

SUPPORTING STATEMENT FOR 9000-0090,
RIGHTS IN DATA AND COPYRIGHTS

A. Justification.

1. Administrative requirements. Contracts must contain terms that delineate the appropriate rights and obligations of the Government and the contractor regarding the use, reproduction and disclosure of data.

2. Uses of information. In general, the information collected is used to protect the Government's rights to make various uses of data.

The information collection burdens and recordkeeping requirements included in the regulations are described below:

- a) The Representation of Limited Rights Data and Restricted Computer Software provision is to be included in solicitations if the contracting officer requires an offeror state whether limited rights data or restricted computer software are likely to be used in meeting the requirements. (FAR 27.409(c))

FAR 52.227-15 requires the contractor to complete a fill-in clause providing whether data proposed for fulfilling the requirements is limited to data rights or restricted software. If the government does not receive unlimited rights, the contractor must provide a list of the data not covered. This information is collected prior to award and submitted with a contractor's proposal to the Government. The Government uses this information to identify when there are only limited data rights or restricted software rights.

- b) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. (FAR 27.406-2)

FAR 52.227-16 allows the Government to require delivery of data not initially asked for at anytime during the contract and up to three years after completion. All data covered by this clause is paid for by the Government. FAR 52.227-16 also requires a record-keeping burden from the contractor to maintain data first produced or specifically used in performance of the contract within three years after acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to ensure that the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information.

When FAR 52.227-16 was first proposed, comments were received from educational institutions, which stated that requiring their investigators to keep records of unlimited rights data for three years after acceptance of deliverables was unreasonable, in that such investigators in reality do not segregate their research by contract, but rather combine it with other data in order to continue their research. In light of this, the proposed rule was changed to state that it would not be placed in contracts for basic or applied research with educational institutions where the value was \$500,000 or less. The \$500,000 threshold was adopted after surveying the major civilian R&D agencies, whose data suggested that an average R&D contract was \$250,000 to \$300,000; commensurate with other clause thresholds (e.g., small business subcontracting), the \$500,000 threshold was chosen. Thus, for most R&D contracts with universities, no recordkeeping is required.

- c) The Rights in Data-Special Works clause, which is included in solicitations and contracts primarily for production or compilation of data. (FAR 27.409(e))

FAR 52.227-17 is used in rare and exceptional circumstances to permit the Government to limit the Contractor's rights in data by preventing the release, distribution and publication of any data first produced in the performance of the contract. This clause may also be limited to particular items and not the entire contract.

d) The Rights in Data-Existing Works clause is included in contracts for audiovisual or similar works. (FAR 27.409(f)) FAR 52.227-18 is used when the Government is acquiring existing audiovisual or similar works, such as books, without modification. This clause requires contractors to obtain license for the Government to reproduce, prepare derivative works, and perform or display publically the materials.

e) The Commercial Computer Software License clause is used in contracts and purchase orders for the acquisition of commercial software.

FAR 52.227-19 requires the Government to set forth the minimum data rights it requires above and beyond what is set forth in the contractor's standard commercial license. The contractor is responsible for affixing a notice on any commercial software delivered under the contract that provides notice that the Government's rights regarding the data are set forth in the contract.

f) The Rights in Data - SBIR Program clause is only required for small business innovation research (SBIR) contracts and it limits the Government's rights to disclose data first produced under the contract. (FAR 27.409(h) and 52.227-20).

g) The Technical Data Declaration, Revisions and Withholding of Payment-Major Systems and Major Systems-Minimum Rights clauses require a technical data certification. This certification requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will involve this certification. (FAR 27.409(j), 27.409(k), 52.227-21, 52.227-22)

- h) The Rights to Proposal Data (technical) clause allows the Government to identify pages of a proposal that, as a condition of contract award, would be subject to unlimited rights in the technical data. (FAR 27.409(l) and 52.227-23)
- i) The Rights in Data-General clause (FAR 52.227-14(d)), outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public.

