 2330a(b).

While the Federal Procurement Data System provides DoD with a majority of the requisite data, DoD cannot meet all of the statutory data requirements of the inventory summary, or support the needs of DoD's total workforce management efforts, using only the data listed at 10 U.S.C. 2330a(b). Therefore, this rule requires contractors to provide direct labor hour and cost data to implement the statute and support DoD workforce planning and analysis.

To relieve burden and minimize impact for contractors and subcontractors, the rule requires contractors to report the total number of hours (both contractor and subcontractor) worked under the contract for the entire fiscal year and does not require a breakdown of those hours by employee type or by subcontractor.

4. Reporting of Subcontractor Data

Comment: A respondent recommended that the requirement to report subcontractor data be limited to first-tier subcontractors, which is consistent with the current FAR requirements for civilian agencies.

Response: Concur. To reduce burden on and maintain consistency for contractors, DoD intends for the reporting requirements and procedures of this rule to be as similar as possible to the existing service contract reporting requirements of the FAR. The intent of the rule is for contractors to report the total number of direct labor hours expended in performing the contracted services during the preceding fiscal year. The total number of hours reported to SAM should represent a combined total of the number of direct labor hours the contractor itself expended performing the contracted services, and the total number of direct labor hours any of the contractor's subcontractors expended performing the contracted services. To clarify this intent, the rule is amended to replace the term "subcontract" with "first-tier subcontract," based on the definition at FAR 4.1701.

Comment: A respondent recommended the rule be revised to specifically authorize contractors to rely on the direct labor hour data received from subcontractors when reporting total labor hours annually in SAM.

Response: The rule simply requires the reporting of the direct labor hours expended on the contracted service for the preceding fiscal year. The rule does not prescribe or suggest a specific methodology that contractors must use to gather this data on its applicable subcontracts, or prescribe a reporting requirement for subcontractors via the flow-down of the contract clause. Therefore, an amendment to the rule to authorize a specific methodology for gathering the data is not necessary.

c. A notice of submission to OMB for clearance of this information collection was published in the *Federal Register* on December 29, 2020 (85 FR 85604).

9. Gifts or Payment

No payment or gift will be provided to respondents under this information requirement.

10. Confidentiality

This information is disclosed only to the extent consistent with statutory requirements, current regulations, and prudent business practices. The collection of information does not include and personally identifiable information; therefore, no Privacy Impact Assessment or Privacy Act System of Records Notice is required.

11. Sensitive questions

No sensitive questions are involved.

12. Respondent Burden and its Labor Costs

Estimation of Respondent Burden

The estimated burden hours of the information collection and the estimated annualized cost to the public are based on information obtained from FPDS for FY 2016 through FY 2018 for DoD applicable awards and estimates of responses and processing times by contracting professionals familiar with the service acquisition reporting process.

Existing information technology is used to collect the covered information to the maximum extent practicable. For example, DoD uses FPDS, an existing source of contract information for the Federal Government, to provide a majority of the information required by 10 U.S.C. 2330a. The data that is not available in FPDS is entered by the contractor in SAM. The clause at DFARS 252.204-7023 and its alternate I require contractors to report in SAM on an annual basis a DoD contract or task order that is valued in excess of \$3 million and is for one of the following acquisition portfolio groups: logistics management services, equipment-related services, knowledge-based services, and electronics and communications services. When applicable, contractors will be required to report annually the total dollar amount invoiced for and the total number of direct labor hours expended on services performed under the contract or task order during the preceding fiscal year. The total number of direct labor hours and dollars reported to SAM are the total of both the contractor and its subcontractors' hours and dollars.

The new basic DFARS clause and the alternate I clause advise applicable contractors of the requirements for reporting data in SAM. When awarded a contract or task order placed under a non-DoD contract, DFARS subpart 204.17 requires use of the basic clause to notify contractors of the requirement to report in SAM on the effort performed under the award. When awarded an indefinite-delivery contract under which orders will be placed that may meet the thresholds and criteria for service contract reporting, subpart 204.17 requires use of the alternate I clause to notify contractors of the requirement to report in SAM on the effort performed for a task order issued under the contract that meets the service contract reporting thresholds and criteria.

