

SUPPORTING STATEMENT PART A

OMB Control Number 0750-XXXX

Defense Federal Acquisition Regulation Supplement (DFARS), Disclosure of Employment of Individuals Who Work in the People's Republic of China

- This is a new information collection required to implement a statute.

1. Need for the Information Collection

This statement supports a request for the information collection for one solicitation provision and one contract clause. Section 855 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117-81, 10 U.S.C. 4651 note prec.), requires a disclosure from any corporation, company, limited liability company, limited partnership, business trust, business association, or other similar entity, including any subsidiary thereof, performing work on a DoD contract in the People's Republic of China, including by leasing or owning real property used in the performance of a contract in the People's Republic of China. Additionally, the statute requires recurring disclosure requirements for covered entities to disclose their use of workforce and facilities, if the covered entity employs one or more individuals who perform work in the People's Republic of China on any such contract at contract award and for FY 2023 and 2024.

The DFARS interim rule 2022-D010, Employment Transparency Regarding Individuals Who Perform Work in the People's Republic of China, implements the statutory disclosure requirement, and adds a solicitation provision 225.225-70XX, Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China, and a contract clause 225.225-70YY, Postaward Disclosure of Employment of Individuals Who Work in the People's Republic of China. The solicitation provision and contract clause will be included in solicitations and contracts with a value in excess of \$5 million, excluding contracts for commercial items.

2. Use of the Information

The disclosure requirements in the solicitation provision and the contract clause are required to ensure compliance with the statute as follows:

- DFARS 252.225-70XX, Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China: The offeror's disclosure is required when the offeror submits a proposal in response to a solicitation for a contract or subcontract with a value in excess of \$5 million, excluding contracts for commercial items. The solicitation provision requires the offeror to disclose their proposed use of workforce and facilities in the People's Republic of China, if the offeror employs one or more individuals who will perform work in the People's Republic of China. The offeror will provide their disclosure in writing.

- DFARS 252.225-70YY, Postaward Disclosure of Employment of Individuals Who Work in the People’s Republic of China: Before renewing a covered contract, the contractor’s recurring postaward disclosure is required from covered entities for fiscal years 2023 and 2024, to disclose if the contractor employs one or more individuals who perform work in the People’s Republic of China. The disclosure must include the total number of individuals who will perform work in the People’s Republic of China on the contract and a description of the exact street location of the physical presence in China where the work on the contract will be performed.

DoD will use this information to provide the congressional defense committees with briefings that summarize the disclosures received from offerors and contractors, in accordance with section 855 of the NDAA for FY 2022.

3. Use of Information Technology

Information technology is used to the maximum extent practicable. Where both the Government and the offeror or contractor are capable of electronic interchange, the information collection requirements may be submitted electronically, and the usage of information technology is 100 percent.

4. Non-duplication

As a matter of policy, DoD reviews the Federal Acquisition Regulation (FAR) and DFARS to eliminate unnecessary duplication. This request for information applies solely to DoD and does not duplicate any other requirement in the FAR.

Subject matter experts (SMEs) were consulted regarding the potential use of the System for Award Management (SAM) in lieu of disclosures submitted with individual proposals. Existing North American Treaty Organization (NATO) Commercial and Government Entity (NCAGE) code data was analyzed to determine if NCAGE codes could provide the required preaward and postaward disclosures from offerors and contractors, specifically, a description of the exact street location of the physical presence of an entity’s facility in the People’s Republic of China where all work on the contract will be performed. NCAGE codes, once established, continue to exist in perpetuity. The Defense Logistics Agency SMEs provided that the NATO Support and Procurement Agency (NSPA) is the authoritative source for the information for entities with foreign locations (as identified with NCAGE codes). The NSPA advised that foreign entities as well as U.S. corporations may have a CAGE code and an NCAGE code, and may be doing business at a physical location in China (or any other foreign location). The same scenario may apply for any entity within one of the allied participating NATO countries. In addition, they may have entities that have been assigned an NCAGE code to conduct business in one or more physical locations. Therefore, use of the existing SAM system for disclosures using NCAGE codes was deemed not to be a viable option as not being sufficiently granular for the required statutory disclosures.

