

SUPPORTING STATEMENT

OMB Control Number 0704-0369— Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.71, Rights in Technical Data, and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses

A. JUSTIFICATION

1. Need for the Information Collection

This justification support 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, 2016. DFARS subparts 227.71 and 227.72 (TAB A) contain information collection requirements that are associated with rights in technical data and computer software. DoD 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 (TAB A). DoD describes the relationships among the information collection requirements and the statutory requirements in the following analysis:

DoD must recognize and protect contractors' intellectual property rights in technical data that are associated with development exclusively at private expense, 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 10, 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, DoD does not challenge a contractor's assertion that a commercial item, component, or process was developed exclusively at private expense unless the Government can demonstrate that it contributed to development of the item, component, or process. DoD does not use many data rights clauses in contracts for commercial items. However, DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items, is prescribed for use in contracts using FAR part 12 procedures for the acquisition of commercial items if the successful offeror(s) will be required to deliver to the Government technical data pertaining to commercial items for which the Government will have paid for any portion of the development costs (in which case the clause at 252.227-7013 will govern only the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense). DFARS 252.227-7037, Validation of Restrictive Markings on Technical Data, is also prescribed for use in contracts for commercial items if the solicitation and contract contain the either DFARS clause 252.227-7013, 252.227-7015, or 252.227-7018.

a. Identification and assertion of use, release, or disclosure restrictions prior to delivery. DFARS provision 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, is used in all noncommercial solicitations that include either DFARS clauses 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, to require offerors to identify and assert, in their offer, technical data or computer software to be delivered with other than unlimited rights in their offer. 10 U.S.C. 2320 requires, to the maximum extent practicable, an identification prior to delivery of any technical data to be delivered to the Government with restrictions on use, release, or disclosure.

b. Post-award notices of use, release, or disclosure restriction and marking. DFARS clauses 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 both identify and mark technical data or software that must be protected from unauthorized release or disclosure. Once the contractor properly marks the technical data and software, DoD can protect it, as required by 10 U.S.C. 2320.

c. Justification for any asserted restriction. 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 to justify the validity of any markings that assert restrictions on the Government's rights to use, modify, reproduce, perform, display, release or disclose delivered or required to be delivered. 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. DoD uses 252.227-7037 when buying commercial and noncommercial items.

d. Use and non-disclosure agreement. DFARS 227.7103-7, Use and non-disclosure agreement, requires intended recipients of technical data or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure, to sign the use and non-disclosure agreement at 227.7103-7(c) prior to release or disclosure of the data, unless the recipient is a Government contractor that requires access to a third parties data or software for the performance of a Government contract that contains the clause at 252.227-7025, Limitations on Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. 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 use, release, or disclose the data.

e. Limitations on use or disclosure. DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, requires contractors and subcontractors at any tier that obtain data from the Government to which the Government has only limited rights, restricted rights, or SBIR rights legends to submit a "Use

and Disclosure" agreement. 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.

f. Identification of previously delivered technical data or computer software. DFARS 252.227-7028, Technical Data or Computer Software Previously Delivered to the Government, requires offerors to identify any technical data or computer software that it intends to deliver that are identical or substantially similar to technical data or computer software that the offeror has produced for, delivered to or is obligated to deliver to the Government. DoD needs this information to avoid paying for rights in technical data or computer software to which the Government already has license rights.

2. Use of the Information

The information collected—

a. Enables the Government to protect a contractor's or subcontractor's technical data or software from unauthorized release or disclosure. Data generators may suffer significant, adverse financial impacts if DoD does not protect technical data developed under contracts;

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. Use of Information Technology

55% responses collected electronically. DoD uses improved information technology to the maximum extent practicable. The information collection requirements may be submitted electronically when 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. Non-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. DoD cannot obtain similar information from any other source.

5. Burden on Small Business

The collections are the minimums consistent with applicable laws, regulations, and prudent business practices. DoD does not expect the collections to have a significant impact on a substantial number of small businesses or other small entities. DoD obtains fewer Government

license rights in data 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. Less Frequent Collection

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.

Data rights vary from contract to contract. Contracting officers may negotiate nonstandard data rights licenses that are tailored to a particular acquisition. DoD 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. DoD must understand any limitations on data proposed for use under a Government contract to make an informed source selection. DoD also must know if the data were previously delivered under a Government contract to avoid paying again for the data rights that DoD has already obtained.

