

DRAFT SUPPORTING STATEMENT
FOR
48 CFR CHAPTER 20

U.S. NUCLEAR REGULATORY COMMISSION
ACQUISITION REGULATION
REVISION
(3150-0169)

Description of the Information Collection

NRC regulations in 48 CFR Chapter 20 implement and supplement the government-wide Federal Acquisition Regulation (FAR) and ensure that the policies governing the procurement of goods and services within the U.S. Nuclear Regulatory Commission (NRC) satisfy the needs of the agency. The Nuclear Regulatory Commission Acquisition Regulation (NRCAR) includes policies, procedures, solicitation provisions, and contract clauses needed to ensure effective and efficient evaluation, negotiation, and administration of procurements.

A. Justification

1. Need For and Practicable Utility of the Information Collection:

Section 2009.570-3(b)(1) and (2). This section implements the statute (42 U.S.C. Sec. 2221, Sec. 170A of the Atomic Energy Act of 1954, as amended), which governs conflicts of interest pertaining to contract award. It requires that the offeror or contractor disclose information concerning relationships that may be potential conflicts of interest under certain circumstances which are listed. If there is an indication of a potential for a conflict of interest, the contracting officer may request specific information or may require special clauses. The burden associated with this requirement is covered under §2052.209-71 "Contractor Organizational Conflicts of Interest (representation)". It includes information needed to make conflict of interest determinations on a case-by-case basis.

Section 2009.570-3(c). This section provides conflict of interest policy application guidance. Because the NRC does not predetermine conflict of interest issues before receiving offers, this information helps organizations decide whether to expend bid and proposal costs if there is a possibility of ineligibility for award due to a conflict of interest determination. The burden associated with this requirement is covered under paragraphs (d)(2), (d)(3), and (f) of §2052.209-72 "Contractor Organizational Conflicts of Interest."

Section 2009.570-5(b). This section states that if it is determined from the nature of a proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with §2009.570-9, neutralized through the use of an appropriate special contract clause which may be negotiated with the offeror. The burden associated with this requirement is minimal.

Section 2009.570-8. This section states that the contracting officer shall require offerors and contractors to submit a representation statement from all subcontractors (other than a supply subcontractor) and consultants performing

services in excess of \$10,000 that award of the contract or modification does not involve conflict of interest situations. The burden for this requirement, which flows down from the prime to the subcontractor, is covered under §2052.209-72, "Contractor Organizational Conflicts of Interest."

Section 2014.201-670(b). This section requires all bidders to list previous/current contracts for a period of time specified by the contracting officer in which the bidder was the prime or principle subcontractor. This information will assist the contracting officer to make a determination of responsibility. In some instances where there is little or no procurement history available, information concerning bidder qualifications and past experience enables the contracting officer to query the technical and contracting points of contact identified and ascertain the bidder's performance record, integrity, and business ethics. The burden for this requirement is covered under §2052.214-71 "Bidder Qualifications and Past Experience."

Section 2027.305-3 (a) and (b). These sections pertain to contractor reporting requirements during contract closeout procedures. Paragraph (a) of this Section requires the contractor to report on any patents, copyrights, or royalties attained using any portion of the contract funds. If the contractor did not earn any patents, copyrights or royalties using any portion of contract funds, paragraph (b) of this Section requires the contractor to submit a written determination to this effect before final payment and closeout of the contract. The requirements of paragraphs (a) and (b) are necessary to ensure that the contractor has not generated work to which the Federal government might have technical or economic rights and brings the NRCAR into conformance with FAR Part 27.504-3(a). This FAR Part states that "Agencies shall maintain appropriate procedures to protect the Government's interest and to check that subject inventories are identified and disclosed."

