

OMB Clearance No. 0704-XXXX
DFARS Case 2009-D015
Organizational Conflicts of Interest in Major Defense
Acquisition Programs

A. SUPPORTING STATEMENT

1. Need for the information collection. This is a request for a new information collection requirement. DoD is issuing a proposed rule to implement section 207 of the Weapons System Acquisition Reform Act of 2009. Section 207 requires DoD to revise the Defense Federal Acquisition Regulation Supplement (DFARS) to provide uniform guidance and tighten existing requirements for organizational conflicts of interest (OCIs) by contractors in major defense programs (TAB A).

This statutory requirement will be implemented in DFARS subpart 203.12 and associated provisions and clauses in 252.203 (TAB B). While the formal information collection request is new, the information requirement has existed for many years. It is only now being formalized because of the creation of standard contract clauses and provisions in this DFARS case. In order to comply with the statute, DoD needs the following information:

a. **252.203-70XX.** Paragraph (e)(1) requires an offeror to disclose all relevant information regarding any OCI, or represent that there will be no OCI; and to describe any other work performed on contracts and subcontracts within the past 5 years that is associated with the offer it plans to submit. Paragraph (e)(2) requires an offeror that has identified any OCI to explain the actions it intends to use to resolve such conflict, e.g., by submitting a mitigation plan and/or accepting a limitation on future contracting.

b. **252.203-70YY.** Paragraph (b)(2) requires a contractor with a mitigation plan to update it within 30 days of any change. Paragraph (d) requires the contractor to report any non-compliance with the clause or the Mitigation Plan, whether by its own personnel or those of the Government or other contractors.

c. **252.203-70ZZ(b)** requires the contractor to disclose any OCI that has not already been adequately resolved and for which a waiver has not been granted.

2. DoD will use this information to identify and resolve organizational conflicts of interest. It is the Government's policy to protect its interests by identifying and resolving organizational conflicts of interest. Unresolved organizational conflicts of interest call into question the integrity and fairness of the competitive acquisition process. An organizational conflict of interest can impair the Government's ability to acquire supplies and services that are the best value to the Government. A contractor with an organizational conflict of interest may influence the Government to pursue an acquisition outcome that is more compatible with the contractor's interests than with the Government's interests. A contractor that has access to non-public information while performing under a Government contract may be able unfairly to use the non-public information to its advantage to win award of a future contract.

3. Improved information technology will be used to the maximum extent practicable. Offerors and contractors may submit the required information electronically.

4. As a matter of policy, DoD reviews the Federal Acquisition Regulation (FAR) to determine if adequate language already exists. This information collection does not duplicate any other requirement at this time. It updates and restructures the coverage of OCIs currently covered in FAR 9.5 and adds completely new provision and clauses, in order to form a solid foundation for the coverage of OCIs in major defense acquisition programs, which is unique to DoD and is required by the statute. If the FAR is revised to incorporate language that is comparable to some parts of this rule, the duplicative text will be removed from the DFARS.

5. The information collection associated with small businesses is the minimum consistent with applicable laws, Executive orders, regulations, and prudent business practices.

6. Less frequent collection of the information would not permit DoD to comply with the statutory requirements to identify and resolve Organizational conflicts of interest.

7. Collection is consistent with the guidelines in 5 CFR 1320.5(d). The information will not be collected in a manner that requires an explanation of special circumstances. If the information relating to OCIs is not

collected, DoD could pay more for contracts that were awarded to companies only because the companies obtained an advantage due to the conflict. If the mitigation information is not collected and there is no other means for resolving the OCI, conflicts cannot be resolved.

8. Public comments will be solicited in the Federal Register as required by 5 CFR 1320.8(d). This supporting statement will be modified to address any public comments received.

9. No payment or gift will be provided to respondents, other than remuneration of contractors under their contracts.

10. Information obtained will be disclosed only to the extent consistent with statutory requirements, current regulations, and prudent business practices. Prior to award, this is source selection information and therefore protected from disclosure.

