

Supporting Statement for Paperwork Burden Submission

A. Justification

1. This is a request for extension of the expiration date of the information collection requirement currently approved under OMB Control Number 0704-0187 for Information Collection in Support of the DoD Acquisition Process (Various Miscellaneous Requirements), Defense Federal Acquisition Regulation Supplement (DFARS) Parts 208, 209, 235, and associated clauses in Part 252 (formerly titled Information Collection in Support of the DoD Acquisition Process (Solicitation Phase)). This information collection requirement was approved in April 2009 for a total of 1,845 hours. We are requesting a decrease of 5 hours associated with DFARS clause 252.226-7000 as the requirement is going away with the pending deletion of the clause, and an additional decrease of 212 hours in the estimated burden hours associated with DFARS clause 252.235-7003. We have estimated no further substantive changes from the previously used data based on the estimates of DoD acquisition professionals. We are therefore requesting a total of only 1,628 hours (TAB A).

This information collection requirement implements 10 U.S.C. 2327, 10 U.S.C. 2354, and 10 U.S.C. 2536. With regard to administrative requirements that necessitate the collection, this implements 48 CFR Chapter 2 (DFARS Parts 208, 209, 235, and associated clauses in DFARS Part 252). Specifically identified Defense Federal Acquisition Regulation Supplement (DFARS) requirements are at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>.

2. This information is used by Government contracting officers to

- Determine whether to provide precious metals as Government-furnished material;
- Determine ineligibility for award due to ownership or control of the firm by a foreign government, especially the government of a terrorist country;
- Determine whether there is a compelling reason for a contractor to enter into a subcontract in excess of \$30,000 with a firm, or subsidiary of a firm, that is identified in the List of Parties Excluded from Federal Procurement and Nonprocurement as being ineligible for award of Defense subcontracts because it is owned or controlled by the government of a terrorist country;

- Evaluate claims of indemnification for losses or damages occurring under a research and development contract; and
- Keep track of radio frequencies on electronic equipment under research and development contracts so that the user does not override or interfere with the use of that frequency by another user.

3. Improved information technology is used to the maximum extent practicable. Where both the DoD and prospective offerors/bidders are capable of electronic interchange, this information collection requirement may be submitted electronically. However, we anticipate that the burden will be virtually the same whether submissions are made electronically or using a paper format, because identical underlying analysis must be performed in either case. Thus, the difference between the two methods (transmitting information to the Government electronically or using a paper format) would be in transmission time (mailroom, postage, and other related costs). We consider this difference to be negligible.

4. The information collection requirements placed on contractors are specified in individual solicitations issued by DoD acquisition activities for the acquisition of supplies and services and are not considered duplicative of other reporting requirements.

5. The collections associated with small businesses are the minimum consistent with applicable laws, regulations, and prudent business practices.

6. The frequency for collecting this information was reviewed by the DoD specialists who are most knowledgeable of the requirements and the need for the information. Every attempt has been made to keep the frequency of collection to a minimum without jeopardizing the ability of the Government to assure that offerors are submitting adequate responses to requests for proposals. This information is collected in response to individual solicitations or contracts. Collecting this information less frequently would impede contracting officers from making informed contract-award decisions.

7. The information will not be collected in a manner that requires an explanation of special circumstances.

8. Public comments were solicited in the Federal Register on November 28, 2011, 76 FR 72915 (TAB B), as required by 5 CFR 1320.8(d)). No comments were received.

9. No payment or gift will be provided to respondents to this information collection requirement.

10. The information collected will be disclosed only to the extent consistent with prudent business practices, current regulations, and in accordance with the requirements of the Freedom of Information Act. No assurance of confidentiality is provided to respondents.

11. No sensitive questions are involved.

12. The estimated hour burden of the collection of information and the estimated annualized cost to respondents were based on estimates of processing times from contracting professionals familiar with these requirements. We do not estimate any substantive change in the prior estimates for specifically identified burdens.

a. 252.208-7000, Intent to Furnish Precious Metals as Government-Furnished Material, paragraphs (b) and (c). This clause is prescribed at 208.7305(a) for use in all solicitations and contracts exceeding the simplified acquisition threshold except when the contracting officer has determined that the required precious metals are not available from the Defense Supply Center, Philadelphia (DSCP), or when the contracting officer knows that the items being acquired do not require precious metals in their manufacture. The clause has a flow-down requirement to subcontracts for items containing precious metals.

Paragraph (b) requires the offeror to cite the type and quantity of precious metals required in performance of the contracts. Paragraph (c) requires offerors to submit two prices for each deliverable item which contains precious metals – one based on the Government furnishing precious metals, the other based on the contractor furnishing the precious metals.