7. Paperwork Reduction Act Guidelines

There are no special circumstances for collection. Collection of this information is consistent with the guidelines at 5 CFR 1320.5(d)(2).

8. Consultation and Public Comments

a. Public comments were solicited in the Federal Register on June 21, 2016 ([81 FR 40288](#)), as required by 5 CFR 1320.8(d). No comments were received in response to this notice.

b. There were no efforts made to consult with persons outside the sponsoring Agency regarding availability of requested information, frequency of collection, clarity of instructions, etc.

c. A notice of submission to OMB for clearance of this information collection was published in the *Federal Register* on August 29, 2016 ([81 FR 59201](#)).

9. Gifts or Payment

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

10. Confidentiality

DoD will disclose the information collected only to the extent consistent with prudent business practices and the Freedom of Information Act. DoD does not provide an assurance of confidentiality to respondents. This collection does not require submission of personally identifiable information and did not require a Privacy Act System of records Notice.

11. Sensitive Questions

No sensitive questions are involved.

12. Respondent Burden, and its Labor Costs

DoD 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. DoD estimates that DoD receives 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. 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 (SAT) vs. exceeding the simplified acquisition threshold is reflected in the following matrices (note – “Actions” include contracts, orders, and calls, and does not include modifications or funding actions):

a. Non-Commercial.

NON-COMMERCIAL	Micro - SAT			Above SAT			FY 2015
Competitive	Yes	No	Subtotal	Yes	No	Subtotal	Total
Total Actions	284,524	54,589	339,113	35,500	14,883	50,383	389,496
Percent w/ tech data or computer software req’s	5%	5%	5%	70%	70%	70%	~13.4%
Actions w/ tech data or computer software req’s	14,226	2,729	16,956	24,850	10,418	35,268	52,224
Estimated Actions (Rounded)	14,000	2,500	16,500	25,000	10,500	35,500	52,000
Estimated Offerors / Action	5	1	4.4	5	1	3.8	~4
Estimated Offerors	70,000	2,500	72,500	125,000	10,500	135,500	208,000
Estimated Data Submissions / Action	5	5	5	23	23	23	~4

Estimated Data Submissions	70,000	12,500	82,500	575,000	241,500	816,500	899,000
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a. Commercial.

COMMERCIAL	Micro - SAT			Above SAT			FY 2015
Competitive	Yes	No	Subtotal	Yes	No	Subtotal	Total
Total Actions	319,534	53,987	373,521	22,238	8,141	30,379	403,900
Percent w/ tech data or computer software req's	2%	2%	2%	35%	35%	35%	~4.5%
Actions w/ tech data or computer software req's	6,391	1,080	7,470	7,783	2,849	10,633	18,103
Estimated Actions (Rounded)	6,500	1,000	7,500	8,000	3,000	11,000	18,500
Est. Offerors / Action	5	1	4.5	5	1	3.9	~4
Estimated Offerors	32,500	1,000	33,500	40,000	3,000	47,000	76,500
Est. Data Submission / Offeror	5	5	5	23	23	23	~4
Estimated Data Submissions	32,500	5,000	37,500	184,000	69,000	253,000	290,500

DoD calculated the burdens on a respondent basis, a contract basis, or a data-item basis, as appropriate, 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. Identification and assertion of use, release, or disclosure restrictions prior to delivery.

The provision at DFARS 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, is used in all solicitations that include either 252.227-7013, 252.227-7014, or 252.227-7018.

There were approximately 16,500 noncommercial awards between \$3,500 and \$150,000 and 35,500 noncommercial awards over \$150,000 made in fiscal year 2015 that involved acquisition of technical data or computer software. DoD estimates that 75 percent of the offerors for acquisitions between \$3,500 and \$150,000 and 25 percent of the offerors for

acquisitions over \$150,000 will not assert use, release, or disclosure restrictions on technical data or computer software prior to delivery. There were approximately 16,500 noncommercial awards between \$3,500 and \$150,000 and 35,500 noncommercial awards over \$150,000 made in fiscal year 2015 that involved acquisition of technical data or computer software, and would therefore have included one of the three clauses. Because DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items, is prescribed for use in contracts using FAR part 12 procedures for the acquisition of commercial items if the successful offeror(s) will be required to deliver to the Government technical data pertaining to commercial items for which the Government will have paid for any portion of the development costs, DoD has increased the estimated number of noncommercial awards by one percent, estimated as follows: 5,200 of the 18,500 commercial awards involving technical data or commercial computer software are for technical data. If the Government paid some of the development costs in 10 percent of such awards, then an additional 520 commercial awards need to be added to the 52,000 noncommercial awards, i.e. one percent increase).

