



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209, 212, and 252

[Docket DARS-2024-0025]

RIN 0750-AM20

Defense Federal Acquisition Regulation Supplement: Limitation on Certain Institutes of Higher Education (DFARS Case 2024-D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Year 2024, which amend a section of the National Defense Authorization Act for Fiscal Year 2021 that provides for the limitation of funds, authorized to be appropriated or otherwise made available for any fiscal year for DoD, to be provided to an institution of higher education that hosts a Confucius Institute.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: David Johnson, telephone 202-913-5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 88 FR 67607 on September 29, 2023, to implement section 1062 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116-283). Section 1062 provides for the limitation of funds, authorized to be appropriated for DoD, to be provided to an institution of higher education that hosts a Confucius Institute. DoD subsequently published a proposed rule in the **Federal Register** at 89 FR 66338 on August 15, 2024, to implement sections 1044 and 1045 of the NDAA for FY 2024 (Pub. L. 118-31), which amend section 1062 of the NDAA for FY 2021. Section 1044 of the NDAA for FY 2024 revises the definition of "Confucius Institute", and section 1045 of the NDAA for FY 2024 adds a termination date of October 1, 2026, for the authority to waive the funds limitation. The interim rule required offerors to represent, by submission of an offer, that they are not an entity that hosts a Confucius Institute or that they have obtained a waiver approved by the Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)).

One respondent submitted public comments in response to the proposed rule. No public comments were submitted in response to the interim rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. The public comment was outside the scope of the rule. There are no significant changes from the proposed rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

The provision at DFARS 252.209-7011 is prescribed at DFARS 209.170-4 for use in solicitations for acquisitions to an institution of higher education, including solicitations using Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial products, including COTS items, and commercial services. Consistent with the analysis that DoD provided in the proposed rule with regard to the application of the requirements of sections 1044 and 1045 of the NDAA for FY 2024, DoD has made the determination to apply the statute, as implemented in the provision at DFARS 252.209-7011, to contracts at or below the SAT, for the acquisition of commercial products including COTS items, and for the acquisition of commercial services, as defined at FAR 2.101.

IV. Expected Impact of the Rule

Although section 1044 of the NDAA for FY 2024 broadened the definition of Confucius Institute, DoD expects there will be no change to the number of offerors impacted by the representation requirement. Research and data analysis by DoD subject matter experts has not revealed any activity that would constitute a Confucius Institute as defined in section 1044. However, DoD's process of outreach to institutions is ongoing, in an effort to identify any institutes meeting the new definition being hosted

by any U.S. institution of higher education. If it is determined an institution of higher education is hosting an institute meeting the new definition of Confucius Institute, and if the institute intends to continue operating, the prohibition will be applied accordingly.

Consequently, de minimis associated burden exists since this rule only requires the offeror, when submitting an offer in response to a solicitation, to represent compliance with the requirements of section 1062 of the NDAA for FY 2021, as amended by sections 1044 and 1045 of the NDAA for FY 2024. Data from the Federal Procurement Data System indicate that 9 unique entities awarded DoD contracts in fiscal years 2021 through 2023 met the definition of an institution of higher education; none of those entities hosted a Confucius Institute as newly defined. DoD estimates that the cost for all those entities to verify and represent whether they host a Confucius Institute is approximately \$295 per year, based on 30 minutes of effort by a journeyman-level employee.

This rule also includes the addition of the termination date for the authority to waive the funds limitation. As provided in section 1045 of the NDAA for FY 2024, the waiver authority will end on October 1, 2026, and any waivers issued prior to that date will no longer be effective as of October 1, 2026. To date, DoD has not issued any waivers to the funds limitation, and DoD does not anticipate issuing any waivers on or before October 1, 2026.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Executive Order 14192

This final rule is not subject to E.O. 14192, because the final rule is not a significant regulatory action under E.O. 12866.