5. Burden on Small Businesses

The burden applied to small businesses is the minimum consistent with applicable laws, executive orders, regulations, and prudent business practices.

6. Less Frequent Collection

Collection of information on a basis other than contract-by-contract or solicitation-by-solicitation is not practical. In addition, the disclosures must be updated as needed following contract award to comply with the postaward disclosure requirements.

7. Paperwork Reduction Act Guidelines

This collection of information does not require collection to be conducted in a manner inconsistent with the guidelines delineated in 5 CFR 1320.5(d)(2).

8. Consultation and Public Comments

a. Public Notice

i. A 60-day notice for the collection will be published in the *Federal Register* with the interim rule.

ii. A 30-day notice will be published in the *Federal Register* after receipt of comments in response to the interim rule.

b. Consultation

No additional consultation, apart from soliciting public comments through the *Federal Register*, was conducted for this submission.

9. Gifts or Payment

No payments or gifts are being offered to respondents as an incentive to participate in the collection, other than remuneration to contractors under their contracts.

10. Confidentiality

This information is disclosed only to the extent consistent with prudent business practices and current regulatory, statutory, and Freedom of Information Act requirements. No assurance of confidentiality is provided to respondents. A Privacy Act Statement is not required for this collection because DoD is not requesting individuals to furnish personal information for a system of records. A System of Record Notice (SORN) is not required for this collection because records are not retrievable by personally identifiable information (PII). A Privacy Impact Assessment (PIA) is not required for this collection because PII is not being collected electronically.

11. Sensitive Questions

No questions considered sensitive are being asked in this collection.

12. Respondent Burden and its Labor Costs

a. DFARS 252.225-70XX, Preaward Disclosure of Employment of Individuals Who Work in the People's Republic of China

1. Estimation of Respondent Burden

The estimated cost to the public is based on data from the Federal Procurement Data System (FPDS) for FY 2019, 2020, and 2021, including contract awards with a value in excess of \$5 million, for which the place of performance is the People's Republic of China, and excluding contract awards for commercial items. The data revealed that no awards met these criteria.

In addition, further data analysis was performed for NCAGE codes for entities located in the People's Republic of China, including Hong Kong. The results of this analysis were a total of 5,143 unique entities. There were 4,706 entities in People's Republic of China with NCAGE codes and 437 entities in Hong Kong with NCAGE codes. This list of NCAGE codes was compared to the FPDS data for FY 2019, 2020, and 2021. Based on that comparison, there were no unique entities that were awarded contracts meeting the criteria. Conversely, this burden analysis uses the assumption that there are 10 unique entities with a DoD contract award with a value in excess of \$5 million, excluding commercial items.

DoD makes the following additional assumptions:

- The actual place of performance may be unknown at the time of the offeror's proposal submission; unless specifically identified in the solicitation as a requirement.
- The place of performance of personnel or the proposed use of a facility location in China will be known only if the prime contractor is located in the People's Republic of China or Hong Kong as designated in SAM.gov via the entity's assigned NCAGE code. However, an entity may have multiple NCAGE codes for various foreign locations not specifically related to the solicitation and any resulting contract requirement, or the inactive or active status cannot be verified.
- An estimate of three responses per solicitation resulting in each contract award, was used in the burden calculation estimate.

The number of respondents for 252.225-70XX is therefore calculated as 10 solicitations x 3 respondents per solicitation = 30 respondents. An estimate of 1 response per respondent (1 response x 30 respondents) with 1 hour per response (30 responses x 1 hour) results in an estimate of a total of 30 hours per year associated with responses to the solicitation provision 252.225-70XX.