DoD estimates that DoD 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, each offeror submitting an average of 6 offers per year. DoD estimates that it will take the offerors that do not assert use, release, or disclosure restrictions prior to award 30 minutes to determine that they will not restrict the Government's rights to use, release, or disclose technical data or computer software and report that determination to the Government. DoD estimates that it will take each offeror that does assert use, release, or disclosure restrictions prior to award, on average, two hours to identify the technical data or computer software to be furnished with restrictions and provide the basis for the assertion. DoD further estimates that for one percent of the offers that assert such restrictions, the contracting officer may request additional information sufficient to enable the contracting officer to evaluate the listed assertion. DoD estimates the burden for this requirement as follows:

Estimation of Respondent Burden Hours: 252.227-7017				
	No restriction	Restriction	Additional info upon request	Subtotal
Number of respondents	14,843	20,086	1,205*	34,929
Responses per respondent	6	6	1	6.03
Number of responses	89,058	120,516	1,205	210,779
Hours per response	.5	2	6	1.39
Estimated hours (number of responses x hrs /response)	44,529	241,037	7,230	292,796
Cost per hour (hourly wage)	\$32**	\$32**	\$46***	\$32.35
Annual public burden (est. hours x cost per hour)	\$1,424,928	\$7,713,168	\$332,580	\$9,470,676

Notes:

*Subset of respondents that assert restrictions.

** The hourly rate is computed based on Office of Personnel Management (OPM) equivalent 2016 GS-09 step 5 hourly pay rate (\$23.25) without locality pay, plus 36.25% (\$8.43) benefits, totaling \$31.68 per hour, rounded up to \$32 per hour. The 36.25% fringe benefit rate is derived from Circular No. A-76, Revised Supplemental Handbook (Memorandum M-08-13 dated March 11, 2008).

*** Based on OPM 2016 GS-12 step 5 hourly pay rate (\$33.72) without locality pay, plus 36.25% (\$12.22) benefits, totaling \$45.94, rounded up to \$46 per hour.

b. Rights in noncommercial technical data and noncommercial computer software.

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 technical data or computer software that must be protected from unauthorized use, release, or disclosure.

i. *Postaward identification of use, release, or disclosure restrictions.* There were approximately 16,500 noncommercial awards between \$3,500 and \$150,000 and 35,500 noncommercial awards over \$150,000 made in fiscal year 2015 that involved acquisition of technical data or computer software. Because DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items, is prescribed for use in contracts using FAR part 12 procedures for the acquisition of commercial items if the successful offeror(s) will be required to deliver to the Government technical data pertaining to commercial items for which the Government will have paid for any portion of the development costs, DoD has increased the estimated number of noncommercial awards by one percent, estimated as follows: 5,200 of the 18,500 commercial awards involving technical data or commercial computer software are for technical data. If the Government paid some of the development costs in 10 percent of such awards, then an additional 520 commercial awards need to be added to the 52,000 noncommercial awards (i.e. one percent increase). DoD estimates that restrictions will be identified post-award on 5 percent of noncommercial contracts between \$3,500 and \$150,000 that include technical data or computer software, and 25 percent of such noncommercial contracts over \$150,000. DoD estimates that there will be aggregated data submissions with restrictions identified post-award 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 as follows:

Estimation of Respondent Burden Hours: 252.227-7013, -7014, -7018 (e)(3)	
Number of respondents	9,047
Responses per respondent	1
Number of responses	9,047
Hours per response	2
Estimated hours (number of responses multiplied hours per response)	18,094
Cost per hour (hourly wage)*	\$32

Annual public burden (estimated hours multiplied by cost per hour)	\$579,008
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Notes:

* Based on OPM equivalent 2016 GS-09 step 5 hourly pay rate (\$23.25) without locality pay, plus 36.25% (\$8.43) benefits, totaling \$31.68 per hour, rounded up to \$32 per hour.