VII. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of

Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VIII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

This rule is necessary to implement sections 1044 and 1045 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Pub. L. 118-31). Section 1044 amends section 1062(d) of the NDAA for FY 2021 by revising the definition of "Confucius Institute" to mean any program that receives funding or support from the Chinese International Education Foundation or the Center for Language Exchange Cooperation of the Ministry of Education of the People's Republic of China, or any cultural institute funded by the government of the People's Republic of China. Section 1045 of the NDAA for FY 2024 amends section 1062(b) of the NDAA for FY 2021 to add a termination date of October 1, 2026, for the authority to issue a waiver. The objective of the rule is to implement these changes in the DFARS.

No public comments were received in response to the initial regulatory flexibility analysis.

DoD reviewed the Federal Procurement Data System (FPDS) for FY 2021, FY 2022, and FY 2023 for DoD contracts and purchase orders, including those for commercial products and commercial services, awarded to institutions of higher education that meet

the definition in 20 U.S.C. 1002. The FPDS data reflect a total of 104 contract awards to 9 unique entities over the entire three fiscal years. All awards were made to other than small entities. Entities in FPDS categorized as higher-level institutes of education are designated only as other than small entities.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities, unless they are associated with an institution of higher education that hosts a Confucius Institute.

There are no known significant alternative approaches to the rule that would meet the requirements of the statute.

IX. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 209, 212, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher,

Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 209, 212, and 252, which was published at 88 FR 67607 on September 29, 2023, is adopted as final with the following changes:

1. The authority citation for parts 209 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

2. Amend section 209.170-1 by revising the definition of “Confucius Institute” to read as follows:

209.170-1 Definitions.

* * * * *

Confucius Institute means—

(1) Any program that receives funding or support from—

(i) The Chinese International Education Foundation; or

(ii) The Center for Language Exchange Cooperation of the

Ministry of Education of the People’s Republic of China; or

(2) Any cultural institute directly or indirectly funded by

the government of the People’s Republic of China.

* * * * *

3. Revise section 209.170-3 to read as follows:

209.170-3 Waiver of restriction.

The restriction in 209.170-2 can be waived by the Office of the Under Secretary of Defense (Research and Engineering), without power of delegation, in accordance with the Confucius Institute Waiver Program guidance. The waiver authority terminates on October 1, 2026. Any waiver issued shall not apply on or after that date. See PGI 209.170-3.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Revise and republish section 252.209-7011 to read as follows:

252.209-7011 Representation for Restriction on the Use of Certain Institutions of Higher Education.

As prescribed in 209.170-4, use the following provision:
REPRESENTATION FOR RESTRICTION ON THE USE OF CERTAIN
INSTITUTIONS OF HIGHER EDUCATION (OCT 2025)

(a) *Definitions.* As used in this provision—

Confucius Institute means—

(1) Any program that receives funding or support from—

(i) The Chinese International Education Foundation; or

(ii) The Center for Language Exchange Cooperation of the Ministry of Education of the People's Republic of China; or

(2) Any cultural institute directly or indirectly funded by the government of the People's Republic of China.

Institution of higher education has the meaning given in 20 U.S.C. 1002.

(b) *Restriction.* As required by section 1062 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283), DoD may not award a contract with any institution of higher education that hosts a Confucius Institute. Section 1062 prohibits DoD from providing funding to any U.S. institution of higher education hosting a Confucius Institute unless that institution receives a waiver from the Department of Defense Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)). The waiver authority terminates on

October 1, 2026. Any waiver issued will not apply on or after that date. See the OUSD(R&E) Confucius Institute Waiver Program Guidance to U.S. Institutions of Higher Education at <https://rt.cto.mil/wp-content/uploads/Confucius-Institute-Waiver-Program-Guidance-28Mar2023.pdf>.

(c) *Representation.* By submission of an offer, the Offeror represents that—

(1) It is not an institution of higher education that hosts a Confucius Institute; or

(2) The Offeror has obtained a waiver approved by OUSD(R&E).

(End of provision)

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