11. No sensitive questions are involved.

12. Estimated total annual public hour burden. We discussed the burden requirements with specialists in industrial policy. Although definitive information is not available, we relied on the judgment and expertise of subject matter experts within DoD. The annual total burden hours are estimated as follows:

a. DFARS 252.203-70XX, Notice of Potential Organizational Conflict of Interest.

i. Mitigation Plan required. We estimate that 5,650 respondents per year will be required to submit a mitigation plan. We estimate that it takes approximately 40 hours for the disclosure of relevant information and preparation and submission of the mitigation plan.

A.	Number of respondents	5,650
B.	Responses per respondent	1
C.	Total annual responses	5,650
D.	Hours per response	40
E.	Total hours	226,000
F.	Cost per hour (\$75 + 32.85 OH)	\$100
G.	Annual cost to respondents	\$22,600,000

ii. Mitigation Plan not required. We estimate that 600 respondents per year will identify an OCI but not be required to submit a mitigation plan. We estimate that it takes approximately 2.5 hours for the disclosure of relevant information and preparation and submission of the mitigation plan.

A.	Number of respondents	2,930
B.	Responses per respondent	1
C.	Total annual responses	2,930
D.	Hours per response	2
E.	Total hours	5,860
F.	Cost per hour (\$75 + 32.85 OH)	\$100
G.	Annual cost to respondents	\$586,000

b. DFARS 252.203-70YY, Mitigation of Organizational Conflicts of Interest. For the 5,650 respondents that are required to submit a Mitigation Plan, we estimate that 565 (10 percent) will need to update a mitigation plan or report a non-compliance. We estimate an average of 20 hours per response.

A.	Number of respondents	565*
B.	Responses per respondent	1
C.	Total annual responses	565
D.	Hours per response	20
E.	Total hours	11,300
F.	Cost per hour	\$100
G.	Annual cost to respondents	\$1,130,000

* Not additional respondents.

d. DFARS 252.203-70ZZ, Disclosure of Organizational Conflict of Interest After Contract Award. We estimate that approximately 100 contractors may discover a previously unidentified conflict of interest after contract award.

A.	Number of respondents	110
B.	Responses per respondent	1
C.	Total annual responses	110
D.	Hours per response	40
E.	Total hours	4,400
F.	Cost per hour	\$100
G.	Total annual cost to respondents	\$440,000

e. TOTAL.

A.	Number of respondents	8,690
B.	Responses per respondent	1.07
C.	Total annual responses	9,255
D.	Hours per response	26.75
E.	Total hours	246,560
F.	Cost per hour	\$100
G.	Total annual cost to respondents	\$24,656,000

13. Capital start-up or operational land maintenance costs.

None other than the hour burden detailed in paragraph A.12.

14. Estimated cost to the Government. The time required for the Government review of the OCI proposal submitted by the apparent successful offeror when that proposal does not involve a mitigation plan is estimated at 2 hours. The cost is based on the average hourly wage salary of a GS-13, plus 100% overhead.

No Mitigation Plan:

Responses/yr	2,930
Reviewing time/response	2
Review time/yr	5,860
Average wages (\$33/hr. + 32.85% OH)	\$44
Government cost	\$257,840

The time required for the Government review and negotiation of an OCI proposal submitted by the apparent successful offeror when that proposal does not involve a mitigation plan is estimated at 2 hours.

OCI with Mitigation Plan:

Responses	5,650
Reviewing time/response	10
Review time/yr	56,500
Average wages (\$33/hr. + 32.85% OH)	X \$44
Government cost	\$2,486,000

Updates

Responses	565
Reviewing time/response	2
Review time/yr	1,130
Average wages (\$33/hr. + 32.85% OH)	X \$44
Government cost	\$49,720

New OCI

Responses	110
Reviewing time/response	10
Review time/yr	1,100
Average wages (\$33/hr. + 32.85% OH)	X \$44
Government cost	\$48,400

TOTAL

Responses	9,255
Reviewing time/response	10
Review time/yr	64,590
Average wages (\$33/hr. + 32.85% OH)	X \$44
Total Government cost	\$2,841,960

15. This is a new information collection requirement.

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

17. DoD does not seek approval to not display the expiration dates for OMB approval of the information collection.

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

B. Collections of Information Employing Statistical Methods

Statistical methods will not be employed.