Section 2042.570-1. This section requires the contractor to provide a copy of the NRC Differing Professional Views procedures to all its employees performing under the contract and to all subcontractors, who in turn, shall provide a copy of the procedure to its employees so that all are aware of NRC's policy. NRC's policy is to maintain a working environment that encourages expression of best professional judgments, even though these may differ from prevailing NRC staff view, disagree with a management decision or policy position, or take issue with proposed or established agency practices. The procedures cited under this Section allow the contractor a means to express disagreement with the NRC staff. The burden for this section is included under §2052.242-70 "Resolving NRC Contractor Differing Professional Views" and §2052.242-71 "Procedures for Resolving NRC Contractor Differing Professional Views."

Section 2042.803(a)(2)(i). This section states that the contractor may submit a written claim to the contracting officer for reimbursement of a disallowed cost. This procedure allows an alternative to filing a formal claim under the Disputes clause.

Section 2042.803(b). This section states that when audit reports or other notifications question costs or consider them unallowable, the contracting officer shall resolve all cost issues through discussions with the contractor and/or auditor, whenever possible, within six months of receipt of the audit report. The resolution process is dependent on a number of inputs including the contractor's. Six months is a realistic time frame based on experience in resolving audit cost issues.

Section 2045.371(b). This section requires contractors to send a copy of each Financial Status Report to the Chief, Property and Acquisition Oversight Branch, whenever the Financial Status Report references acquisition of, or change in status of, contractor-held property purchased with government funds valued at the time of purchase at \$50,000 or more. This amount is the threshold for detailed reporting of capitalized property. Capital property is recorded as an asset in the agency's financial statement. The NRC surveyed several other agencies to determine their reporting requirements for capitalized equipment. As a result of that survey, the agency determined that the threshold of \$50,000 for detailed reporting of capitalized equipment will maintain the integrity of the contractor's reporting system and preserve, at a meaningful level, NRC's right to recover capitalized equipment. The burden for this requirement is stated under §2052.211-72 "Financial Status Report" and §2052.211-72 "Financial Status Report - Alternate 1."

Section 2052.204-70(b). This section requires the contractor, upon completion or termination of the contract to transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of the contract. If contractor retention of classified material is required after termination of the contract, the contractor must complete a certificate of possession. This certificate must identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their period of retention, if known. In addition to Executive Orders, Statutes and other directives which apply to the security systems of all Federal agencies (including the Department of Defense), NRC's security system is also based on the Atomic Energy Act (AEA) of 1954, as amended. Specifically Chapter 12, Section 145 of the AEA places certain restrictions on the control of NRC information as it relates to contracts. These restrictions/requirements have been incorporated into NRC's security system and must be adhered to by contractors requiring access to classified information. This clause is necessary to ensure that any restricted data and classified information in a contractor's possession during or at the conclusion of contract performance is protected against sabotage, espionage, loss or theft.

Section 2052.204-70(j). This section requires that the contractor insert provisions similar to those found in §2052.204-70(b) through (i) in all subcontracts and purchase orders under the contract, to safeguard classified information. [See statement of need at 2052.204-70(b) above.]

Section 2052.204-70(k). This section requires that the contractor assign classifications to all documents, materials, and equipment originated or generated by the contractor in accordance with the Commission's security

requirements to safeguard classified information and that every subcontractor must comply with those agency security requirements. [See statement of need at 2052.204-70(b) above.]

Section 2052.204-71 This section requires that all contractor personnel obtain, display, safeguard, and return identification badges in accordance with agency procedures. Because the NRC is a secure facility with perimeter access control, all NRC employees and contractor employees needing frequent access to the NRC facilities must display current identification badges. All contractors to whom this clause applies must also safeguard classified information and safeguard against unauthorized access to other Government records or data.

Section 2052.209-70. This section requires the offeror to provide identifying information for each case where any current/former NRC employees (including special government employees performing services as experts, advisors, consultants, or members of advisory committees) have been or will be involved, directly or indirectly, in developing the offer, negotiating on behalf of the offeror, or managing, administering, or performing any contract, consultant agreement or subcontract resulting from the offeror. This requirement assures that conflict of interests are avoided and fairness is maintained during the selection process.

Section 2052.209-71(a). This section requires the offeror to provide a written description of all relevant factors to be considered by the contracting officer if a contractor represents that a potential organizational conflict of interest may exist. This information is necessary to permit NRC to make a fair analysis of such situations.