ii. *Requirement for marking data that have restricted data rights.* In each of 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, paragraph (f) requires contractors to mark each instance in which data is furnished with restricted rights. DoD estimates that offerors/contractors will provide data with restricted data rights on 3 percent of data requirements for solicitations/contracts between \$3,500 and \$150,000 ($16,665 * .03 = 500$) and 25 percent of data requirements for solicitations/contracts over \$150,000 ($32,855 * .25 = 8,214$) that involved acquisition of technical data or computer software. DoD estimates that each award between \$3,500 and \$150,000 will generate an average of 5 data items and that 40 percent of awards over \$150,000 will also generate an average of 5 data items. However, DoD estimates that 60 percent of awards over \$150,000 will generate an average of 50 data items. This results in a composite average of 32 data items for each award over \$150,000. DoD estimates approximately 174,274 data submissions with restricted data rights in response to solicitations: $((500 + 8214) * 4 \text{ offers} * 5 \text{ data requirements})$. With an estimate of .5 hours to mark each data item, the estimated burden for this requirement is as follows:

Estimation of Respondent Burden Hours: 252.2227-7013, -7014, -7018 (f)	
Number of respondents	8,700
Responses per respondent	50
Number of responses	435,000
Hours per response	.5
Estimated hours (number of responses multiplied hours per response)	217,500
Cost per hour (hourly wage)*	\$32
Annual public burden (estimated hours multiplied by cost per hour)	\$6,960,000

Notes:

* Based on OPM equivalent 2016 GS-09 step 5 hourly pay rate (\$23.25) without locality pay, plus 36.25% (\$8.43) benefits, totaling \$31.68 per hour, rounded up to \$32 per hour.

c. Respond to pre-challenge requests for information and 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 upon a pre-challenge request for information or a challenge to the assertions. DoD uses 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 as well as during contract performance. Based on the advice of subject matter experts, DoD does not anticipate many requests for information or challenges relating to commercial items, because the statute mandates a presumption of development exclusively at private expense, except in limited conditions relating to acquisition of weapon systems unless the contracting officer has information to the contrary.

DoD estimates that the Government will request additional information or challenge 0.06 percent of data submissions on commercial and non-commercial contracts that involve the acquisition of technical data or computer software between \$3,500 and \$150,000 $((2500/1.01) * .0006 = 1)$ and 0.08 percent of data submissions on commercial and non-commercial contracts that involve the acquisition of technical data or computer software over \$150,000 $((222,840/1.01=260,000) * .0008 = 208)$.

DoD estimates that DoD will challenge .15 percent of the restrictive markings in proposals $((174,274/1.01=172,549) * .0015 = 259)$. In addition, DoD estimates challenges or pre-challenge requests for information 52 times per year. DoD also estimates that it will take approximately 20 hours for the contractor to provide additional pre-challenge information or respond to and resolve the Government's challenge. The estimated burden for this requirement is as follows:

Estimation of Respondent Burden Hours: 252.227-7019 and -7037	
Number of respondents	520
Responses per respondent	1
Number of responses	520
Hours per response	20
Estimated hours (number of responses multiplied hours per response)	10,400
Cost per hour (hourly wage)*	\$46
Annual public burden (estimated hours multiplied by cost per hour)	\$478,400

Notes:

* Based on OPM equivalent 2016 GS-12 step 5 hourly pay rate (\$33.72) without locality pay, plus 36.25% (\$12.22) benefits, totaling \$45.94, rounded up to \$46 per hour.

d. Non-disclosure agreements for solicitations that contain technical data to which the Government has other than unlimited rights.

DFARS 227.7103-7, Use and Non-Disclosure Agreement, requires intended recipients of technical data or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure, to sign the use and non-disclosure agreement at 227.7103-7(c) prior to release or disclosure of the data, unless the recipient is a Government contractor that requires access to a third parties data or software

for the performance of a Government contract that contains the clause at 252.227-7025, Limitations on Use or Disclosure of Government-Furnished Information Marked with Restrictive legends. This category generally addresses solicitation that contain 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.

This burden is calculated on a “per respondent” basis because it is calculated on the basis of the estimated number of offerors under solicitations that contain data rights clauses. There were approximately 52,000 such noncommercial awards made in fiscal year 2015 and 520 commercial awards. Of those 52,520 solicitations, DoD estimates that approximately 50% will contain technical data to which the Government has other than unlimited rights. DoD estimates that DoD receives, on average, 4 responses to each solicitation, and that each offeror submits approximately 4 offers per year. DoD also estimates 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 non-disclosure agreement to the Government. DoD estimates the burden for this requirement as follows:

Estimation of Respondent Burden Hours: 227.7103-7	
Number of respondents	17,506
Responses per respondent	6
Number of responses	105,036
Hours per response	1.5
Estimated hours (number of responses multiplied hours per response)	157,554
Cost per hour (hourly wage)*	\$32
Annual public burden (estimated hours multiplied by cost per hour)	\$5,041,728

Notes:

* Based on OPM equivalent 2016 GS-09 step 5 hourly pay rate (\$23.25) without locality pay, plus 36.25% (\$8.43) benefits, totaling \$31.68 per hour, rounded up to \$32 per hour.

e. Limitations on use or disclosure.

