

SUPPORTING STATEMENT

A. Justification

1. Requirement. We request the renewal of the information collection requirement currently approved under OMB Control Number 0704-0369 for Subparts 227.71, Rights in Technical Data, and 227.72, Rights in Computer Software and Computer Software Documentation, and related clauses of the Defense Federal Acquisition Regulation Supplement (DFARS). The DFARS is on the web at <http://www.acq.osd.mil/dpap/dars/index.html>. The approval for 0704-0369 expires on September 30, 2013. DFARS Subparts 227.71 and 227.72 (TAB A) contain information collection requirements that are associated with rights in technical data and computer software. We must impose the information collection requirements to implement 10 U.S.C. 2320, Rights in technical data, and 10 U.S.C. 2321, Validation of proprietary data restrictions. We describe the relationships among the information collection requirements and the statutory requirements in the following analysis:

a. The Department of Defense must recognize and protect contractor rights in technical data that are associated with privately funded developments, per 10 U.S.C. 2320. Therefore, a contractor must notify the Government if it intends to use any privately developed items, components, or processes under a Government contract that would restrict the Government's rights to use, release, or disclose technical data delivered under the contract.

Section 2320(b)(1) of Title, United States Code, establishes a presumption that commercial items are developed at private expense whether or not a contractor submits a justification in response to a challenge notice. Therefore, we do not challenge a contractor's assertion that a commercial item, component, or process was developed at private expense unless the Government can demonstrate that it contributed to development of the item, component, or process. We do not use most of the data rights clauses in contracts for commercial items. We only use the clauses at DFARS 252.227-7015, Technical Data--Commercial Items, and 252.227-7037, Validation of Restrictive Markings on Technical Data, in contracts for commercial items, and the clause at DFARS 252.227-7015 does not contain any information collection requirements.

We insert the provisions and clauses at DFARS 252.227-7013, Rights in Technical Data--Noncommercial Items; 252.227-7014,

Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions; and 252.227-7018, Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program; in solicitations and contracts to require contractors to identify and mark data or software that must be protected from unauthorized release or disclosure. Once the contractor properly marks the data and software, we can protect it, as required by 10 U.S.C. 2320.

b. According to 10 U.S.C. 2320(a)(2)(D), DoD may disclose limited rights data to persons outside the Government, or allow those persons to use limited rights data, if the recipient agrees not to further release, disclose, or use the data. Therefore, the clause at DFARS 252.227-7013, Rights in Technical Data--Noncommercial Items, requires the contractor to identify and mark the data or software that is provided with limited rights.

c. According to 10 U.S.C. 2321(b), contractors and subcontractors of any tier must be prepared to furnish written justification for any asserted restriction on the Government's rights to use or release data. The clauses at DFARS 252.227-7019, Validation of Asserted Restrictions--Computer Software, and 252.227-7037, Validation of Restrictive Markings on Technical Data, require contractors and subcontractors to maintain adequate records and procedures to justify any asserted restrictions. We use 252.227-7037 when we buy commercial and noncommercial items.

d. Contractors and subcontractors at any tier that obtain data from the Government to which the Government has only limited rights must submit a "Use and Disclosure" agreement. The clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, contains this requirement. DoD must levy this requirement on contractors and subcontractors because 10 U.S.C. 2320 requires DoD to protect the rights of contractors that have developed items, components, or processes at private expense.

e. Offerors must identify any technical data or computer software that they previously delivered, or will deliver under any other Federal contract, according to the provision at DFARS 252.227-7028, Technical Data or Computer Software Previously Delivered to the Government. DoD needs this information to avoid paying for rights in technical data or computer software that the Government already owns.

2. Purpose. The information collected—

a. Enables the Government to protect a contractor's or subcontractor's data or software from unauthorized release or disclosure. Data generators may suffer significant, adverse financial impacts if we do not protect privately developed data;

b. Facilitates the public release of technical data or computer software developed at the Government's expense; and

c. Enables a contracting officer to determine whether the Government has already paid for rights in the data or software.