Section 2052.209-72(c)(1) and (d)(2). These sections require the contractor to make an immediate and full disclosure in writing to the contracting officer if organizational conflict of interests are discovered after contract award. Although the basic principles underlying FAR Subpart 9.5, Organizational Conflicts of Interest, are identical to the NRC rule, this clause is needed because the NRC procedures to implement that policy are substantially different. NRC's procedures are dictated in large part by Section 170A of the Atomic Energy Act, (Section 8 of Public Law 95-601, Section 170A to Public Law 83-703, 68 Stat. 919, as amended (42 U.S.C. Ch. 14)). This section of the Atomic Energy Act requires the NRC to request information from prospective contractors regarding conflict of interests and evaluate the information prior to contract award. It is this active role of requesting and evaluating information concerning conflict of interest situations that makes agency procedures different from those intended by the FAR. This clause puts into effect agency policy of avoiding, eliminating or neutralizing contractor organizational conflict of interests. This objective is achieved by requiring prospective contractors to submit information describing relationships, if any, which may give rise to actual or potential conflict of interests if awarded the contract. Since determinations regarding contractor conflict of interests cannot be made routinely, such contractor supplied information is essential.

Section 2052.209-72(d)(3). This section requires the contractor performing a task-order type contract to disclose all proposed new work involving NRC licensees or applicants which comes within the scope of work of the underlying contract at least 15 days before the proposed award date unless the contractor

provides a written justification demonstrating urgency and due diligence to discover and disclose new work. This information is necessary to permit NRC to make a fair analysis and to avoid conflict of interest situations.

Section 2052.209-72(f). This section requires the contractor to include the Contractor Organizational Conflict of Interest clause in subcontracts. The terms "contract", "contractor", and "contracting officer", must be appropriately modified to preserve the Government's rights.

Section 2052.211-70. This section requires that all technical reports and technical progress reports be prepared in accordance with the NRC's Management Directive 3.8, "Unclassified Contractor and Grantee Publications in the NUREG Series." The clause alerts the offeror to the requirements of the chapter. The prescription at §2011.104-70(a) and the prescription under the clause state that the contracting officer may alter the clause prior to issuance of the solicitation or during competition by solicitation amendment. Insignificant changes to the clause may be made by the contracting officer on a case-by-case basis during negotiations, without a solicitation amendment.

Section 2052.211-71. This section provides the requirements for Technical Progress Reports which the offerors may consider in preparing a proposal and as guidance to the contractor during performance of the contract. This information is necessary to ensure efficiency of the contractor's report preparation and the NRC's review of these reports. The requirements of OMB Circular A-110 are applicable only to certain financial assistance awards, and are not appropriate for NRC contracts. This clause is prescribed by §2011.104-70(b) which emphasizes that the reporting requirements should be set at a meaningful and productive frequency for each contract, considering the size and complexity of the particular project or program. The technical progress reports, normally provided under cost-plus-fixed-fee contracts only, are necessary for staff assessment, surveillance and enforcement of technical performance.

Section 2052.211-72. This section provides the Financial Status Report requirements which the offerors may consider in preparing a proposal and as guidance to the contractor during performance of the contract. As stated in the justification above in §2052.211-71, the requirements of OMB A-110 are applicable only to certain financial assistance awards and are not appropriate for NRC contracts. This section requires the contractor to send a copy of the financial status report, normally provided monthly, to the Chief, Property and Acquisition Oversight Branch, Division of Contracts and Property Management, Office of Administration whenever it references the acquisition of, or changes in the status of, contractor-held property acquired with government funds valued at the time of purchase at \$50,000 or more. Both the technical progress and financial status reports are due within 15 calendar days after the end of the report period. This due date accommodates the accounting system of most commercial contractors, and educational and other non-profit institutions. If this due date causes a hardship for a contractor, another date is negotiated and agreed upon. This due date also enables the staff to review the report as close to "real time" as can reasonably be required. The financial status report is necessary to provide detailed cost information and is analyzed in concert with the technical progress report to ensure consistence of progress with costs expended. These reports are analyzed by staff to ensure all costs are allocable

and allowable and to provide the basis for approving payment of the contractor's monthly invoice.

