

## SUPPORTING STATEMENT

### OMB Control Number 0750-0002 – Defense Federal Acquisition Regulation Supplement (DFARS) Part 204, Covered Defense Telecommunications Equipment or Services

#### A. JUSTIFICATION

##### 1. Need for the Information Collection

This justification supports an extension of information collections under Office of Management and Budget (OMB) Control Number 0750-0002. These information collection requirements are necessary to implement section 1656 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115-91). Section 1656 prohibits DoD from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service to carry out the DoD nuclear deterrence or homeland defense missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as a part of any system. The information collection requirements to implement section 1656 are as follows:

- The provision at DFARS 252.204-7016, Covered Defense Telecommunications Equipment or Services—Representation, requires an offeror to represent whether it does or does not provide covered defense telecommunications equipment or services as part of its offered products or services to the Government. This representation is completed at least annually in the System for Award Management (SAM) at <https://www.sam.gov/> by any company interested in doing business with DoD.
- The provision at DFARS 252.204-7017, Prohibition on Acquisition of Covered Telecommunications Equipment or Services—Representation, requires that if an offeror provides an affirmative representation under the provision at 252.204-7016, Covered Defense Telecommunications Equipment or Services—Representation, the offeror is required to represent whether it will or will not provide under the contract covered defense telecommunications equipment or services. If the offeror responds affirmatively, the offeror is required to further disclose information about the covered defense telecommunications equipment or services.
- The clause at DFARS 252.204-7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, requires contractors and subcontractors to report through <https://dibnet.dod.mil>, any discovery of covered telecommunications equipment or services during the course of contract performance.

##### 2. Use of the Information

The information obtained through DFARS 252.204-7016, 252.204-7017, and 252.204-7018 is used to (1) ensure contracting officers do not violate the prohibition under section 1656; (2) determine whether an offer presents a risk to national security; (3) determine whether a waiver would be needed in order to award to an otherwise successful offeror; and (4) ensure DoD is made aware during contract performance of any equipment, systems, or services to carry

out the DoD nuclear deterrence or homeland defense missions that could jeopardize national security.

### 3. Use of Information Technology

Information technology is used 98% of the time to collect the information under DFARS 252.204-7016 and 252.204-7018. Specifically, offerors complete the representation under DFARS provision 252.204-7016 at least annually in SAM at <https://www.sam.gov/>. This representation is rarely completed outside of SAM. Contractors provide the reports under DFARS clause 252.204-7018 to DIBNET at <https://dibnet.dod.mil>. The representation and disclosure under 252.204-7017 are submitted as part of an offeror's response to a DoD solicitation in the format specified in the solicitation.

### 4. Non-duplication

As a matter of policy, DoD reviews the Federal Acquisition Regulation to determine if adequate language already exists. DoD requires DoD-unique provisions to address the requirements of section 1656 of the NDAA for FY 2018. A similar Governmentwide prohibition under section 889 of the NDAA for FY 2019 is implemented in FAR subpart 4.21. However, the DoD prohibition under 1656 differs from the Governmentwide prohibition under 889(1)(1)(A) in that it: applies to equipment, systems, or services to carry out the DoD nuclear deterrence or homeland defense missions; includes different definitions of "covered telecommunications equipment or services" and "covered foreign country"; does not include exceptions from the prohibition; and provides independent waiver authority to the Secretary of Defense. As such, the DFARS requires additional representations and disclosures from offerors and contractors to ensure compliance with the statutory prohibition.

### 5. Burden on Small Business

DFARS provision 252.204-7016, Covered Defense Telecommunications Equipment or Services—Representation, requires each offeror to represent whether it provides covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument. All offerors will be required to complete this representation in the SAM at least annually. As of July 31, 2019, there were 424,927 active registrants in SAM. Approximately 49.78% (211,529) of the active SAM registrants completed the DoD-specific representations and certifications, of which approximately 158,647 (75 percent) are estimated to be registered as a small entity for their primary NAICS code. These small entities would be required to complete the representation under DFARS 252.204-7016.