3. Information Technology. We use improved information technology to the maximum extent practicable. The information collection requirements may be submitted electronically where electronic submission is authorized by the contracting officer. Contractors may also maintain electronic records that meet the requirements of 252.227-7019, if that is their normal internal practice.

4. Duplication. DoD data rights requirements in 10 U.S.C. 2320 and 2321 are different than those in the corresponding civilian agency statutes. Therefore, this rule does not duplicate the Federal Acquisition Regulation. Also, we cannot obtain similar information from any other source.

5. Small business. The collections are the minimums consistent with applicable laws, regulations, and prudent business practices. We do not expect the collections to have a significant impact on a substantial number of small businesses or other small entities. We obtain fewer Government rights from certain types of small business contractors under the clause at DFARS 252.227-7018 than are typically obtained from large businesses. This helps reduce the paperwork burden on those small businesses.

6. Consequences for Non-Collection. Data rights vary from contract to contract. Contracting officers may negotiate nonstandard data rights licenses that are tailored to a particular acquisition. We must obtain disclosure agreements and require appropriate standardized restrictive legends in order to protect contractor's rights in data developed at private expense or data to which the Government has limited rights. We must understand any limitations on data proposed for use under a Government contract to make an informed source selection. We also must know if the data were previously delivered under a

Government contract to avoid paying again for data rights we already own.

7. Special circumstances. We will not collect information in a manner that requires explanation of special circumstances.

8. Public comments and consultation.

a. **60-day notice.** Public comments were solicited in the Federal Register on May 23, 2013 (78 FR 30898) (TAB B), as required by 5 CFR 1320.8(d). Two responses were received.

i. **Scope and methodology.**

Comment: Both respondents were not sure how DoD arrived at the composite estimates. One respondent stated that the scope of the information collection activity was not defined. The other respondent observed that the information combines seven different information collections, covering 9 DFARS clauses and observed that some clauses take significantly more time than others. One respondent concluded that the notice significantly understates the actual burden. The other respondent stated that the "incomplete public notice prevents a proper and substantive comment on the burden, need, and effectiveness of this information collection." Nevertheless, the respondent concluded that the "methodology used by the Agency in this request is insufficient."

Response: The Federal Register notice provided under "Summary of Information Collection" the clauses and specific burdens covered by this information collection request. The Federal Register notice also provided contact information as to how the respondent could obtain further information. In accordance with our standard procedures, DoD would have provided the detailed justifications for the calculations upon request. The composite of 1.16 hours per response represents a weighted average (with a range of from .25 hours per response for 85,500 responses to 10 hours per response for 33,299 responses). The composite hours per response cannot be evaluated without a thorough understanding of what the required responses entail. Depending on the nature of the requirement, the burden hours are calculated either on a respondent basis, a contract basis, or a data item basis. There is also a recordkeeping requirement of 75,000 hours, related to assertion of restricted rights.

ii. **Changes from prior estimated burden.**

Comment: One respondent noted that this estimate has dramatically increased responses (more than 50%), while also decreasing total burden hours (almost 33%).

Response: These changes were the result of a thorough re-evaluation of every requirement in the information collection renewal request. An analysis was performed based on current data relating to whether contract actions are competitive or non-competitive, above or below the simplified acquisition threshold, and commercial or non-commercial. For some requirements, this resulted in significant increases in number of estimated responses of a type that require less than the average response time (e.g., increase in the number of estimated negative responses to assertions of limited rights as compared to the positive assertions of such limited rights). For some other requirements that entail a substantial number of hours to respond, there was a significant reduction in estimated number of responses (e.g., response to Government challenge of restricted rights).

iii. Activities and factors influencing average burden per response.

Comment: One respondent provided a list of activities and factors influencing average burden per response.