Based on prior data from DSCP, we continue to estimate that 29 contractors will receive precious metals under this clause in 131 different shipments in a year. We estimate the following, based on an estimate of twice as many respondents as contractors receiving shipments ($29 \times 2 = 58$); an estimate that number of solicitations equals shipments plus 25 percent ($131 + 33 = 164$); an estimate of four responses per solicitation; one hour per response; and an estimated cost of \$37 per hour (the equivalent of a GS-11, step 5 salary plus 36.45 percent burden):

Respondents	58
Responses/respondent	<u>x 11.31</u>
Responses	656
Hours per response	<u>x 1</u>
Total hours	656
Cost per hour	x <u>\$37</u>
Total annual cost to public	\$24,272

b. 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, paragraph (c); 252.209-7002, Disclosure of Ownership or Control by a Foreign Government, paragraph (c); and 252.209-7004, paragraph (b), Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country.

i. Use of the provision at 252.209-7001 is prescribed at 209.104-70(a), for use in all solicitations expected to result in contracts of \$150,000 or more. Paragraph (c) requires disclosure if the government of a terrorist country has a significant interest in the offeror, a subsidiary of the offeror, or in a parent company of which the offeror is a subsidiary.

We estimate that such disclosure rarely occurs, because 10 U.S.C. 2327 prohibits award to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary, unless a waiver is granted by the Secretary of Defense. We have estimated not more than 10 respondents, .1 responses per respondent per year, 1 hour per response, and an estimated cost of \$37 per hour (the equivalent of a GS-11, step 5 salary plus 36.45 percent burden):

Respondents	10
Responses/respondent	<u>x .1</u>
Responses	1
Hours per response	<u>x 1</u>
Total hours	1
Cost per hour	x <u>\$37</u>
Total annual cost to public	\$37

ii. Use of the provision at DFARS 252.209-7002 is prescribed at 209.104-70(b), for use in all solicitations when access to proscribed information is necessary for contract performance. Paragraph (c) requires disclosure if a foreign government has a controlling interest in the offeror, or in a parent company of which the offeror is a subsidiary.

We estimate that such disclosure rarely occurs, because 10 U.S.C. 2536(a) prohibits award to a firm or a subsidiary of a firm controlled by a foreign government under such circumstances, unless the Secretary of Defense grants a waiver. We have estimated not more than 10 respondents, .1 responses per respondent per year, 1 hour per response, and an estimated cost of \$37 per hour (the equivalent of a GS-11, step 5 salary plus 36.45 percent burden):

Respondents		10
Responses/respondent		<u>x .1</u>
Responses		1
Hours per response		<u>x 1</u>
Total hours		1
Cost per hour	x	<u>\$37</u>
Total annual cost to public		\$37

iii. Use of the clause at 252.209-7004 is prescribed at 209.409, for use in all solicitations and contracts with a value of \$150,000 or more. Paragraph (b) requires the Contractor to notify the contracting officer in writing before entering into a subcontract in excess of \$30,000 with a party that is identified on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs as being ineligible for award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The contractor must provide the name of the proposed subcontractor and the compelling reasons for doing business with the subcontractor.

We estimate that such notification rarely occurs, because 10 U.S.C. 2327 prohibits award of subcontracts exceeding \$30,000 to a firm owned or controlled by the government of a terrorist country, unless the Government determines that there is a compelling reason to do so. We have estimated not more than 10 respondents, .1 responses per respondent, 1 hour per response, and an estimated cost of \$37 per hour (the equivalent of a GS-11, step 5 salary plus 36.45 percent burden):

Respondents		10
Responses/respondent		<u>x .1</u>
Responses		1
Hours per response		<u>x 1</u>
Total hours		1
Cost per hour	x	<u>\$37</u>
Total annual cost to public		\$37

c. **252.226-7000, Notice of Historically Black College or University and Minority Institution Set-Aside, paragraph (c)(2).** This clause is currently prescribed at 226.370-9(a) for use in solicitations and contracts set aside for Historically Black Colleges or Universities (HBCUs)/Minority Institutions (MIs) (10 U.S.C. 2323). Paragraph (c)(2) requires that upon request of the contracting officer, the offeror provide evidence prior to award that the Secretary of Education has determined the offeror to be an HBCU or MI. This clause is pending deletion, so collection efforts are estimated to be reduced by 5 hours to 0 hours, with no annual cost to the public.

d. **252.235-7000, Indemnification under 10 U.S.C. 2354--Fixed Price, paragraph (f); 252.235-7001, Indemnification Under 10 U.S.C. 2354--Cost-Reimbursement, paragraph (e); and DFARS 252.235-7003, Frequency Authorization, paragraph (b).**

i. Use of the clauses at 252.235-7000/7001 is prescribed at 235.070-3, for use in solicitations and contracts when the contractor is to be indemnified in accordance with DFARS 235.070-1. Paragraphs (f) and (e), respectively, require contractors to notify the contracting officer of any claim and provide (i) proof or evidence of a claim, and (ii) copies of all pertinent papers when the contractor is to be indemnified.