3. Consideration of information technology. We use improved information technology to the maximum extent practicable. Where both the Government agency and contractors are capable of electronic interchange, the contractors may submit this information collection requirement electronically. Nothing in the FAR precludes the use of electronic interchange.

4. Efforts to identify duplication. This requirement is being issued under the Federal Acquisition Regulation (FAR) which has been developed to standardize Federal procurement practices and eliminate unnecessary duplication.

5. If the collection of information impacts small businesses or other entities, describe methods used to minimize burden. The burden applied to small businesses is the minimum consistent with applicable laws, Executive Orders, regulations, and prudent business practices.

6. Describe consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently. Similar information is not already available to the contracting officer or buyer. Failure to obtain this information could result in the incorrect data deliverables under a contract.

7. Special circumstances for collection. Collection of information on a basis other than solicitation-by-solicitation is not practical. Collection is consistent with guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency. A 60-day notice published in the *Federal Register* at 78 FR 45196, on July 26, 2013. No comments were received.

9. Explanation of any decision to provide any payment or gift to respondents, other than remuneration of contractors or guarantees. Not applicable.

10. Describe assurance of confidentiality provided to respondents. This information is disclosed only to the extent consistent with prudent business practices and current regulations.

11. Additional justification for questions of a sensitive nature. No sensitive questions are involved.

12 & 13 Estimated total annual public hour and cost burden. Time required to read and prepare information is estimated as follows:

Reporting Burden and Cost

- a. FAR 52.227-15: The estimated number of respondents per year is based off of Fiscal Year 2012 (FY12) data from the Federal Procurement Data System (FPDS). It is estimated that 25 unique contractors were awarded sole source contracts based on the existence of limited rights in data, patent rights, copyrights or secret processes using NAICS codes 511210-Software Publishers, 423430 - Computer and Computer Peripheral Equipment and Software Merchant Wholesalers and 334611 - Software Reproducing. GSA Counsel was contacted, and it was confirmed that this clause is not used in GSA Schedule contracts. FedBizOpps was also searched and did not result in any solicitations identifying this clause for the past year. It is further estimated that each contractor will provide four responses annually. This is based on the average number of actions per contractor and rounded to the nearest whole number (92 total actions/25 contractors). One burden hour is estimated per response.

Annual Reporting Burden and Cost

Estimated respondents/yr.....	25
Responses annually.....	<u>x</u>
<u>4</u>	
Total annual responses.....	100
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden/hrs.....	100
Average wages + overhead.....	<u>x \$55*</u>
Estimated cost to the public.....	\$5,500

- b. FAR 52.227-17: The estimated number of respondents per year is 13, based on the estimated number of unique contractors using FPDS data, FedBizOpps and consulting with GSA General Counsel. FedBizOpps was searched for the past year and one solicitation for training video and training materials was identified to include this clause. Further, this clause is not used in GSA Schedule contracts, and is only used in rare circumstances. It is estimated that one percent of all transactions in FPDS awarded based on the existence of limited rights in data, patent rights, copyrights or secret processes would use this clause or 12 (1,216 actions * 1 percent). The number of responses per respondent is estimated at one. One burden hour is estimated per response.

Annual Reporting Burden and Cost

Estimated respondents/yr.....	13
Responses annually.....	<u>x</u>
<u>1</u>	
Total annual responses.....	13
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden/hrs.....	13
Average wages + overhead.....	<u>x \$55*</u>
Estimated cost to the public.....	\$715

- c. FAR 52.227-18: The estimated number of respondents per year is 27, based off of FY12 data from FPDS. It is estimated that 27 unique contractors were awarded sole source contracts based on the existence of limited rights in data, patent rights, copyrights or secret processes using NAICS codes 512199 - Other Motion Picture and Video Industries, 323119 - Other Commercial Printing, 323117 - Books Printing, 511110 - Newspaper Publishers, 511120 - Periodical Publishers, 511130 - Book Publishers. It is further estimated that each contractor will provide one

response annually. This is based on the number of actions per contractor and rounded to the nearest whole number (27 total actions/27 contractors). One burden hour is estimated per response.