DFARS 252.204-7017, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation, requires that if an offeror provides an affirmative representation under the DFARS provision 252.204-7016, then that offeror will be required to represent on every solicitation whether it is including covered defense telecommunications equipment or services as a part of its offer in response to the solicitation. If the offeror responds affirmatively, the offeror is required to further disclose information about the covered defense telecommunications equipment or services. According to data in FPDS for

fiscal years (FYs) 2016 through 2018, on average DoD makes awards each year to approximately 44,277 unique entities, of which 30,762 are unique small entities. DoD estimates that approximately 3,076 (10 percent) of the unique small entities that receive DoD awards each year may be required to submit the additional offer-by-offer representation. DoD further estimates that of the estimated 3,076 unique small entities that may be required to represent on an offer-by-offer basis, it is estimated that 10 percent (308 unique small entities) may also be required to provide the additional disclosure within the representation.

DFARS clause 252.204-7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, requires contractors and subcontractors to report through <https://dibnet.dod.mil>, any discovery of covered defense telecommunications equipment or services that is being used as a substantial or essential component of any system, or as critical technology as part of any system, during the course of contract performance. At this time, there is no way for DoD to estimate how many contractors (small or otherwise) may make such discovery and be required to submit a report; however, DoD expects this number to be relatively low. DoD estimates that approximately 1,538 entities (5 percent of the 30,762 unique small entities that receive DoD awards annually) may be required to submit a report to DIBNET.

#### 6. Less Frequent Collection

Only offerors who represent that they do provide covered defense telecommunications equipment or services in the annual SAM representation will be required to provide the offer-by-offer representation in the provision at DFARS 252.204-7017.

#### 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. The Acquisition Law Team—International Acquisition and special advisers from the DoD CIO and Contracting e-Business were consulted with regard to some of the burden estimates for which supporting data is not available in the Federal Procurement Data System.

b. This information collection is consistent with the guidelines in 5 CFR 1320.6. On December 18, 2019, DoD published a notice in the Federal Register at [84 FR 69362](#) requesting that OMB provide emergency clearance of collections of information. OMB provided emergency clearance under OMB Control Number 0750-0002. This notice was published in conjunction with publication of an interim rule under DFARS Case 2018-D022, Covered Defense Telecommunications Equipment or Services, published in the *Federal Register* on December 31, 2019 ([84 FR 72231](#)). Three comments were received on the interim rule that related to reporting. The three public comments and Government responses are as follows:

1. Cost to the Public and Government.

*Comment:* One respondent stated that the representation adds administration costs to the public and Government and will make it difficult for small businesses to work with the Government.

*Response:* The interim rule reduced the burden on the public, including small business entities, by adding an annual representation that may be relied upon if it is a negative representation of “does not”. The offer-by-offer representation is only required if the offer responds in the annual representation that it “does” covered defense telecommunications equipment or services as a part of its offered products or services to the Government. The offer-by-offer representation is necessary to ensure that when we are not buying covered defense telecommunications equipment or services from the prohibited sources, when the contract is in support of the DoD nuclear deterrence or homeland defense missions.

## 2. Reporting Timelines.

*Comment:* Two respondents recommend that the reporting timeline for the discovery of covered defense telecommunications equipment or services reporting timeline be extended beyond one business day and that the reporting timeline for reporting the mitigation actions undertaken by the contractor be extended beyond ten days.

*Response:* The one-day and ten-day requirements for reporting to DIBNet have been extended in the final rule to three days and thirty days, respectively.

## 3. Subcontract Reporting.

*Comment:* Two respondents recommended that contractors only report subcontractor’s discovery of covered defense telecommunications equipment or services that have “credible information”.

*Response:* The clause flow down requires that entities at all tiers report the discovery of covered defense telecommunications equipment or services to the higher tier subcontractor or prime contractor. If the higher tier subcontractor or prime contractor does not report lower tier notifications of the discovery of covered defense telecommunications equipment or services, the higher tier subcontractor and prime contractor are at risk of being in violation of the prohibition.

c. A notice of submission to OMB for clearance of this information collection was published in the *Federal Register* on June 29, 2020 ([85 FR 38870](#)).

## 9. Gifts or Payment

DoD will not provide a payment or gift to respondents to this information collection requirement.