DoD calculates the burden for DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information, on a contract basis. Contractors and subcontractors at any tier that obtain data from the Government to which the Government has only limited rights, restricted rights, or SBIR data rights must submit a "use and disclosure" agreement. The clause at DFARS 252.227-7025 contains this requirement. DoD does not insert the clause in solicitations for commercial items and uses it less frequently in simplified acquisitions (\$150,000 or less), so these calculations reflect two different frequencies of information requirements.

Using the same estimates of approximately 16,500 noncommercial contracts between \$3,500 and \$150,000 and 32,500 noncommercial contracts over \$150,000 in fiscal year 2015 that involved acquisition of technical data or computer software, DoD estimates that contractors and subcontractors will need to submit a use and disclosure agreement on 2.5 percent of contracts between \$3,500 and \$150,000. DoD estimates that three submittals will be required under each relevant contract between \$3,500 and \$150,000.

DoD also estimates that subcontractors will need to submit a use and disclosure agreement on 50 percent of contracts over \$150,000. DoD estimates that five submittals will be required for each relevant contract over \$150,000, 1.5 responses per respondent.

The submittals occur after contract award. DoD estimates that a contractor will take, on the average, 1.5 hours to copy and provide the contracting officer the required evidence. The estimated burden for this requirement is as follows:

Estimation of Respondent Burden Hours: 252.227-7025	
Number of respondents	60,408
Responses per respondent	1.5
Number of responses	90,612
Hours per response	1.5
Estimated hours (number of responses multiplied hours per response)	135,918
Cost per hour (hourly wage)*	\$32
Annual public burden (estimated hours multiplied by cost per hour)	\$4,349,376

Notes:

* Based on OPM equivalent 2016 GS-09 step 5 hourly pay rate (\$23.25) without locality pay, plus 36.25% (\$8.43) benefits, totaling \$31.68 per hour, rounded up to \$32 per hour.

f. Identification of previously delivered data.

This category addresses the provision at DFARS 252.227-7028, Technical Data or Computer Software. DoD estimates that 10 percent of offerors for acquisitions between \$3,500 and \$150,000 and 30 percent of offerors for acquisitions over \$150,000 will have previously delivered data to the Government. There were approximately 16,500 noncommercial awards between \$3,500 and \$150,000 and 35,500 noncommercial awards over \$150,000 made in fiscal year 2015 that involved acquisition of technical data or computer software. DoD estimates receipt, on average, of 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. DoD estimates that it will take each offeror that has previously delivered data, on average, one hour to identify that data to the Government. DoD estimates the burden for this requirement is as follows:

Estimation of Respondent Burden Hours: 252.227-7028	
Number of respondents	12,052
Responses per respondent	4
Number of responses	48,208
Hours per response	1.5
Estimated hours (number of responses multiplied hours per response)	72,312
Cost per hour (hourly wage)*	\$32
Annual public burden (estimated hours multiplied by cost per hour)	\$2,313,984

Notes:

* Based on OPM equivalent 2016 GS-09 step 5 hourly pay rate (\$23.25) without locality pay, plus 36.25% (\$8.43) benefits, totaling \$31.68 per hour, rounded up to \$32 per hour.

g. Total Estimate of Respondent Burden Hours:

i. *Reporting burden (sum of 12.a. through 12.g. of this supporting statement).*

The total number of respondents for these information collection requirements is estimated at 75,250: 60,400 offerors, contractors, and subcontractors that assert restrictions and 14,850 offerors that do not assert restrictions. The number of responses per respondent, hours per response, and cost per hour are weighted averages.

