

**SUPPORTING STATEMENT FOR OMB Control No. 9000-0090,
RIGHTS IN DATA AND COPYRIGHTS; FAR Part 27.406-2, 27.409,
52.227-15-52.227-23**

A. Justification.

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

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

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

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

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

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

from the final acceptance of all items delivered under the contract. (FAR 27.406-2)

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

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

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

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

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

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

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

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

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

contracts will involve this certification. (FAR 27.409(j), 27.409(k), 52.227-21, 52.227-22)

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

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

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

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

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

7. Special circumstances for collection. Collection of information on a basis other than solicitation-by-

solicitation is not practical. Collection is consistent with guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency. A 60-day notice published in the *Federal Register* at 81 FR 58940 on August 26, 2016. No comments were received. A 30-day notice was published in the *Federal Register* on 81 FR 93687 on December 21, 2016. No comments were received.

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

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

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

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

Total Annual Reporting and Recordkeeping Burden and Cost

Estimated respondents/yr	944-
Responses annually	<u>x</u>
<u>2.43</u>	
Total annual responses.....	2294
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden/hrs.....	2294
Average wages + overhead.....	<u>x \$72</u>
Estimated cost to the public.....	
.....	
\$165,168	
Number of recordkeepers.....	1532
Number of responses	<u>3</u>
Total Annual Responses.....	4,596
Number of hours per recordkeeper.....	<u>x 2</u>
Total response and recordkeeping burden hours.....	
9,192	
Average wages + overhead.....	<u>x \$72</u>
Estimated cost to the public.....	

.....
\$661,824

- a. FAR 52.227-15: Based on Fiscal Year 2015 (FY15) data from the Federal Procurement Data System (FPDS) there were 46 respondents. 46 unique contractors were awarded sole source contracts based on the existence of limited rights in data, patent rights, copyrights or secret processes using NAICS codes 511210-Software Publishers, 423430 - Computer and Computer Peripheral Equipment and Software Merchant Wholesalers and 334611 - Software Reproducing. It is estimated that each contractor will provide four responses annually. One burden hour is estimated per response.

Annual Reporting Burden and Cost

Estimated respondents/yr.....	46
Responses annually.....	<u>X</u>
<u>4</u>	
Total annual responses.....	184
Estimated hrs/response.....	<u>X 1</u>
Estimated total burden/hrs.....	184
Average wages + overhead.....	<u>X \$72*</u>
Estimated cost to the public.....	
.....	
\$13,248	

- b. FAR 52.227-17: This clause is not used in GSA Schedule contracts, and is only used in rare circumstances. It is estimated that one percent of all transactions in FPDS (FY 15) awarded based on the existence of limited rights in data, patent rights, copyrights or secret processes would use this clause or 11(1091 actions x 1 percent). The number of responses per respondent is estimated at one. One burden hour is estimated per response.

Annual Reporting Burden and Cost

Estimated respondents/yr.....	11
Responses annually.....	<u>X</u>
<u>1</u>	
Total annual responses.....	11

Estimated hrs/response.....	<u>x 1</u>
Estimated total burden/hrs.....	11
Average wages + overhead.....	x \$72*
Estimated cost to the public.....	\$792

c. FAR 52.227-18: The number of respondents per year is 17, based on FY15 data from FPDS. It is estimated that 17 unique contractors were awarded sole source contracts based on the existence of limited rights in data, patent rights, copyrights or secret processes using NAICS codes 512199 - Other Motion Picture and Video Industries, 323119 - Other Commercial Printing, 323117 - Books Printing, 511110 - Newspaper Publishers, 511120 - Periodical Publishers, 511130 - Book Publishers. It is further estimated that each contractor will provide one response annually. One burden hour is estimated per response.

Annual Reporting Burden and Cost

Estimated respondents/yr.....	17
Responses annually.....	<u>x</u>
<u>1</u>	
Total annual responses.....	17
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden/hrs.....	17
Average wages + overhead.....	<u>x</u>
<u>\$72*</u>	
Estimated cost to the public.....	\$1,224

d. FAR 52.227-19: 4617 unique contractors were awarded sole source contracts based on the number of unique contractors in FPDS (FY 15) using NAICS codes 511210 - Software Publishers, 423430-Computer and Computer Peripheral Equipment and Software Merchant Wholesalers and 334614 - Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing. It is estimated that(04%)or 185 of these will be respondent contractors. It is estimated that each contractor will provide three responses annually. This estimate was based on the fact that a contractor's commercial license would most commonly outline the license terms, as opposed to the commercial computer software license clause, which contractors often take exception too because this clause takes precedence over the contractor's commercial license. One burden hour is estimated per response.