## 10. Confidentiality

This information is disclosed only to the extent consistent with statutory requirements, current regulations, and prudent business practices. The collection of information does not

include any personally identifiable information; therefore, no Privacy Impact Assessment or Privacy Act System of Records Notice is required.

11. Sensitive Questions

No sensitive questions are involved in the information collection.

12. Respondent Burden and its Labor Costs

a. 252.204-7016, Covered Defense Telecommunications Equipment or Services—Representation. This provision requires the offeror to represent in SAM on an at least annual basis whether it does or does not provide covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

Data from SAM indicates that there were 424,927 active registrants (DoD and non-DoD awardees) in August 2019. According to the SAM data, 49.78 percent of total active SAM registrants or 211,529 unique entities completed DoD-specific representations and certifications associated with the DFARS. In order to maintain an active registration in SAM and continue to be considered for award of DoD contracts, these 211,529 entities will be required to complete the 252.204-7016 representation in SAM. This estimate does not include the number of entities that will complete the representation outside of SAM; however, those incidences are expected to be rare. It is estimated that it will take a respondent 5 minutes (0.08333 hour) to review and make the annual representation. The following is a summary of the estimated public burden hours and labor cost associated with the annual representation:

Estimation of Respondent Burden: 252.204-7016	
Number of respondents	211,529
Responses per respondent	1
Number of responses	211,529
Hours per response	0.08333
Estimated hours	17,626.71
Cost per hour (hourly wage) *	\$55.19
Cost per response	~\$4.60
Annual public burden	\$972,818.21

\* The cost per hour is based on the Office of Personnel Management (OPM) General Schedule (GS) 12, Step 5, base hourly rate for calendar year (CY) 2019 plus rest of US locality pay (\$40.51) plus the 36.25% (\$14.68) civilian personnel full fringe benefit rate from OMB Memo M-08-13 (\$55.19).

b. 252.204-7017, Prohibition on Acquisition of Covered Defense Telecommunications Equipment or Services—Representation. This provision requires that if an offeror provides an affirmative representation under the provision at 252.204-7016, Covered Defense Telecommunications Equipment or Services—Representation, then that offeror will be required to represent in paragraph (d) of the provision whether it will or will not provide under a specific

contract any covered defense telecommunications equipment or services. If the offeror responds affirmatively, the offeror is required to further disclose information identified in paragraph (e) of the provision about the covered defense telecommunications equipment or services.

Data from the Federal Procurement Data System (FPDS) for FY 2016 through 2018 indicates that each year on average DoD awards contracts to 44,277 unique awardees. DoD does not currently have data to indicate how many offerors may be required to respond to the offer-by-offer representation at 252.204-7017. To be conservative DoD estimates that 10 percent of the DoD unique awardees (4,427 entities) will respond that they do provide covered defense telecommunications equipment or services as part of their offered products or services to the Government in the provision at 252.204-7016 and will, therefore, be required to complete the representation at 252.204-7017(d). Based on the FPDS data, DoD estimates that for the 4,428 offerors required to respond to 252.204-7018, each are estimated to have to complete 45 offer-by-offer representations per year in response to 15 solicitations for basic contracts and 30 solicitations for orders. It is estimated that it will take an offeror 5 minutes (0.08333 hour) to complete this representation for each solicitation. The following is a summary of the estimated public burden hours and labor cost associated with the offer-by-offer representation:

Estimation of Respondent Burden: 252.204-7017(d) Representation	
Number of respondents	4,428
Responses per respondent	45
Number of responses	199,260
Hours per response	0.08333
Estimated hours	16,604.34
Cost per hour (hourly wage) *	\$55.19
Cost per response	~\$4.60
Annual public burden	\$916,393.29

\* The cost per hour is based on the OPM GS 12, Step 5, base hourly rate for CY 2019 plus rest of US locality pay (\$40.51) plus the 36.25% (\$14.68) civilian personnel full fringe benefit rate from OMB Memo M-08-13 (\$55.19).