Response: Some of these factors were considered (e.g., recordkeeping with regard to data rights assertions and marking of data.) Some of the factors would require more specific knowledge of individual acquisitions that is possible when doing an estimate of this type (e.g., size, meaning dollar value and complexity, of the acquisition and the number of suppliers involved, and number of company function participating in the data collection. However, DoD did make estimated based on number of acquisitions above and below the simplified acquisition threshold, competitive vs. non-competitive, and commercial vs. non-commercial. This information collection requirement does not cover special non-standard solicitation requirement that DoD customers may include in a solicitation. It only covers standard DFARS requirements.

iv. Suggested improvements to efficiency and effectiveness.

Comment: One respondent made several suggestions for improving efficiency and effectiveness of information collection requirements relating to technical data and computer software:

- Expressly prohibit the requirement to provide data rights assertion-type information for commercial items, including computer software.
- Address justifications for data rights assertions post-contract award and prohibit such justification at the solicitation stage of the procurement process.
- Provide guidance to contracting officers that informs them of the cost of pre-challenge requests for information and creates appropriate boundaries around the scope and number of pre-challenge requests for information to support data rights assertions.

Response: These recommendations have been forwarded to the Patents, Data, and Copyrights Committee for consideration.

v. The collective burden of compliance.

Comment: One respondent is concerned about the collective burden of compliance, i.e., the total burden of all information collection requirements imposed on all respondents. The respondent considers that the actual burden is far higher than the estimated burden, because of inadequate Government estimates, and that such burdensome paperwork requirement imposes unnecessary expenses for both the Government and the respondents, without demonstrating a clear value to the taxpayer.

Response: It is not feasible or appropriate to address the total "collective burden of compliance" when requesting extension of this information collection requirement. This supporting statement provides the rationale for the need to extend this information collection requirement and has provided the calculations upon which the estimates are based. Pressure within DoD to reduce the number of information collection hours imposed on the public focuses on program changes that actually reduce requirements. There is no incentive to just revise the estimated hours downward without any change in the requirements.

b. 30-day notice. Public comments were again solicited in the Federal Register on July 29, 2013 (78 FR 45515) (TAB B), as required by 5 CFR 1320.8(d). One response was received, from one of the respondents to the initial 60-day notice. Some of the comments were duplicative of the comments previously submitted, which are addressed above.

The respondent also raised the following concerns:

i. Need for the collection.

Comment: The respondent was of the opinion that if an accurate assessment of the burden of these requirements on both the public and on the Government were conducted, then OMB would recognize that the agency has not met the requirement to justify these information collection requirements. The respondent quotes President Obama with the need to get rid of "absurd and unnecessary paperwork requirements that waste time and money."

Response: DoD constantly seeks ways to reduce unnecessary paperwork requirements. However, the requirements covered by this clearance are based primarily on statute. The need for and use of the data are justified in paragraphs 1. and 2. of this supporting statement. Consequences of non-collection are stated in paragraph 6.

ii. Support for estimates.

Comment: The respondent still notes that the information collection covers seven different requirements, and questions the level of explanation provided for some of the changes.

Response: It is much more efficient to address related information collection requirements in a single clearance, than to process each requirement separately. To the extent feasible, DoD consolidates requests for clearance of information collection requirements related to the same DFARS part.

The methodology and estimates were reviewed and found adequate by multiple subject matter experts within the Government, including several patent attorneys.

There are several back-up matrices that were not posted with the supporting statement, which further demonstrate the origin of some of the estimates. For example, the change to 3.82 responses per solicitation and many of the other calculations in the supporting statement were based on an analysis of FPDS data taking into account number of solicitations/contracts that are commercial vs. noncommercial, competitive vs. non-competitive, and acquisitions below the simplified acquisition thresholds vs. exceeding the simplified acquisition threshold.