Based on information provided by specialists responsible for reviewing and processing claims under the requirements of these clauses, we estimate that there is not more than one claim per year. The contractor should already have the information available, as the same information is necessary to answer suits filed against them by a third party. Therefore, we have estimated 1 hour to prepare and submit the information, at an estimated cost of \$37 per hour (the equivalent of a GS-11, step 5 salary plus 36.45 percent burden):

Respondents	1
Responses/respondent	x <u>1</u>
Responses	1
Hours per response	x <u>1</u>
Total hours	1
Cost per hour	x <u>\$37</u>
Total annual cost to public	\$37

ii. Use of the clause at DFARS 252.235-7003 is prescribed at 235.072(b), for use in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring frequency authorization. Paragraph (b) requires that the contractor or subcontractor provide to the contracting officer the technical operating characteristics for any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made.

According to the Federal Procurement Data System (FPDS) database, DoD R&D contracts have decreased by approximately 18% over the past 3 years. Therefore, we estimate the number of contracts that would require approval to use a radio frequency to decrease from 590 to 484. We estimate that it will take the contractor approximately 2 hours to prepare and submit the required information, at an estimated cost of \$37 per hour (the equivalent of a GS-11, step 5 salary plus 36.45 percent burden):

Respondents	484
Responses/respondent	x <u>1</u>
Responses	484
Hours per response	x <u>2</u>
Total hours	968
Cost per hour	x <u>\$37</u>
Total annual cost to public	\$35,816

13. This information collection requirement imposes no recordkeeping requirement.

14. The time required for Government review of offeror responses to requests for proposals and invitations for bids and the associated annual cost to the Government is estimated to be 1,301 hours and \$48,137 based on \$37 per hour (the equivalent of a GS-11, step 5 salary plus 36.45 percent burden). This estimate is based on receiving, reviewing, and analyzing the information submitted by each offeror.

a. **252.208-7000, Intent to Furnish Precious Metals as Government-Furnished Material, paragraphs (b) and (c).** We estimate the annual cost to the Government to review and analyze the responses to this information collection requirement to be .5 hours per response, at \$37 per hour, based on GS-11, step 5 salary plus 36.45 percent burden.

Number of responses	656
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Avg. hours per response	<u>x .5</u>
Total hours	328
Cost per hour	<u>x \$37</u>
Total annual cost to Government	\$12,136

b. **252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, paragraph (c); 252.209-7002, Disclosure of Ownership or Control by a Foreign Government, paragraph (c); and 252.209-7004, paragraph (b), Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country.** We estimate the annual cost to the Government to review and analyze the responses to this information collection requirement to be 1 hour per response (increased from .5 hours per response to perform the requisite analysis to determine whether a waiver will be necessary), at \$37 per hour, based on GS-11, step 5 salary plus 36.45 percent burden.

Number of responses	1
Avg. hours per response	<u>x 3</u>
Total hours	3
Cost per hour	<u>x \$37</u>
Total annual cost to Government	\$111

c. **252.226-7000, Notice of Historically Black College or University and Minority Institution Set-Aside, paragraph (c)(2).** This clause is pending deletion, so collection efforts are estimated to be reduced by 1 hours to 0 hours, with no annual cost to the Government.

d. **252.235-7000, Indemnification under 10 U.S.C. 2354--Fixed Price, paragraph (f); 252.235-7001, Indemnification Under 10 U.S.C. 2354--Cost-Reimbursement, paragraph (e); and DFARS 252.235-7003, Frequency Authorization, paragraph (b).** We estimate the annual cost to the Government to review and analyze the responses to this information collection requirement to be 2 hours per response, at \$37 per hour, based on a GS-11, step 5 salary plus 36.45 percent burden.

i. 252.235-7000 and 252.235-7001

Number of responses	1
Avg. hours per response	<u>x 2</u>
Total hours	2
Cost per hour	<u>x \$37</u>

Total annual cost to Government \$74

ii. 252.235-7003

Number of responses	484
Avg. hours per response	x 2
Total hours	<hr/> 968
Cost per hour	x \$37
Total annual cost to Government	\$35,816

15. The previous estimate of Government hours was reduced by 1 hour as clause 252.226-7000 is pending deletion, and reduced by an additional 212 hours associated with clause 252.235-7003 due to a reduction in the number of DoD R&D contracts awarded. The previous estimate was increased by approximately 1 hour due to the increase in estimated Government response time associated with 252.209-7001, 252.209-7002, and 252.209-7004.

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

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

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

B. Collections of Information Employing Statistical Methods.

Results will not be tabulated. Statistical methods will not be employed.