The notes below summarize the analysis and assumptions involved in estimating the information collection requirements. The estimated annual cost to the public is as follows:

| | |
|---|---------------------|
| Estimation of Respondent Burden Hours: | |
| Number of respondents (See Note (1)) | 1,934 |
| Responses per respondent | 2.267 |
| Number of responses (See Note (1)) | 4,384 |
| Hours per response (See Note (2)) | 2 |
| Estimated hours (number of responses multiplied hours per response) | 8,768 |
| Cost per hour (hourly wage) (See Note (3)) | \$83.32 |
| Cost per response | \$166.64 |
| Annual public burden (estimated hours multiplied by cost per hour) | \$730,550 (rounded) |

Notes:

- (1) *Number of respondents/responses* – The number of respondents and responses is based on FPDS data for FY 2016 through FY 2018 that shows the average number of contracts and orders awarded annually by DoD that have a value exceeding \$3M and that are for services in one of the four service acquisition portfolios (as identified by Product Service Code in OUSD(AT&L) DPAP memorandum, “Taxonomy for the Acquisition of Services and Supplies & Equipment,” dated August 27, 2012). DoD awards approximately 4,386 contracts to 1,934 unique contractors each year that would meet the reporting criteria.
- (2) *Hours per response* – Contractors are required to report annually for each contract or order that is subject to the reporting requirements of 10 U.S.C. 2330a. DoD subject matter experts estimate that it takes approximately 2 hours for a Journeyman-level contractor employee to submit a report.
- (3) *Cost per Hour* - Hourly wage was developed based on the 2020 salary table for GS12/Step 5 salary from the OPM General Schedule for Rest of the United States of \$41.66, and includes an overhead rate of 100%.

13. Respondent Costs Other Than Burden Hour Costs

DoD does not estimate any annual cost burden for respondents other than the burden hours reported in item 12.

14. Cost to the Federal Government

The following labor estimates are based on annually reviewing contractor-provided service contract data in SAM and ensuring contractor reporting compliance.

| | |
|--|-------|
| Estimation of Government Burden Hours: | |
| Number of respondents (See Note (1)) | 4,386 |
| Responses per respondent | 1 |
| Number of responses(See Note (1)) | 4,386 |

| | |
|--|-----------|
| Hours per response | 1.5 |
| Estimated hours (number of responses multiplied hours per response) | 6,579 |
| Cost per hour (hourly wage) (See Note (2)) | \$83.32 |
| Annual Government burden (estimated hours multiplied by cost per hour) | \$548,162 |

Notes:

- (1) *Number of respondents/responses* – This number is based on the average of FPDS data for FY 2016 through FY 2018, as described in Note 1 and 2 of Paragraph 12 above.
- (2) *Cost per Hour* – See Note 3 in Paragraph 12 above.

15. Reasons for Change in Burden

This is a new information collection associated with this rulemaking, which implements a new DFARS clause. DoD previously submitted a request to OMB for an information collection associated with the proposed rule for DFARS Case 2012-D051, Service Contract Reporting. Since the publication of that proposed rule on June 5, 2014 (79 FR 32522), section 812 of the National Defense Authorization Act for FY 2017 revised the statutory requirements for reporting on services contracts to require reporting on fewer contracts. Therefore, the burden is lower than the estimate previously submitted.

16. Publication of Results

Results of this information collection will not be tabulated or published.

17. Non-Display of OMB Expiration Date

DoD is not requesting approval to omit display of the expiration date of OMB approval on the instrument of collection.

18. Exceptions to “Certification for Paperwork Reduction Submissions”

There are no exceptions to the certification accompanying the Paperwork Reduction Act submission.