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General Comment

See attached file(s)

Attachments

SwRI comments on draft NRCAR 2021

**Comments from Southwest Research Institute on the
Draft Supporting Document and Impact Tables for
Proposed Rule for 48 CFR Chapter 20
U.S. Nuclear Regulatory Commission Acquisition Regulation (3150-0169)**

April 26, 2021

The following comments are provided by Southwest Research Institute® (SwRI® or the Institute) in response to a March 29, 2021 request from Ms. Caitlin Kimball of the U.S. Nuclear Regulatory Commission (NRC). SwRI hosts the NRC's only Federally Funded Research and Development Center (FFRDC), the Center for Nuclear Waste Regulatory Analyses (CNWRA). Answers are provided with respect to each of the four questions posed by NRC, based on review of the NRC Acquisition Regulations (NRCAR) materials available on Docket No. NRC-2020-0190. The comments that follow are based on SwRI's review of the Supporting Statement regarding the four topics identified in that document, as well as Table 3 Annual Reporting Burden and Table 4 Recordkeeping Burden presented in the Impact Tables.

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? SwRI did not identify any significant changes relative to the types of information that it historically has provided to NRC under its contracts and task orders. The primary categories of information that SwRI is requested to submit [other than certain special reporting requirements associated with the CNWRA® being a FFRDC] are identified in the Draft Supporting Statement. From a contractor's perspective, the information requested appears to be both necessary for NRC to perform its functions and to have practical utility. Furthermore, SwRI has found it to be more efficient to have these requirements clearly established in the NRCAR. Contractor responses to formally established reporting requirements such as these obviate the need for informally reporting to multiple parties within NRC as questions arise.
2. Is the burden estimate accurate? Table 3 Annual Reporting Burden and Table 4 Recordkeeping Burden identify the three main factors composing the burden estimate. These are the number of responses, the hours per response, and the cost per hour for such responses. Although the Supporting Statement indicates that NRC used its records to develop the values used in the computations, based on its more than 30 years of experience as an NRC contractor, SwRI has questions about specific values of these factors for several of the requirements contained in the NRCAR. SwRI offers the following observations and comments in response to this question.
 - a. Taking into consideration the wide range of reporting requirements and variations in the types of organizations responding to NRC, it is our view that the proposed fully loaded rate of \$279/hour is not unreasonable.
 - b. For Section 2009.570-5(b), NRC estimates 1 response per year for each contractor. In sharp contrast, over the past 5 years, SwRI has submitted an average of 13 such requests (ranging from 8 to 17 each year) for NRC evaluation and determination of whether there may be an impermissible Organizational Conflict of Interest (OCOI).
 - c. The estimate of 2 hours for responding to Section 2009.570-5(b) is appropriate for situations where an evaluation by the contractor identifies no potential for OCOI. If there is a potential for OCOI, however, development and submittal of the required information, response to any NRC questions or requests for additional information, and documentation and dissemination of the NRC conclusion within SwRI would take