Estimation of Burden Hours: Reporting Total (sum 12.a. through 12.g.)	
Number of respondents *	75,250
Responses per respondent ** (Approximately)	12
Number of responses	899,202
Hours per response ** (Approximately)	1
Estimated hours	904,574
Cost per hour (hourly wage) **	\$32.27
Annual public burden (estimated hours multiplied by cost per hour)	\$29,193,172

Notes:

* The total number of respondents for these information collection requirements is estimated at 75,250: 60,400 offerors, contractors, and subcontractors that assert restrictions and 14,850 offerors that do not assert restrictions

** The number of responses per respondent, hours per response, and cost per hour are weighted averages

ii. *Recordkeeping burden.*

Per statute, contractors must maintain records that support the validity of any assertions of restrictions on the Government's rights to use, modify, reproduce, display, perform, release, or disclose technical data or computer software that are deliverables under a Government contract. 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. This requirement is also repeated in 252.227-7013, 252.227-7014, and 252.227-7018. DoD estimates that of the 75,250 respondents, 60,400 will assert restrictions on use, release, or disclosure in response to solicitations and on contracts awarded for acquisition of technical data or computer software and will therefore be required to maintain adequate records to justify such assertions; such offerors/contractors/subcontractors will require an average of 1.5 hours annually 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 as follows:

Estimation of Burden Hours: Recordkeeping Total	
Number of respondents (record keepers)	60,400
Responses per respondent	1
Number of responses	60,400
Hours per record keeper	1.5
Estimated hours	90,600
Cost per hour (hourly wage)	\$32.00
Annual public burden (estimated hours multiplied by cost per hour)	\$2,899,200

Notes:

* Based on OPM equivalent 2016 GS-09 step 5 hourly pay rate (\$23.25) without locality pay, plus 36.25% (\$8.43) benefits, totaling \$31.68 per hour, rounded up to \$32 per hour.

iii. Total Respondent Burden Hours (Reporting + Recordkeeping)

Estimation of Burden Hours: Total	
Number of respondents (record keepers are a subset)	75,250
Responses per respondent (approximately)	13
Number of responses	959,602
Hours per response (approximately)	1.04
Total Estimated hours	995,174
Cost per hour (hourly wage) (approximately)	\$32.25
Annual public burden (estimated hours multiplied by cost per hour)	\$32,092,372

13. Respondent Costs Other Than Burden Hour Costs

DoD does not estimate any annual cost burden for respondents other than the burden hours reported in item 12.

14. Cost to the Federal Government

a. DoD estimates the cost to the Government as follows:

Government Burden	Annual Responses	Hours per Response	Annual Hours	Cost per Hour	Annual Burden
a.1. No restrictions	89,058	0.1	8,906	\$32.00	\$284,986
a.2. Restrictions – assert	120,516	1	120,516	\$32.00	\$3,856,512
a.3. Additional info	1,205	1	1,205	\$32.00	\$38,560
b.i. Post award – notice	9,047	1	9,047	\$32.00	\$289,504
b.ii. Marking	435,000	1	435,000	\$32.00	\$13,920,000
c. Justification	520	10	5,200	\$32.00	\$166,400
d. Non-Disclosure	105,036	0.5	52,518	\$32.00	\$1,680,576
e. Use or Disclosure	90,612	0.25	22,653	\$32.00	\$724,896
f. Previous delivered data	48,208	0.2	9,642	\$32.00	\$308,531
TOTAL	899,202	0.74	664,686	\$32.00	\$21,269,965

b. Based on the above calculations, the total annualized cost to the Government is as follows:

Total Estimation of Government Burden	
Number of responses	899,202
Hours per response	0.74
Estimated hours (number of responses multiplied hours per response)	664,686
Cost per hour (hourly wage)	\$32.00
Annual burden (estimated hours multiplied by cost per hour)	\$21,269,965

Notes:

* Based on equivalent 2015 OPM GS-09 step 5 salary of \$23.25 per hour plus 33 percent burden, rounded to the nearest whole dollar.

15. Reasons for Change in Burden

The differences in estimated responses and burden hours are due to adjusted estimates based on current FPDS data and the advice of subject matter experts. One of the most significant changes and the reason for the average reduction in hours per response is due to the decrease in the number of estimated challenges and pre-challenge requests for information, which are associated with a high number of hours per response. None of the estimated hours per response have decreased, and several have increased.

Adjusted	Previous	New	Difference
Responses	846,135	959,602	+ 113,467
Reporting Hours	978,801	904,574	- 74,227
Recordkeeping Hours	*75,000	90,600	+ 15,600
Total Burden Hours	1,053,801	995,174	- 58,267

* Approval inadvertently did not include the 75,000 recordkeeping hours. Requested 1,053,801 hours, which the supporting statement justified as 978,801 for responses and 75,000 for recordkeeping.

16. Publication of Results

DoD will not publish results of this information collection.

17. Non-Display of OMB Expiration Date

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

18. Exceptions to “Certification for Paperwork Reduction Submissions”

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

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical methods will not be employed.