Annual Reporting Burden and Cost

Estimated respondents/yr.....	27
Responses annually.....	<u>x</u>
<u>1</u>	
Total annual responses.....	27
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden/hrs.....	27
Average wages + overhead.....	<u>x \$55*</u>
Estimated cost to the public.....	\$1,485

d. FAR 52.227-19: It is estimated that 246 unique contractors were awarded sole source contracts based on the estimated number of unique contractors in FPDS using NAICS codes 511210 - Software Publishers, 423430-Computer and Computer Peripheral Equipment and Software Merchant Wholesalers and 334614 - Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing. GSA General Counsel was also consulted and verified that this provision is not used in schedule contracts. FedBizOpps was also searched and did not result in any solicitations identifying this clause for the past year. It is further estimated that each contractor will provide three responses annually. This is based on an estimate that only 15% of actions will include this clause. This estimate was based on the fact that a contractor's commercial license would most commonly outline the license terms, as opposed to the commercial computer software license clause, which contractors often take exception too because this clause takes precedence over the contractor's commercial license (4,959 total actions * 15% = 744 total actions/246 contractors = 3). One burden hour is estimated per response.

Estimated respondents/yr.....	246
Responses annually.....	<u>x</u>
<u>3</u>	
Total annual responses.....	738
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden/hrs.....	738
Average wages + overhead.....	<u>x \$55*</u>
Estimated cost to the public.....	

.....
\$40,590

e. FAR 52.227-20: The estimated number of respondents per year is based off of FY12 data from FPDS. It is estimated that 49 unique contractors were awarded a SBIR contract based on the existence of limited rights in data, patent rights, copyrights or secret processes. It is further estimated that each contractor will provide approximately two responses annually. This is based on the number of actions per contractor and rounded to the nearest whole number (111 total actions/49 contractors). One burden hour is estimated per response. One burden hour is estimated per response.

Estimated respondents/yr.....	49
Responses annually.....	<u>X</u>
<u>2</u>	
Total annual responses.....	98
Estimated hrs/response.....	<u>X 1</u>
Estimated total burden/hrs.....	98
Average wages + overhead.....	<u>X \$55*</u>
Estimated cost to the public.....	\$5,390

f. FAR 52.227-21 and FAR 52.227-22: It is estimated that 28 unique contractors were awarded a sole source major systems contract based on the existence of limited rights in data, patent rights, copyrights or secret processes using NAICS codes 336411 - Aircraft Manufacturing, 336412 - Aircraft Engine and Engine Parts Manufacturing, 336413- Other Aircraft Parts and Auxiliary Equipment Manufacturing and 336414 - Guided Missile and Space Vehicle Manufacturing. FedBizOpps was also searched and two solicitations were identified in the past year that included this clause. Therefore, the estimated number of respondents per year is 30. It is further estimated that each contractor will provide approximately five responses annually. This is based on the number of actions per contractor (138 total actions/30 contractors). One burden hour is estimated per response.

Estimated respondents/yr.....	30
Responses annually.....	<u>X</u>
<u>5</u>	
Total annual responses.....	150
Estimated hrs/response.....	<u>X 1</u>
Estimated total burden/hrs.....	150

Average wages + overhead.....	x \$55*
Estimated cost to the public.....	\$8,250

g. FAR 52.227-23: The estimated number of respondents per year is based off of FY12 data from FPDS. It is estimated that 57 unique contractors were awarded a contract based on the existence of limited rights in data, patent rights, copyrights or secret processes. An estimate was applied that approximately one half of the contractors would have this provision in their contract. Therefore, the number of respondents is estimated to be approximately 29. It is further estimated that each contractor will provide approximately 1 response annually. This is based on an estimate after consulting with GSA Legal that this provision is rarely invoked by the government. One burden hour is estimated per response.