Estimated respondents per year	185
Responses annually	3
Total annual responses.....	555
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden/hrs.....	555
Average wages + overhead.....	<u>x \$72*</u>
Estimated cost to the public	\$39,960

e. FAR 52.227-20: The number of respondents per year is based on FY 15 data from FPDS. 1 unique contractor was awarded a SBIR contract based on the existence of limited rights in data, patent rights, copyrights or secret processes. It is estimated that each contractor will provide approximately two responses annually. One burden hour is estimated per response.

Estimated respondents/yr.....	1—
Responses annually.....	<u>x</u>
<u>2</u>	
Total annual responses.....	2
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden/hrs.....	2
Average wages + overhead.....	<u>x \$72*</u>
Estimated cost to the public.....	\$144

f. FAR 52.227-21 and FAR 52.227-22: For FY 2015, 81 unique contractors were awarded a sole source major systems contract based on the existence of limited rights in data, patent rights, copyrights or secret processes using NAICS codes 336411 - Aircraft Manufacturing, 336412 - Aircraft Engine and Engine Parts Manufacturing, 336413- Other Aircraft Parts and Auxiliary Equipment Manufacturing and 336414 - Guided Missile and Space Vehicle Manufacturing. The estimated number of respondents per year is 80. It is estimated that each contractor will provide approximately five responses annually. This is based on the number of actions in FY 2015 divided by the number of contractors(812 total actions/80 contractors). One burden hour is estimated per response.

Estimated respondents/yr.....	80
Responses annually.....	<u>x</u>
<u>5</u>	
Total annual responses.....	400
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden/hrs.....	400

Average wages + overhead.....	<u>x \$72*</u>
Estimated cost to the public	\$28,800

g. FAR 52.227-23: The estimated number of respondents per year is based on FY15 data from FPDS. 468 unique contractors were awarded a contract based on the existence of limited rights in data, patent rights, copyrights or secret processes. An estimate was applied that approximately one half of the contractors would have this provision in their contract. Therefore, the number of respondents is estimated to be approximately 234. It is further estimated that each contractor will provide approximately 1 response annually. This estimate is based on the fact that this provision is rarely invoked by the government. One burden hour is estimated per response.

Estimated respondents/yr.....	234
Responses annually.....	<u>x</u>
<u>1</u>	
Total annual responses.....	234
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden/hrs.....	234
Average wages + overhead.....	<u>x \$72*</u>
Estimated cost to the public.....	
.....	
\$16,848	

* Based on the OPM salary table for calendar year 2016, we estimated an hourly rate equivalent to a GS-13, Step-7, or \$53.00 per hour, plus 36.45 percent overhead burden which is the rate mandated by OMB for A-76 public-private competitions, and rounded to the nearest whole dollar, or \$72.00.

Recording Keeping Burden

FAR 52.227-16: The number of recordkeepers per year is based on FY15 data from FPDS. 1532 unique contractors were identified as educational institutions. It is further estimated that each contractor will provide three responses annually. This is based on an estimate that 80% of contracts will be less than \$500,000 since the vast majority of R&D contracts with educational institutions are between \$250,000 and \$300,000, and therefore this clause is not applicable (24001 total actions * .20 = 4,800 total

actions/1532 contractors = 3 responses). One burden hour is estimated per response.

Number of recordkeepers.....	
.....	
1532	
Number of responses	<u>x 3</u>
Total Annual Responses.....	4596
Number of hours per recordkeeper.....	<u>x 1</u>
Total response and recordkeeping burden hours.....	4596
Average wages + overhead.....	<u>x 72*</u>
Estimated cost to the public.....	
.....	
\$330,912	

* Based on the OPM salary table for calendar year 16, we estimated an hourly rate equivalent to a GS-13, Step-7, or \$53.00 per hour, plus 36.45 percent overhead burden which is the rate mandated by OMB for A-76 public-private competitions, and rounded to the nearest whole dollar, or \$72.00.

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

Annual Reporting Burden and Cost

Total annual responses.....	2294
Review time per response.....	<u>x .50</u>
Total burden hours.....	1147
Average wages/yr + overhead.....	<u>\$72</u>
Total Government cost.....	
.....	
\$82,584	

15. Explain reasons for program changes or adjustments reported in Item 13 or 14. A reassessment of the rights in data and copyright provisions was performed, and the information collection requirement in the FAR has increased from the previous collection. The increase is a result of increased use of Government-wide contracts, increased use of commercial products, and budget constraints. Subject matter experts in the intellectual property law were consulted to obtain additional information that helped in estimating the revised public burden. FedBizOpps was searched to determine the use of these clauses in competitive contract

solicitations throughout the Government. Federal Procurement Data System (FPDS), a system used by Government agencies for collecting and reporting data on federal procurement, was used to determine the likely contracts that would contain rights in data and copyright provisions. Updates were made to the average wages and overhead based on current Office of Personnel Management and Office of Management and Budget rates.

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

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

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

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