Commercial				
	MP-SAT	Above SAT		

	Commercial Competitive	Commercial Noncomp	Subtotal	Commercial Competitive	Commercial Noncomp	Subtotal	TOTAL
Total contracts/orders	328,512	64,432	392,944	23,077	8,165	31,242	
Est # actions with tech data/computer software requirements							
	2%	2%		35%	35%		
	6,570	1,289		8,077	2,858		
Est. contracts/orders	6,500	1,500	8,000	8,000	3,000	11,000	19,000

Actions include contracts, orders calls (not modifications or funding actions)

Offerors							
	6,500	1,500	8,000	8,000	3,000	11,000	
	5	1	4.25	5	1	3.9	
Est. offerors	32,500	1,500	34,000	40,000	3,000	43,000	77,000

Data Submissions							
	6,500	1,500	8,000	8,000	3,000	11,000	
	5	5	5	23	23	23	
Total data subm	32,500	7,500	40,000	184,000	69,000	253,000	

Noncommercial

	MP - SAT			Above SAT			TOTAL
	Non-Com Competitive	Non-Com Noncomp	Subtotal	Non-Com Competitive	Non-Com Noncomp	Subtotal	
Total contracts/orders	243,557	82,722	326,279	39,245	17,517	56,762	
Est # actions with tech data/computer software requirements							
	5%	5%		70%	70%		
	12,178	4,136		27,472	12,262		
Est. contracts/orders	12,000	4,000	16,000	27,500	12,500	40,000	56,000

Actions include contracts, orders calls (not modifications or funding actions)

Offerors							
	12,000	4,000	16,000	27,500	12,500	40,000	
	5	1	4	5	1	3.75	
Est. offerors	60,000	4,000	64,000	137,500	12,500	150,000	214,000

Data Submissions							
	12,000	4,000	16,000	27,500	12,500	40,000	
	5	5	5	23	23	23	
Total data subm	60,000	20,000	80,000	632,500	287,500	920,000	

9. Payment to respondents. We will not provide a payment or gift to respondents to this information collection requirement.

10. Confidentiality. We will disclose the information collected only to the extent consistent with prudent business practices and the Freedom of Information Act. We do not provide an assurance of confidentiality to respondents.

11. Sensitive questions. We will not ask sensitive questions.

12. Information Collection burden on the public (TAB C). DoD specialists who are most knowledgeable of the requirements and the need for the information reviewed the collection frequency. The requirements are the minimum information and frequency that will support reasonable and prudent Government operations. Contracting officers could not perform their administrative functions effectively and efficiently if the information were collected less frequently. Also, per statute, contractors must maintain records that support the validity of any assertions of restrictions on the Government's rights to use or distribute technical data or computer software that are deliverables under a Government contract.

We estimated the hour burden using information generated from the Federal Procurement Data System (FPDS), discussions with personnel at the military departments and defense agencies, and good business judgment. We estimate that we receive an average of four responses to each noncommercial solicitation at or below the simplified acquisition threshold and 3.75 responses to each noncommercial solicitation above the simplified acquisition threshold (see TAB D). We calculated the burdens on a respondent basis, a contract basis, and a data-item basis because those are the most logical groupings for the broad spectrum of types of

information that will be submitted under this information collection requirement.

a. *Respondent basis.* Some of the provisions and clauses require an offeror under a solicitation to provide information if it is asserting restrictions in data rights or computer software rights to information contained in the proposal. Therefore, we can calculate the burden for that subset of requirements on the basis of the estimated number of offerors under solicitations that contain data rights clauses. We insert the provisions in solicitations where data rights might be an issue. Except for the clause at 252.227-7037, we do not insert the clauses in solicitations for commercial items and use them less frequently in simplified acquisitions (\$150,000 or less), so we reflect two different frequencies of information requirements in our calculations.