Section 2052.211-72 Alternate 1. This section is used instead of §2052.211-72 when no contractor spending plan is required. The justification for the clause is addressed above under §2052.211-72.

Section 2052.214-71. This section requires the bidder to provide information on previous and current contracts so that the contracting officer may determine responsibility. Past experience is relevant to determining responsibility prior to award, and timely awards depend on this minimal information to be available. Determination of responsibility is required by FAR 14.407-2.

Section 2052.214-72(e). This section requires bidders to submit, on request, statements concerning their ability to meet any of the minimum standards set forth in FAR 9.104, samples of work, and identifying information on clients. This information is necessary to assess whether the bidder is responsible within the meaning of FAR 9.1 and whether the bidder possess qualifications that are conducive to the work under a particular contract.

Section 2052.214-74 and 2052.215-74. If a bidder or a contractor wants his copies of a bid or proposal returned, he must state that request in a cover letter accompanying these documents. Such advance notice permits the contracting activity to automatically dispose of excess bid or proposal copies of offers in a timely manner.

Section 2052.215-70(b). This section requires that the contractor immediately notify the contracting officer if any key personnel become unavailable for contract work for a continuous period exceeding 30 work days, or are expected to devote substantially less effort to the work than indicated in the contractor's proposal or initially anticipated by the contractor. The contractor shall promptly replace key personnel with personnel of at least substantially equal ability and qualifications subject to the concurrence of the contracting officer. This requirement ensures that the project continues to be managed by competent personnel.

Section 2052.215-70(c). This section requires the contractor to submit a written request to the contracting officer for approval of substitutions for key personnel. This written request must contain a detailed explanation of the circumstances necessitating the proposed substitutions, a complete resume for the proposed substitute and other information requested by the contracting officer to evaluate the proposed substitution. The requirement of this section is to ensure that the project continues to be managed by competent personnel in accordance with the contract.

Section 2052.215-71(f). This section requires the contractor to notify the contracting officer in writing within five days after the receipt of any instruction or technical direction by the project officer that is not within the scope of work, and to request the contracting officer to modify the contract accordingly. This requirement is in the best interest of all parties and serves to avoid delays and expense associated with disputes that occur as a result of an unauthorized action.

Sections 2052.215-75, 2052.215-75, Alternate 1, and 2052.215-75 Alternate 2. These sections provide proposal preparation instructions for Section L of NRC solicitations which inform offerors of technical and cost proposal content, presentation and format required by NRC, and allow streamlined oral presentations in lieu of burdensome written proposal material. These instructions serve as a guide for offerors in preparing technical and cost proposals, establish uniformity and facilitate proposal evaluation.

Sections 2052.215-77(a) and (d). These sections provide for prior NRC approval of foreign travel and incurred travel expenses for those contracts which require travel but do not set a specific ceiling amount on that travel. Section (a) requires that all foreign travel requests be submitted in advance on NRC Form 445, "Request for Approval of Official Foreign Travel". This form is used to specify the travel purpose, names of travelers, estimated foreign travel costs, and NRC approval of the foreign travel. The NRC assumes no obligation for foreign travel expenses incurred until this form has been signed by the Chairman or Executive Council member (e.g., Office Director, or Regional Administrator). NRC Form 445 is cleared separately under decision number 3150-0193. Section (d) requires the contractor to notify the contracting officer in accordance with the FAR Limitations of Cost clause included in the contract when, at any time, the contractor learns that travel expenses will cause the contractor to exceed the estimated contract costs. This notification serves as a means to help control contract costs in a timely manner.