- longer than this. A reasonable estimate based on long-term averages is about 5-7 hours for each situation where there is potential for OCOI.
- d. Beyond what is identified in Section 2009.570-5(b) for OCOI, NRC requires SwRI to evaluate individual/personal COI with respect to each employee, consultant, and subcontractor who works on NRC-funded contracts and task orders. Although not routinely transmitted to NRC, SwRI must maintain these records, involving approximately 35-45 individuals each year, for inspection by NRC. The preparation time for each of these evaluations averages about 3 hours/year. This cost impact of these individual COI evaluations is not included in either Table 3 or Table 4.
 - e. For Section 2014.201-670(b), Table 3 allocates 0.5 hours for a one-time disclosure of current and previous contracts. Although this may be appropriate for very small businesses, it significantly underestimates the time needed by other-than-small contractors like SwRI (which the Supporting Statement indicates comprise 48 percent of the total respondents) to identify, list, and provide relevant information to support NRC's evaluation. A more reasonable estimate is 5 hours/response.
 - f. In addressing Section 2052.204-70(k) in Table 3, the number of respondents (160) appears to be overestimated. This NRCAR requirement applies only to contractors conducting classified work and handling the associated classified information. The number of hours required per respondent appears to be underestimated significantly at 2 hours. A more reasonable estimate for the smaller number of contractors handling classified information would be 7-10 hours/year. The estimated impact in Table 4 Recordkeeping Burden of 20 hours/year appears to be reasonable.
 - g. Revision of the Table 3 entries regarding Section 2052.211-71 should be considered. Although these reports are required monthly, the table indicates only 3 Technical Progress Reports [referred to elsewhere as Monthly Letter Status Reports (MSLRs)] are required instead of 12. The preparation time of 3 hours/report is appropriate; in our organization, these reports average 3-4 hours for preparation per financial period. The companion Section 2052.211-72 on financial information included in MSLRs appropriately identifies 12 reports and provides a reasonable 3-hour/report time commitment.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected? SwRI offers the following specific comments. In addition, the Institute reserves the option of providing further comments and insights when the revised NRCAR is available after any revisions that the Office of Management and Budget may require.
- a. The initial sentence of Section A Justification of the Supporting Statement, which says "Confidential and proprietary information is protected in accordance with NRC regulations at 10 CFR 9.17(a) and 10 CFR 2.390(b)," provides an important assurance. The following statement that "However, no information normally considered confidential or proprietary is requested," is not consistent with SwRI experience; furthermore, the sentence could be struck without detracting from the NRC justification. Many SwRI clients prohibit disclosure of the contract scope of work; several, including commercial and government organizations, do not permit disclosure of their names.
 - b. SwRI recommends that the discussion of Section 2042.803(a)(2)(i) in Table 3 be clarified. The financial disputes covered in this section of the NRCAR are outside the scope of contractual requirements and NRC Management Directives regarding Differing Professional Opinions.

- c. The discussion in the Supporting Statement and text of NRCAR Section 2052.204-70(k) would benefit from clarification. Contrary to what is stated here, contractors have no authority to “assign classifications” to items that they have “originated or generated.” Only the Government can make such original classifications and contractors are limited to assigning derivative classifications only to the extent specifically authorized.
 - d. The discussion in the Supporting Statement and text of Section 2052.211-70 refers to Management Directive (MD) 3.8, which the agency has eliminated since the previous NRCAR update. It appears that MD 3.7 may be the most relevant citation. Furthermore, the discussion in the Supporting Statement would benefit from clarification that limits the requirement to “as directed by NRC.” Historically, most technical reports developed by SwRI have not been published as NUREGs, so adherence to the associated Management Directive has not been required and constitutes an unnecessary burden to NRC and the contractors.
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology? SwRI offers the following observations and suggestions in response to this question.
- a. SwRI already uses an internal workflow that takes advantage of available office automation technology, document sharing, and an integrated Financial Data System to develop, review, transmit, and respond to comments on submitted information.
 - b. Although the Supporting Statement identifies use of the Electronic Information Exchange (EIE) for submitting information, the kinds of information associated with NRCAR requirements that are identified in the review package do not appear to be within the scope of EIE. Consequently, it is unlikely that items submitted through EIE (erroneously in our understanding) would be seen and acted on by NRC contracting personnel. SwRI suggests revising the Supporting Statement to avoid confusion.
 - c. Recent adoption of the FedConnect system should facilitate the process of notifying contractors about directed opportunities for submitting task-order proposals, receiving responses from contractors, and obtaining approvals of contract and task-order modifications that originate with the Government.
 - d. The FedConnect system does not appear to accommodate contractor-originated requests. Instead, SwRI uses submission of MLSRs, email, and periodic meetings with NRC counterparts to identify requested/required actions by NRC. At times, SwRI has had to follow up more than one time to obtain responses to submitted information and inquiries, including responses to MLSRs that request additional obligations of funds, extension of contract and task-order periods of performance, and similar actions. Because FedConnect does not accommodate introducing and tracking contractor-initiated actions, NRC may find it useful to develop and implement a system for tracking and responding to contractor requests.