Based on review of the Federal Procurement Data System (FPDS) database, we estimate award of approximately 16,000 noncommercial contracts between \$3,000 and \$150,000 and 40,000 noncommercial contracts over \$150,000 that may have involved the acquisition of technical data or computer software in fiscal year 2012, the last year for which a full year of data was available. There are three major subgroups of information requirements that vary according to the number of respondents. These are (1) those related to disclosure agreements; (2) those related to identification and assertion of rights; and (3) those related to identification of previously delivered data. We have calculated each of these separately:

(1) *Nondisclosure agreements for solicitations that contain technical data to which the Government has other than unlimited rights.* This category addresses the clauses at DFARS 252.227-7013, Rights in Technical Data-- Noncommercial Items; DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; and DFARS 252.227-7018, Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program. There were approximately 56,000 such noncommercial awards made in fiscal year 2012. Of those 56,000 solicitations, we estimate that approximately 50% will contain technical data to which the Government has other than unlimited rights. We estimate that we receive, on average, 3.82 responses to each solicitation. We also estimate that it will take each offeror that receives such data and requires a non-disclosure agreement, on average, one hour to prepare and submit the nondisclosure agreement to the Government. We estimate the burden for this requirement is:

Number of responses	
(.5 * 56,000 * 3.82)	107,000
Avg. hours per response	<u> 1</u>
Estimated hours	107,000
Cost per hour ¹	<u> \$30.00</u>
Total annual public burden	\$ 3,210,000

Notes:

1. Based on equivalent 2013 OPM GS-09 step 5 salary of \$22.57 per hour (TAB E) plus 33 percent burden, rounded to the nearest whole dollar.

(2) *Identification and assertion of limited rights in data.* This category addresses the provision at DFARS 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions. We use the provision in all noncommercial solicitations that include either 252.227-7013, 252.227-7014, or 252.227-7018.

We estimate that 25 percent of the offerors for acquisitions between \$3,000 and \$150,000 and 75 percent of the offerors for acquisitions over \$150,000 will assert limited rights. There were approximately 16,000 noncommercial awards between \$3,000 and \$150,000 and 40,000 noncommercial awards over \$150,000 made in fiscal year 2012 that involved acquisition of technical data or computer software, and would therefore have included one of the three clauses. We estimate that we received, on average, four responses to each solicitation less than or equal to the simplified acquisition threshold and 3.75 responses to solicitations that exceed the simplified acquisition threshold. We estimate that it will take each offeror that asserts limited rights, on average, one hour to identify the restricted rights to the Government and defend them. We estimate that it will take the offerors that do not assert restricted rights in each category 15 minutes each to determine that they will not restrict the Government's rights in data and report that determination to the Government. We estimate the burden for this requirement is:

Number of assertions of limited rights	
(25% * 16,000 * 4) + (75% * 40,000 * 3.75)	128,500
Avg. hours per response	<u> 1</u>
Estimated hours	128,500

Number of negative responses

	(75% * 16,000 * 4) + (25% * 40,000 * 3.75)	85,500
Avg. hours per response		<u>x .25</u>
Estimated Hours		21,375
Total estimated hours		149,875
Cost per hour ¹		<u>x \$30.00</u>
Total annual public burden		\$ 4,496,250

Notes:

1. Based on equivalent 2013 GS-09 step 5 salary of \$22.57 per hour plus 33 percent burden, rounded to the nearest whole dollar.

(3) *Identification of previously delivered data.* This category addresses the provision at DFARS 252.227-7028, Technical Data or Computer Software Previously Delivered to the Government. We estimate that 10 percent of offerors for acquisitions between \$3,000 and \$150,000 and 30 percent of offerors for acquisitions over \$150,000 will have previously delivered data to the Government. There were approximately 16,000 noncommercial awards between \$3,000 and \$150,000 and 40,000 noncommercial awards over \$150,000 made in fiscal year 2012 that involved acquisition of technical data or computer software. We estimate that we received, on average, four responses to each solicitation that was less than or equal to the simplified acquisition threshold and 3.75 responses per solicitation that exceeded the simplified acquisition threshold. We estimate that it will take each offeror that has previously delivered data, on average, one hour to identify that data to the Government. We estimate the burden for this requirement is:

