**DFARS Case 2021-D023**

**(S) Limitation on Certain Institutes of Higher Education**

**Interim Rule**

**PART 209—CONTRACTOR QUALIFICATIONS**

**SUBPART 209.1—responsible prospective contractors**

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**209.106 Preaward surveys.**

When requesting a ~~preawared~~**[preaward]** survey, follow the procedures at PGI 209.106.

**[****209.170** **Restriction on the use of certain institutions of higher education.**

**209.170-0 Scope.**

**This section implements section 1062 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283).**

**209.170-1 Definitions.**

**As used in this section—**

**‘‘Confucius Institute’’ means a 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.**

**209.170-2 Restriction.**

**None of the funds authorized to be appropriated or otherwise made available for any fiscal year for DoD may be used to contract with an institution of higher education that hosts a Confucius Institute, other than amounts provided directly to students as educational assistance. Contracting officers shall not enter into a contract with any institution of higher education that hosts a Confucius Institute, unless a waiver has been granted.**

**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. See PGI 209.170-4.**

**209.170-4 Solicitation provision.**

**Use the provision at 252.209-7011, Representation for Restriction on the Use of Certain Institutions of Higher Education,** **in** **solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services,** **for acquisitions to an institution of higher education****.]**

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**PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

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**Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services**

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.**

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(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services. If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at *https://www.sam.gov*, the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

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(iv) **[*Part 209—Contractor Qualifications*. Use the provision at 252.209-7011, Representation for Restriction on the Use of Certain Institutions of Higher Education, as prescribed at 209.170-4, to comply with section 1062 of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283).**

**(v)]** *Part 211—Describing Agency Needs*. \* \* \*

*[Redesignate paragraphs (iv) through (xix) as paragraphs (v) through (xx).]*

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**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**subpart 252.2--text of provisions and clauses**

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**[252.209-70****11 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 2023)**

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

**‘‘Confucius Institute’’ means a 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)). 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)]**