- Hours per response (1 hour per response): Assumes that all information is available or otherwise easily accessible and that a single offeror (1 individual per

entity) will be able to generate such a disclosure at the time of proposal submission. One hour is considered to be a reasonable amount of time for the offeror's personnel to provide the initial disclosure on their use of workforce and facilities in the People's Republic of China, if they propose to employ one or more individuals who will perform work in the People's Republic of China.

Estimation of Respondent Burden Hours: 252.225-70XX	
Number of respondents	30
Number of responses per respondent	1
Number of total annual responses	30
Hours per response	1
Annual respondent burden hours (<i>Total annual responses * hours per response</i>)	30

2. Labor Cost of Respondent Burden

The offeror's required disclosure submitted at the time of offer is estimated to be a total of 30 responses annually. In addition, the estimate of 1 response per respondent was projected as taking 1 hour per response (30 x 1 hour), associated with the required preaward disclosure in the solicitation provision 252.225-70XX. It is estimated that this information would be provided by professional midlevel officials at a GS-12/Step 5 level. This assumes that all information regarding the entity's location and associated workforce's location proposed is available or otherwise easily accessible and that a single offeror (1 individual per entity) will be able to generate such a disclosure at the time of proposal submission.

Labor Cost of Respondent Burden: 252.225-70XX	
Number of total annual responses	30
Hours per response	1
Cost per hour (hourly wage)	\$58.72
Labor burden per response (<i>1* \$58.72</i>)	\$58.72
Annual Labor Burden (<i>Total annual responses * hours per response * hourly wage</i>)	\$1,762

*The estimated cost per hour of \$58.72 is based on the 2022 (rest of US):

1 hour at GS-12/Step 5 base hourly rate of \$ 43.10 plus 36.25 percent burden (pursuant with OMB Memorandum M-08-13) = \$58.72 per hour (for the entity reporting and facility usage location).

b. DFARS 252.225-70YY

1. Estimation of Respondent Burden

- The number of responses for 252.225-70YY is therefore calculated as 10 contract awardees * 3 responses per year = 30.
- Frequency of disclosure (1 annually for 2 years equals the number of responses per respondent for exercise of options, and considering one major modification during the two years that would require a disclosure (1*3)): The interim rule requires that entities must disclose if they employ any individual who will perform work in the People’s Republic of China on a covered contract.
- The disclosures must include the total number of individuals who will perform work in China; and a description of the facility used (the physical presence) where work on the contract will be performed, in the People’s Republic of China.
- The total number of annual respondent burden hours is estimated at 30 annual responses * 1 hour per response = 30 hours per year.

Estimation of Respondent Burden Hours: 252.225-70YY	
Number of respondents	10
Number of responses per respondent	2
Number of total annual responses	20
Hours per response	1
Annual respondent burden hours (<i>Total annual responses * hours per response</i>)	20

2. Labor Cost of Respondent Burden

There is no Government-wide data collection process or system that identifies the number of individuals who will perform work in China or provides a description of the facility used. Time required to compile documents and prepare information for the recurring disclosure is estimated at 1 hour per response. The entity’s required postaward disclosure is estimated to be a total of 3 responses annually (10 respondents x 3 annual responses per respondent = 30). The estimate of 30 responses per respondent is projected as taking 1 hour per response (30 respondents x 1 hour per response), associated with the required postaward disclosures in the contract clause 252.225-70YY. It is estimated that this information would be performed by midlevel officials at a GS-12/Step 5 level. This assumes that all information regarding the entity’s street location and associated workforce’s location under contract is available or otherwise easily accessible and that a single official (1 individual per entity) will be able to generate such a disclosure at the required time.