Number of previous data deliveries		
	((10% * 16,000 * 4) + (30% * 40,000 * 3.75))	51,400
Avg. hours per response		<u>x 1</u>
Estimated hours		51,400
Cost per hour ¹		<u>x \$30.00</u>
Total annual public burden		\$ 1,542,000

Notes:

1. Based on equivalent 2013 OPM GS-09 step 5 salary of \$22.57 per hour plus 33 percent burden, rounded to the nearest whole dollar.

b. *Contract basis.* We can calculate one of the information collection requirements on a contract basis. Contractors and subcontractors at any tier that obtain data from the Government

to which the Government has only limited rights must submit a "use and disclosure" agreement. The clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, contains this requirement. We do not insert the clause in solicitations for commercial items and use it less frequently in simplified acquisitions (\$150,000 or less), so we reflect two different frequencies of information requirements in our calculations.

Using the same estimates of approximately 16,000 noncommercial contracts between \$3,000 and \$150,000 and 40,000 noncommercial contracts over \$150,000 in fiscal year 2012 that involved acquisition of technical data or computer software, we have calculated as follows:

We estimate that contractors and subcontractors will need to submit a disclosure agreement on 2.5 percent of contracts between \$3,000 and \$150,000 (25 percent of contracts between \$3,000 and \$150,000 will require subcontracted effort and only 10 percent of that group will require a disclosure agreement). We estimate that three submittals will be required under each relevant contract between \$3,000 and \$150,000.

We also estimate that subcontractors will need to submit a disclosure agreement on 56.25 percent of contracts over \$150,000 (75 percent of contracts over \$150,000 will require subcontracted effort and 75 percent of that group will require a disclosure agreement). We estimate that five submittals will be required for each relevant contract over \$150,000.

The submittals occur after contract award. We estimate that a contractor will take, on the average, one hour to copy and provide the contracting officer the required evidence. The estimated burden for this requirement is:

Number of disclosure statements required (.025 * 16,000)*3) + (.5625 * 40,000)*5)	113,700
Avg. hours per response	<u> x 1.5</u>
Estimated hours	170,550
Cost per hour ¹	<u> x \$30.00</u>
Total annual public burden	\$ 5,116,500

Notes:

1. Based on equivalent 2013 OPM GS-09 step 5 salary of \$22.57 per hour plus 33 percent burden, rounded to the nearest whole dollar.

c. *Data item basis.* We can calculate four of the information collection requirements and one recordkeeping requirement on a data item basis.

(1) *Requirement for marking data that has restricted data rights.* The clauses at DFARS 252.227-7013, Rights in Technical Data--Noncommercial Items; 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; and DFARS 252.227-7018, Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program, require contractors to mark each instance where data is furnished with restricted rights.

We estimate that offerors/contractors will provide data with restricted data rights on 3 percent of data requirements for solicitations/contracts between \$3,000 and \$150,000 ($16,000 * .03 = 480$) and 25 percent of data requirements for solicitations/contracts over \$150,000 ($15,500 * .25 = 3,875$) that involved acquisition of technical data or computer software.

We estimate approximately 87,100 data submissions with restricted data rights in response to solicitation: $((480 + 3,875) * 4 \text{ offers} * 5 \text{ data requirements} = 87,100)$.

We estimate that each award between \$3,000 and \$150,000 will generate an average of 5 data items and that 60 percent of awards over \$150,00 will also generate an average of 5 data items. However, we estimate that 60 percent of awards over \$150,000 will generate an average of 50 data items. This results in a composite average of 23 data items for each award over \$150,000. The estimated burden for this requirement is:

Number of data requirements	
$(.03 * 16,000 * 5) + (.25 * 40,000) * 23$	
+ $(4,355 * 4 * 5)$	319,500
Avg. hours per data requirement	<u>x.5</u>
Estimated hours	159,750
Cost per hour ¹	<u>x \$30.00</u>
Total annual public burden	\$4,792,500

Notes:

1. Based on equivalent 2013 OPM GS-09 step 5 salary of \$22.57 per hour plus 33 percent burden, rounded to the nearest whole dollar.

