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January 4, 2023

Jennifer D. Johnson
Editor/Publisher
Defense Acquisition Regulations System
Department of Defense

Electronic Submission: <https://www.regulations.gov/commenton/DARS-2023-0017-0006>

Re: Defense Acquisition Regulations System [Docket Number DARS–2023–0017; Office of Management and Budget (OMB) Control Number 0704–0246] Information Collection Requirements; Defense Federal Acquisition Regulation (FAR) Supplement (DFARS); Part 245, Government Property, related clauses in DFARS 252, and related forms in DFARS 253. Federal Register / Vol. 88, No. 232 / Tuesday, December 5, 2023.

Dear Ms. Johnson:

The National Defense Industry Association (NDIA) appreciates the opportunity to provide comments on the Department of Defense (DoD) [Defense Acquisition Regulations System] clearance submittal to the OMB's collection of information under the provisions of the Paperwork Reduction Act.

NDIA is the nation's oldest and largest defense industry association, representing 1,780 corporate and 65,500 individual members from small, medium, and large contractors, a majority of which are small businesses. NDIA members design, manufacture, apply, and maintain the cutting-edge technologies, systems, and platforms that our armed forces rely upon to deter aggression and defend our nation and its interests. As such, our members' professional and informed views on this request for information reflect the complexity and nuance of the issues under discussion.

Our members are concerned that the Federal Register Notice (FRN) of December 5, 2023, (Vol. 88, No. 232) cites an inaccurate annual burden estimate of 47,659 hours across industry. Taken literally and given a standard 2,080 hour work-year (adjusted down for 11 holidays (88 hours) with the usual three weeks (120 hours) of time off ($2,080 - 88 - 120 = 1,872$)), the estimate implies that there are approximately only 25 full time persons employed industry-wide ($47,659 / 1,872 = 25.45$) supporting the requirements of DoD's proposed rule of April 27, 2023, (Federal Register/Vol. 88, No. 81/).

In contrast, as stated in NDIA comments submitted previously to OMB in response (letter of February 10, 2021, attached) to the information collection requirements of FAR clause 52.245-1, "Government property"), over 20,000 contractors are affected, to include over 14,000 small business entities.¹ FAR clause 52.245-1 contains the basic contractually binding conditions for contractors from which the various DFARS clauses derive their requirements. The public burden data associated with FAR clause 52.245-1 confirms the substantially greater public burden impact of DoD's proposed rule and OMB's Control Number 0704–0246.

Moreover, DoD's assertion that *"There are no changes to the Government property data that contractors are required to report"*, and *"...does not impose any new reporting, recordkeeping, or compliance requirements,"* underestimates the impact of DFARS case 2020-D029, especially to small business entities. In fact, as reflected in DoD's proposed rule, DFARS case 2020-D029 goes well beyond the consolidation of data reporting and contains several new requirements unrelated to data reporting.

¹ Data generated from the Federal Procurement Data System (FPDS) for FY 2017-FY 2019



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These new requirements include the marking of Government furnished property, reporting of transaction events for embedded Government property items, inclusion of “workmanship errors” as an example of “loss of Government property” – an expanded and arbitrary interpretation of FAR 52.245-1 requirements, contractor required research for the availability of technical drawings, and introduction of mandatory procedural timeframes for reporting that program contractors will likely be unable to meet. Even before considering these new requirements, OMB’s estimated public burden is understated.

The consequences of this DFARS final rule are the costly programming updates needed to meet clause requirements. All businesses, especially small business entities, will be adversely impacted and left with little recourse but to absorb the costs associated with such changes, submit to clause requirements, and yield to substantially increased Government oversight.

NDIA will consider submitting additional comments upon publication of the DFARS final rule. However, our members believe that publication of a final rule (DFARS Case DFARS Case 2020-D029, “Consolidation of DoD Government Property Clauses”), should not proceed until an accurate and realistic accounting of its impact can be determined.

NDIA stands ready to assist OMB and DoD in revising and updating the public burden estimates on OMB Control Number 0704–0246. The point of contact for this comment is Chris Sax, NDIA’s Associate Director of Strategy, who may be reached at csax@ndia.org.

Sincerely,

The National Defense Industrial Association

cc:

Attachment2_NDIA letter 2.10.21