

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
OMB CONTROL NO.9000-0090
RIGHTS IN DATA AND COPYRIGHTS**

FAR sections affected: 52.227-15, 52.227-16, 52.227-17, 52.227-18, 52.227-19, 52.227-20, 52.227-21, and 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. This clearance covers the information that offerors and contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

- ***FAR 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.*** This provision requires an offeror to state, in response to a solicitation, whether data proposed for fulfilling the data delivery requirements qualifies as limited rights data or restricted computer software. If the Government does not receive unlimited rights, the offeror must provide a list of the data that qualify as limited rights data or restricted computer software. The offeror would identify any proprietary data it would use during contract performance, in order that the contracting officer might ascertain if such proprietary data should be delivered.
- ***FAR 52.227-16, Additional Data Requirements.*** This clause requires contractors to keep, for possible delivery to the Government, any data, in addition to data already required to be delivered under the contract, first produced or specifically used in performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. The data delivered under this clause may be in the form of computations, preliminary data, records of experiments, etc. For any data to be delivered under this clause, the Government will pay the contractor for converting the data into a specific form, and for reproducing and delivering the data. The purpose of such recordkeeping requirements is to ensure

that, if all data requirements are not known prior to contract award, 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.

- ***FAR 52.227-17, Rights in Data-Special Works.*** This clause is included in solicitations and contracts primarily for production or compilation of data. It 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. This clause requires contractors to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.
- ***FAR 52.227-18, Rights in Data-Existing Works.*** This clause 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 and display publicly the materials.
- ***FAR 52.227-19, Commercial Computer Software License.*** This clause requires contractors to affix 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.
- ***FAR 52.227-20, Rights in Data-SBIR Program.*** This clause authorizes contractors under Small Business Innovation Research (SBIR) contracts to affix a notice to SBIR data delivered under the contract to limit the Government's rights to disclose data first produced under the contract. Contractors shall obtain from their subcontractors all data and rights necessary to fulfill the contractor's obligations to the Government under the contract. If a subcontractor refuses to accept terms affording the Government those rights, the

contractor shall notify the contracting officer of the refusal.

- ***FAR 52.227-21, Technical Data Declaration, Revision, and Withholding of Payment-Major Systems.*** This clause requires major systems contractors to certify that the data delivered under the contract is complete, accurate, and compliant with the requirements of the contract.
- ***FAR 52.227-23, Rights to Proposal Data (Technical).*** This clause allows the Government to identify pages of a proposal that would not be subject to unlimited rights in the technical data.

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

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.

4. Efforts to identify duplication. These requirements are issued under the 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. Collection of information on a basis other than solicitation-by-solicitation or contract-by-contract is not practical.

7. Special circumstances for collection. Collection is consistent with guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency.

- A. A 60-day notice was published in the *Federal Register* at 85 FR 45637, on July 29, 2020. No comments were received.
- B. A 30-day notice was published in the *Federal Register* at 85 FR 65053 on October 14, 2020.

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, current regulations, and statutory requirements.

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

12 & 13 Estimated total annual public hour and cost burden. The following estimates are based on data retrieved from the Federal Procurement Data System (FPDS) for Fiscal Year (FY) 2015. Time required to read and prepare information is estimated as follows:

Total Annual Reporting and Recordkeeping Burden and Cost

Estimated respondents/yr.....	574
Responses annually.....	<u>x 2.44</u>
Total annual responses.....	1403
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden/hrs.....	1403
Hourly rate*.....	<u>x \$68</u>
Estimated cost to the public.....	\$ 95,404

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 recordkeeping burden hours.....	4596
Hourly rate*.....	<u>x \$68</u>
Estimated cost to the public.....	\$312,528

a. **FAR 52.227-15, Representation of Limited Rights Data and Restricted Computer Software:** 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.

Estimated respondents/yr.....	46
Responses annually.....	<u>x 4</u>
Total annual responses.....	184
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden hrs.....	184
Hourly rate*.....	<u>x \$68</u>
Estimated cost to the public.....	\$12,512

b. **FAR 52.227-17, Rights in Data-Special Works:** 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 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.

Estimated respondents/yr.....	11
Responses annually.....	<u>x 1</u>
Total annual responses.....	11
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden hrs.....	11
Hourly rate*.....	<u>x \$68</u>
Estimated cost to the public.....	\$ 748

c. **FAR 52.227-18, Rights in Data-Existing Works:** 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.

Estimated respondents/yr.....	17
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Responses annually.....	<u>x 1</u>
Total annual responses.....	17
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden hrs.....	17
Hourly rate*.....	<u>x \$68</u>
Estimated cost to the public.....	\$1,156

d. **FAR 52.227-19, Commercial Computer Software License:** 4617 unique contractors were awarded sole source contracts based on the number of unique contractors 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 4% or 185 of these contractors will provide the notice required by 52.227-19. 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, to which contractors often take exception to because this clause takes precedence over the contractor's commercial license. One burden hour is estimated per response.

Estimated respondents/yr.....	185
Responses annually.....	<u>x 3</u>
Total annual responses.....	555
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden hrs.....	555
Hourly rate*.....	<u>x \$68</u>
Estimated cost to the public.....	\$37,740

e. **FAR 52.227-20, Rights in Data-SBIR Program:** One unique contractor was awarded a SBIR contract and 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 2</u>
Total annual responses.....	2
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden hrs.....	2
Hourly rate*.....	<u>x \$68</u>
Estimated cost to the public.....	\$ 136

f. **FAR 52.227-21, Technical Data Declaration, Revision, and Withholding of Payment-Major Systems:** 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 5</u>
Total annual responses.....	400
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden hrs.....	400
Hourly rate*.....	<u>x \$68</u>
Estimated cost to the public.....	\$27,200

g. **FAR 52.227-23, Rights to Proposal Data (Technical):** 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 clause 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 clause is rarely invoked by the Government. One burden hour is estimated per response.

Estimated respondents/yr.....	234
Responses annually.....	<u>x 1</u>
Total annual responses.....	234
Estimated hrs/response.....	<u>x 1</u>
Estimated total burden hrs.....	234
Hourly rate*.....	<u>x \$68</u>
Estimated cost to the public.....	\$15,912

Recording Keeping Burden

FAR 52.227-16, Additional Data Requirements: 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 recordkeeping burden hours.....	4596
Hourly rate*.....	<u>x \$68</u>
Estimated cost to the public.....	\$312,528

* Based on the OPM GS-13/step 5 salary (\$49.54 an hour) plus 36.25% fringe and overhead burden rate, the one mandated by OMB memorandum M-08-13 for use in public-private competition, rounded to the nearest dollar, or \$68 an hour. Reference Salary Table 2020-RUS, Effective January 2020, found at www.opm.gov.

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

Total annual responses.....	1403
Review time per response (hours).....	<u>x .5</u>
Review time per year (hours).....	701.5
Hourly rate*.....	<u>x \$68</u>
Estimated cost to the Government.....	\$47,702

15. Explain reasons for program changes or adjustments reported in Item 13 or 14. The data and the methodology to estimate the total burden hours to the public have not changed from the prior collection. The increase of responses from 2,294 to 5,999 and the associated increase in estimated burden hours from 2,294 to 5,999 is an adjustment due to a correction to the previous estimate that failed to include the recordkeeping estimates disclosed in the documentation. The estimated cost to the public is also adjusted by using the hour rates for FY 2020.

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.