(2) *Respond to Government challenge of restricted rights.* The clauses at DFARS 252.227-7019, Validation of Asserted Restrictions--Computer Software, and 252.227-7037, Validation of Restrictive Markings on Technical Data, require contractors and subcontractors to justify any asserted restrictions.

We estimate that the Government will challenge 1 percent of data submissions on commercial and non-commercial contracts that involve the acquisition of technical data or computer software between \$3,000 and \$150,000 (2,400) and 5 percent of data submissions on commercial and non-commercial contracts that involve the acquisition of technical data or computer software over \$150,000 (230,000). We use 252.227-7037 on all acquisitions that involved acquisition of technical data or computer software, including those for commercial items. This requirement applies during the source-selection phase and during contract performance.

We estimate that we will challenge 25 percent of the restrictive markings in proposals (87,100).

We also estimate that it will take approximately 10 hours for the contractor to respond to and resolve the Government's challenge. The estimated burden for this requirement is:

Number of challenges	
(.01 * 2,400)	24
+ (.05 * 230,000)	11,500
+ (.25 * 87,100)	<u>21,755</u>
	33,299
Avg. hours per response	<u> x 10</u>
Estimated hours	332,990
Cost per hour ¹	<u> x \$30.00</u>
Total annual public burden	\$9,989,700

Notes:

1. Based on equivalent 2012 GS-09 step 5 salary of \$22.57 per hour plus 33 percent burden, rounded to the nearest whole dollar.

(3) *Post award notice of restrictions.* The clauses at DFARS 252.227-7013, Rights in Technical Data-- Noncommercial Items; 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; and 252.227-7018, Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program, require contractors to identify and mark data or software that must be protected from unauthorized release or disclosure. We estimate that data restrictions will be identified post-award on

5 percent of noncommercial contracts between \$3,000 and \$10,000, and 25 percent of noncommercial contracts over \$150,000. We estimate that there will be aggregated data submissions with restrictions identified post-award (33 percent) and that it will take one hour for the contractor to identify the data restrictions in each instance. The estimated burden for this requirement is:

Number of postaward notices of restrictions ¹ ((.05 * 16,000) + (.25 * 40,000)) * .67	7,236
Avg. hours per response	<u> x 1</u>
Estimated hours	7,236
Cost per hour ²	<u> x \$30.00</u>
Total annual public burden	\$ 217,080

Notes:

1. We calculated the number of data submissions in paragraph (2) of this section.

2. Based on equivalent 2012 OPM GS-09 step 5 salary of \$22.57 per hour plus 33 percent burden, rounded to the nearest whole dollar.

3. All cost estimates are rounded to the nearest dollar.

d. *Total of the burdens in a through c :*

Number of respondents ¹	50,250
Number of responses per respondent ²	<u> x 16.8</u>
Number of responses	846,135
Avg. hours per response ³	<u> x 1.16</u>
Estimated hours	978,801
Cost per hour ⁴	<u> x \$30.00</u>
Total annual public burden	\$24,571,530

Notes:

1. Number of respondents = number of contracts (75,000) that involve technical data or computer software * .67.

2. Determined by dividing total annual responses by number of respondents.

3. Determined by dividing total estimated hours by number of respondents.

4. Based on equivalent 2012 OPM GS-09, step 5 salary of \$22.57 per hour, plus 33 percent burden, rounded to the nearest dollar.

e. *DFARS Part 227 imposes one recordkeeping requirement.* The clauses at DFARS 252.227-7019, Validation of Asserted Restrictions—Computer Software, and 252.227-7037, Validation of Restrictive Markings on Technical Data, require contractors and subcontractors to maintain adequate records and procedures to justify any asserted restrictions. This is a statutory requirement. We estimate that contractors will assert restricted data rights on every contract awarded for acquisition of technical data or computer software; contractors will require one hour annually per instance to maintain records supporting their assertions in addition to the records that the contractor keeps in accordance with its customary business practices. The estimated recordkeeping burden for this requirement is:

Number of assertions of restricted rights	75,000
Avg. hours per assertion	<u> x 1</u>
Estimated hours	75,000
Cost per hour ¹	<u> x \$30.00</u>
Total annual public burden	\$ 2,250,000

Notes:

1. Based on equivalent 2012 OPM GS-09 step 5 salary of \$22.57 per hour plus 33 percent burden, rounded to the nearest whole dollar.