Labor Cost of Respondent Burden: 252.225-70YYZZ	
Number of total annual responses	20
Hours per response	1
Cost per hour (hourly wage)	\$58.72

Labor burden per response (<i>Hours per response * hourly wage</i>)	\$58.72
Annual Labor Burden (<i>Total annual responses * hours per response * hourly wage</i>)	\$1,174

*The estimated cost per hour of \$58.72 is based on the 2022 (rest of US):

1 hour at GS-12/Step 5 base hourly rate of \$ 43.10 plus 36.25 percent burden (pursuant with OMB Memorandum M-08-13) = \$58.72 per hour (for the entity reporting and facility usage location).

c. Total for 252.225-70XX and 252.225-70YY

1. Total Submission Burden

The total estimated burden hours for DFARS 252.225-70XX and 252.225-70YY are provided in the following table:

Estimation of Respondent Burden Hours: 0750-0XXX	
Total number of respondents	30
Total number of annual responses	50
Total burden hours (<i>Sum of annual respondent burden hours from 12.a. and 12.b.</i>)	50

2. Overall Labor Burden

The total estimated labor cost of the respondent burden for DFARS 252.225-70XX and 252.225-70YY is provided in the following table:

Labor Cost of Respondent Burden: 0750-0XXX	
Total number of annual responses	50
Annual Labor Burden (<i>Sum of annual labor burden from 12.a. and 12.b.</i>)	\$2,936

13. Respondent Costs Other Than Burden Hour Costs

There are no capital start-up or operational maintenance costs associated with this information collection, other than the hour burden detailed in paragraph 12.

14. Cost to the Federal Government

a. Labor Cost to the Federal Government

1. DFARS 252.225-70XX

As estimated in the calculation of the public burden, the Government estimates receipt of 30 responses (3 responses per respondent), which must include the offeror's preaward disclosure of the total number of individuals who will perform work in China and a description of the facility used (the physical presence) where work on the proposed contract will be performed in the People's Republic of China. The Government further estimates a review time of 0.25 hours per response for the offers received from that covered entity.

Labor Cost to the Federal Government: 252.225-70XX	
Number of total annual responses (<i>from 12.a.</i>)	30
Hours per response (<i>time for Government to review 1 response</i>)	0.25
Cost per hour (hourly wage)	\$58.72
Cost per response (<i>Hours per response * cost per hour</i>)	\$14.68
Total cost (<i>Total annual responses * cost per response</i>)	\$440

2. DFARS 252.225-70YY

For subsequent postaward disclosures, the Government estimates a review time of 0.25 hours per response. The hourly rate of \$58.72 is based on the same rates applied in calculation of the public cost.

Labor Cost to the Federal Government: 252.225-70YY	
Number of total annual responses (<i>from 12.b.</i>)	20
Hours per response (<i>time for Government to review 1 response</i>)	0.25
Cost per hour (hourly wage)	\$58.72
Cost per response (<i>Hours per response * cost per hour</i>)	\$14.68
Total cost (<i>Total annual responses * cost per response</i>)	\$294

*The estimated cost per hour of \$58.72 is based on the 2022 (rest of US):

0.25 hours at GS-12/Step 5 base hourly rate of \$ 43.10 plus 36.25 percent burden (pursuant with OMB Memorandum M-08-13) = \$58.72 per hour (for the entity reporting and facility usage location).

3. Total for 252.225-70XX and 252.225-70YY

Overall Labor Burden to the Federal Government	
Total number of annual responses	50
Total Labor Burden (<i>Sum of total cost from 14.a.1. and 14a.2.</i>)	\$734

b. Operational and Maintenance Costs

There are no operational and maintenance costs for the Federal Government associated with this information collection.

c. Total Cost to the Federal Government

Total labor burden (<i>from 14.a.3.</i>)	\$734
Total operational and maintenance costs	\$0
Total cost to the Federal Government	\$734

15. Reasons for Change in Burden

This is a new collection with a new associated burden.

16. Publication of Results

The results of this information collection will not be published.

17. Non-Display of OMB Expiration Date

DoD is not seeking approval to omit the display of the expiration date of the OMB approval on the collection instrument.

18. Exceptions to “Certification for Paperwork Reduction Submissions”

DoD is not requesting any exemptions to the provisions stated in 5 CFR 1320.9.