Sections 2052.215-78(b) and (d). This information collection requirement is used when a total travel expenditure ceiling is specified. Section (b) requires that all foreign travel requests be submitted on NRC Form 445, "Request for Approval of Official Foreign Travel". This form is used to specify the travel purpose, names of travelers, estimated foreign travel costs, and NRC approval of the foreign travel. The NRC assumes no obligation for foreign travel expenses incurred until this form has been signed by the Chairman or Executive Council member (e.g., Office Director, or Regional Administrator). NRC Form 445 is cleared separately under decision number 3150-0193. Section (d) requires the contractor to notify the contracting officer in accordance with the FAR Limitations of Cost clause included in the contract when, at any time, the contractor learns that travel expenses will cause the contractor to exceed the estimated contract costs. This notification serves as a means to help control contract costs in a timely manner.

Section 2052.216-72. This section allows the contractor to give an oral presentation of his plan to complete the task order requirements instead of submitting a detailed written technical proposal. The requirement for submittal of a contractor spending plan is still required if the task order is in excess of \$100,000. However, the contractor is not required to submit detailed elements of cost. Instead, the contractor is instructed to support cost data to establish the reasonableness of the amount proposed.

Section 2052.227-70. This section provides that all drawings, designs, specifications and other data associated with the contract work are the property of the Government, must be made available for inspection by the Commission, and must be delivered to the Government, or disposed of in accordance with instructions from the contracting officer. This requirement is necessary to assure

that classified, highly sensitive, and high priority specifications and other data are secured throughout the life of the contract and after expiration of the contract. The clause is included in all contracts in which drawings, designs, specifications are involved, or where other data will be developed.

Section 2052.235-70(c). Prior to publication, the private contractor or university shall submit any proposed document to the contracting officer and project officer for review and approval. This clause alerts the contractor that NRC has 30 days to review the publication and reserves the right to approve or disapprove publication of the document. If the NRC disagrees with the proposed publication, this enables the agency to reserve the right to require that any publication not identify NRC's sponsorship of the work and that any associated publication costs shall be borne by the private contractor or university.

Section 2052.235-71. This section requires the contractor to take all reasonable precautions in the performance of work under a contract to protect the health and safety of its employees and members of the public, including reporting requirements. In the event the contractor fails to comply with this regulation, this clause allows the contracting officer to stop all work.

Section 2052.242-70. This section requires the contractor to provide a copy of "Procedures for Resolving Differing Professional Views" to all employees performing under this contract and to all subcontractors who shall, in turn, provide a copy to their employees so that all employees are aware of NRC's policy. The prescription for this clause is at §2042.570-2. NRC policy is to maintain a working environment that encourages expression of best professional judgments, even though these may differ from prevailing NRC staff view, disagree with a management decision or policy position, or take issue with proposed or established agency practices.

Section 2052.242-71. This section details the procedures that the contractor and the NRC staff follow upon receipt of a contractor's differing professional views submittal. Prior to incurring costs to document a differing professional view, the contractor shall determine if sufficient funds are available and request the NRC contracting officer for additional funding as necessary. The contractor shall submit each differing professional views statement in writing. The differing professional views statement should be brief, and summarize the NRC's view, describe the submitter's views and rationale, and include the consequences should the position not be adopted by the NRC. The prescription for this clause is at §2042.570-2. The procedures cited under this section allow the contractor a means to express disagreement with the NRC staff.

2. Agency Use of Information

This information is necessary to ensure that the agency's acquisition regulations comply with the FAR, and other applicable statutes and to ensure that public funds used for the acquisition of commercial goods and services are expended properly.

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection through the respondents' use of information technology.

NRC encourages the use of information technology and electronic commerce wherever possible while asserting that sensitive information be protected from improper disclosure and the integrity of the competitive procurement process be maintained.

4. Effort to Identify Duplication and Use of Similar Information

There is no similar information available. The Information Requirements Control Automated System (IRCAS) was searched to identify duplication. None was found. The nature of the collections (proposal components and reports of current activity specific to the contract) do not lend themselves to duplication. For evaluation of proposals, information conveyed in the proposal needs to be evaluated to assess the offeror's ability to successfully accomplish the prospective contract.