DoD does not currently have data to indicate how many offerors may respond affirmatively to the representation in 252.204-7017(d) and will, therefore, be required to provide the additional disclosure on the covered telecommunications equipment or services to be included in the offer. To be conservative, DoD estimates that 10 percent (approximately 443) of 4,428 offerors may provide an affirmative response to the representation in 252.204-7017(d) and have to provide the additional information identified in paragraph (e) of the provision. It is estimated that such offerors may provide up to 45 responses per year and require 3 hours per response to respond. The following is a summary of the estimated public burden hours and labor cost associated with the disclosure:

Estimation of Respondent Burden: 252.204-7017(e) Disclosure	
Number of respondents	443
Responses per respondent	45

Number of responses	19,935
Hours per response	3
Estimated hours	59,805
Cost per hour (hourly wage) *	\$55.19
Cost per response	\$165.57
Annual public burden	\$3,300,637.95

\* The cost per hour is based on the OPM GS 12, Step 5, base hourly rate for CY 2019 plus rest of US locality pay (\$40.51) plus the 36.25% (\$14.68) civilian personnel full fringe benefit rate from OMB Memo M-08-13 (\$55.19).

c. 252.204-7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services. This clause requires contractors and subcontractors to report through <https://dibnet.dod.mil>, any discovery of covered telecommunications equipment or services during the course of contract performance.

DoD does not currently have data to indicate how many contractors may have to report a discovery covered telecommunications equipment or services in accordance with the clause at 252.204-7018. To be conservative, DoD estimates that 1 percent (443 prime contractors) of the 44,277 unique awardees may discover covered telecommunications equipment or services during the course of contract performance and, therefore, be required to report information to DIBNET. It is expected that each respondent may make up to 5 reports a year and each report may take up to 1.5 hours to complete. The following is a summary of the estimated public burden hours and labor cost associated with the reporting requirement:

Estimation of Respondent Burden: 252.204-7018	
Number of respondents	443
Responses per respondent	5
Number of responses	2,215
Hours per response	1.5
Estimated hours	3322.5
Cost per hour (hourly wage) *	\$55.19
Cost per response	~\$82.79
Annual public burden	\$183,368.78

\* The cost per hour is based on the OPM GS 12, Step 5, base hourly rate for CY 2019 plus rest of US locality pay (\$40.51) plus the 36.25% (\$14.68) civilian personnel full fringe benefit rate from OMB Memo M-08-13 (\$55.19).

d. Total Respondent Burden Hours Costs.

Summary of Public Burden Estimate	Responses	Hours	Dollars
252.204-7016 Representation	211,529	17,627	\$972,818
252.204-7017(d) Representation	199,260	16,604	\$916,393

252.204-7017(e) Disclosure	19,935	59,805	\$330,638
252.204-7018 Reporting	2,215	3,323	\$183,369
Total Public Burden *	432,939	97,359	\$5,373,218

\* Totals for responses, hours, and dollars are rounded

13. Respondent Costs Other Than Burden Hour Costs

DoD does not estimate any annual cost burden apart from the hourly burden in Item 12 above.

14. Cost to the Federal Government

The following is a summary of the estimated hours and cost associated with Government review of the representations, disclosures, and reports described in section 12 of this supporting statement:

Estimation of Government Burden					
252.204-	7016	7017(d)	7017(e)	7018	Total
Number of responses	211,529	199,260	19,935	2,215	432,939
Hours per response	0.08333	0.08333	3	3	---
Estimated hours	~17,627	~16,604	59,805	6,645	100,681
Cost per hour *	\$55.19	\$55.19	\$55.19	\$55.19	---
Cost per response	~\$4.60	~\$4.60	\$165.57	\$165.57	---
Annual Govt burden	\$972,818	\$916,393	\$3,300,638	\$366,738	\$5,556,587

\* The cost per hour is based on the OPM GS 12, Step 5, base hourly rate for CY 2019 plus rest of US locality pay (\$40.51) plus the 36.25% (\$14.68) civilian personnel full fringe benefit rate from OMB Memo M-08-13 (\$55.19).

15. Reasons for Change in Burden

This is an extension of an information collection requirement.

16. Publication of Results

Results of this collection will not be published.

17. Non-Display of OMB Expiration Date

DoD does not seek approval to not display the expiration dates 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.