13. Estimated nonrecurring costs. There is no estimated annual cost other than shown in items 12 and 14.

14. Annualized cost to the Government (see TAB C). We need approximately four hours, on average, to evaluate information requirements in DFARS Part 227. Our estimate considers the time required to receive, review, and analyze information submitted by contractors and offerors. We estimated the Government burden as follows:

a. Nondisclosure agreements where the Government has not obtained unlimited rights (DFARS 252.227-7013, 252.227-7014, and 252.227-7018):

Number of submissions (see a.1.)	107,000
Avg. hours per submission	<u> x .5</u>
Estimated hours	53,500

b. Identification and assertion of limited rights in data (DFARS 252.227-7017):

Number of assertions (see a.2)	128,500
Avg. hours per assertion	<u>x 1</u>
Subtotal	128,500
Number of negative responses (see a.2)	85,500
Avg. hours per negative response	<u>x .1</u>
Subtotal	8,550
Total estimated hours	137,050

c. Identification of previously delivered data (DFARS 252.227-7028):

Number of submissions (see a.3)	51,400
Avg. hours per submission	<u>x .2</u>
Estimated hours	10,280

d. Requirement for nondisclosure agreement for release of restricted Government-furnished information (DFARS 252.227-7025):

Number of nondisclosure agreements (b.)	113,700
Avg. hours per agreement	<u>x .25</u>
Estimated hours	28,425

e. Marking Requirement (DFARS 252.227-7013, 252.227-7014, and 252.227-7018):

Number of data submissions with restriction (see c.1.)	319,500
Avg. hours per submission	<u>x 1</u>
Estimated hours	319,500

f. Response to challenges (DFARS 252.227-7019 and 252.227-7037):

Number of data submissions with restriction (see c.2.)	33,299
Avg. hours per submission	<u>x 10</u>
Estimated hours	332,990

g. Postaward notice of restrictions (DFARS 252.227-7013, 252.227-7014, and 252.227-7018):

Number of postaward notices of restrictions (see c.3.)	7,236
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Avg. hours per submission	_____ x 1
Estimated hours	7,236

h. Total of the burdens in a through g ¹:

Number of responses	846,135
Avg. hours per response	x 1.05
Estimated hours	888,442
Cost per hour	_____ x \$30.00
Total annual Government burden	\$26,653,260

Notes:

1. All cost estimates are rounded to the nearest dollar.
2. Based on equivalent 2012 OPM GS-09 step 5 salary of \$22.57 per hour plus 33 percent burden, rounded to the nearest whole dollar.

15. Program changes. We do not estimate any program change to the burdens previously reported in items 13 or 14 of the OMB Form 83-I. The differences in estimated responses and burden hours are due to adjusted estimates based on current FPDS data.

	Previous	New	Difference
Responses:	526,630	846,135	+ 319,505
Burden Hours:	1,528,040	1,053,801	<474,239>

16. Publication. We will not publish results of this information collection.

17. Expiration date. We do not seek approval not to display the expiration date for OMB approval of the information collection.

18. Certification. There are no exceptions to the certification accompanying this Paperwork Reduction Act submission. We will provide the information required by 50 CFR 1320.8(b)(3) in a separate Federal Register notice announcing OMB approval of this information collection.

B. Collections of Information Employing Statistical Methods.

We will not tabulate the results. We will not use statistical methods.