5. Effort to Reduce Small Business Burden

The information collection is structured to facilitate the effective and efficient evaluation of proposals, reporting and administration of contracts. Efforts have been made to keep the requirements for information to a minimum. The burden applied is minimal, consistent with applicable regulations and prudent business practices.

6. Consequences of Less Frequent Collection or Policy Activities if the Collection is Not Conducted or is Conducted Less Frequently

Proposal submission and certification are basically one-time collections associated with specific contract/solicitation situations or requirements. Less frequent reporting of technical progress and financial status would remove an effective mechanism needed to monitor contract performance and initiate appropriate remedial action to protect the interests of the Government.

7. Circumstances Which Justify Variation from OMB Guidelines

The following requirements are not consistent with OMB guidelines:

- Sections 2052.211-71 and 72 and Alternate require submittal of financial and technical reports on a monthly basis within 15 calendar days after the end of the reporting period. This time frame accommodates the accounting systems of most commercial contractors and educational and other non-profit institutions. The contractor's submittal of these reports more frequently than on a quarterly basis enables the project officer to analyze the need for technical direction, cost control, and the timely initiation of remedial action. This information is vital to achieve good contract administration.
- Section 2052.214-72(e) requires bidders, on request, to provide statements concerning their ability to meet minimum standards set forth in FAR 9.104. Response is needed in less than 30 days to allow timely award of contracts.
- Section 2052.215-70 requires contractors to immediately notify the contracting officer if any key personnel become unavailable for contract

work. Subsequent to contracting officer approval, the contractor must replace such personnel with personnel of equal ability and qualifications. This notification requirement serves as protection for the government from potential delays; or damage resulting from loss of key personnel.

- Section 2052.215-71(f) requires the contractor, within 5 days of receipt of any instruction or technical direction by a project officer, to notify the contracting officer in writing to modify the contract accordingly. This notification serves to avoid delays and expenses associated with disputes that occur as a result of an unauthorized action.

8. Consultations Outside the NRC

The opportunity for public comment has been published in the Federal Register.

9. Payment or Gift to Respondents.

Not Applicable

10. Confidentiality of Information

To the extent that certain information is proprietary or business confidential, procedures are in place to protect the information from improper disclosure.

11. Justification for Sensitive Questions

No sensitive information normally considered private or personal is required or requested.

12. Estimate of Burden and Burden Hours Cost

Table 2 provides a breakout of estimated costs to respondents to comply with NRCAR requirements. Cost to respondents is calculated at a rate of \$144 per hour, which is a fully burdened rate.

13. Estimate of Other Additional Costs

There is no cost to the contractor to store records or maintain equipment as the NRC does not require the contractor to keep any records under this rule.

14. Estimated Annualized Cost to the Federal Government

See Table 1 for breakout of estimated annualized costs. The estimated annual cost to the government is \$1,680,048, which is attributable to the streamlined proposal preparation instructions for competitive acquisitions as well as task order proposals, and certification requirements. The cost to the Government was derived from time expended by the contracting officers, contract specialists, and program personnel to ensure that offerors comply with the NRCAR instructions. This cost is fully recovered through license fees to NRC licensees pursuant to 10 CFR Parts 170 and/or 171.

15. Reason for Change in Burden

The estimated annual burden has decreased by 622 hours from 26,710 to 26,088 hours because of (1) a reduction in the number of contracts (from 80 to 5) for Section 2027.305-3(a) and (b) which requires contractor to report on any patents, copyrights, or royalties attained using any portion of the contract funds, and (2) a reduction in the number of bids (from 50 to 5) for Section 2052.214-71 which requires the bidder to provide information on previous and current contracts to make a determination of responsibility. There is a direct correlation between the reduction in responses and the reduction in burden. The hourly cost has increased from \$121 to \$144 per hour.

16. Publication for Statistical Use

This collection of information does not employ statistical methods.

17. Reason for Not Displaying the Expiration Date.

Not Applicable.

18. Exceptions to the Certification Statement.

Not Applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.