Estimated respondents/yr.....	29
Responses annually.....	x
<u>1</u>	
Total annual responses.....	29
Estimated hrs/response.....	x <u>1</u>
Estimated total burden/hrs.....	29
Average wages + overhead.....	x \$55*
Estimated cost to the public.....	\$1,595

* Based on the OPM salary table for calendar year 2012, we estimated an hourly rate equivalent to a GS-13, Step-7, or \$40.07 per hour, plus 36.45 percent overhead burden which is the rate mandated by OMB for A-76 public-private competitions, and rounded to the nearest whole dollar, or \$55.00.

** The total annual burden is slightly increased since the last reporting period due to a slight increase in the estimated total burden hours. Also, the cost per hour was updated based on current OPM hourly labor rates and OMB's overhead burdened rates. Therefore, \$42 was increased to \$55.

Recording Keeping Burden

FAR 52.227-16: The estimated number of recordkeepers per year is based off of FY12 data from FPDS. It is estimated that there are 446 unique contractors that were identified as educational institutions. It is further estimated that

each contractor will provide five responses annually. This is based on an estimate that 80% of contracts will be less than \$500,000 since the vast majority of R&D contracts with educational institutions are between \$250,000 and \$300,000, and therefore this clause is not applicable (10,426 total actions * .20 = 2,085 total actions/446 contractors = 5 responses). Two burden hours is estimated per response.

Number of recordkeepers.....	446
Number of responses	<u>5</u>
Total Annual Responses.....	2,230
Number of hours per recordkeeper.....	<u>x 2</u>
Total response and recordkeeping burden hours.....	4,460
Average wages + overhead.....	<u>x \$55*</u>
Estimated cost to the public.....	
.....	
\$245,300**	

* Based on the OPM salary table for calendar year 2012, we estimated an hourly rate equivalent to a GS-13, Step-7, or \$40.07 per hour, plus 36.45 percent overhead burden which is the rate mandated by OMB for A-76 public-private competitions, and rounded to the nearest whole dollar, or \$55.00.

** The total annual recording keeping burden is decreased since the last reporting period due to a decrease in the estimated total burden hours.

Total Annual Reporting and Recordkeeping Burden and Cost

Estimated respondents/yr.....	419
Responses annually.....	<u>x</u>
<u>2.76</u>	
Total annual responses.....	1,156
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden/hrs.....	1,156
Average wages + overhead.....	<u>x \$55</u>
Estimated cost to the public.....	
.....	
\$63,580	

Number of recordkeepers.....	446
Number of responses	<u>5</u>
Total Annual Responses.....	2,230
Number of hours per recordkeeper.....	<u>x 2</u>

Total response and recordkeeping burden hours.....	4,460
Average wages + overhead.....	<u>x \$55</u>
Estimated cost to the public.....	
.....	
\$245,300	

14. Estimated cost to the Government. Time required for Governmentwide review is estimated at 30 minutes per response.

Annual Reporting Burden and Cost

Total annual responses.....	1,155
Review time per response.....	
.....	x .50
Total burden hours.....	
.....	557.50
Average wages/yr + overhead.....	\$55
Total Government cost.....	
.....	
\$31,762.50	

15. Explain reasons for program changes or adjustments reported in Item 13 or 14. This submission requests an extension of OMB approval of an information collection requirement in the FAR. A reassessment of the rights in data and copyright provisions was performed, and the information collection requirement in the FAR is decreased from the previous collection. The decrease is a result of increased use of Government-wide contracts, increased use of commercial products, and budget constraints. Subject matter experts in the intellectual property law were consulted to obtain additional information that helped in estimating the revised public burden. FedBizOpps was searched to determine the use of these clauses in competitive contract solicitations throughout the Government. Federal Procurement Data System (FPDS), a system used by Government agencies for collecting and reporting data on federal procurement, was used to determine the likely contracts that would contain rights in data and copyright provisions. No public comments were received in prior years that have challenged the validity of the Government's estimated. Updates were made to the average wages and overhead based on current Office of Personnel Management and Office of Management and Budget rates.

16. Outline plans for published results of information collections. Results will not be tabulated or published.

17. Approval not to display expiration date. Not applicable.

18. Explanation of exception to certification statement. Not applicable.

B. Collections of Information Employing Statistical Methods. Statistical methods are not used in this information collection.