

**252.204–7021 Contractor Compliance With the Cybersecurity Maturity Model Certification Level Requirements.**

As prescribed in 204.7504(a), insert the following clause:

**Contractor Compliance With the Cybersecurity Maturity Model Certification Level Requirements (Date)**

(a) *Definitions.* As used in this clause—  
*Controlled unclassified information* means information the Government creates or possesses, or an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Governmentwide policy requires or permits an agency to handle using safeguarding or dissemination controls (32 CFR part 2002.4(h)).

*Current* means, with regard to Cybersecurity Maturity Model Certification (CMMC)—

(1) Not older than 1 year for Level 1 self-assessments, with no changes in CMMC compliance since the date of the assessment;

(2) Not older than 3 years for Level 2 certificates and self-assessments, with no changes in CMMC compliance since the date of the assessment;

(3) Not older than 3 years for Level 3 certificates, with no changes in CMMC compliance since the date of the assessment; and

(4) Not older than 1 year for affirmations of continuous compliance with the security requirements identified at 32 CFR part 170, with no changes in CMMC compliance since the date of the affirmation.

*Cybersecurity Maturity Model Certification* means a framework for assessing a contractor's compliance with applicable information security requirements (see 32 CFR part 170).

*DoD unique identifier* means an alphanumeric string of ten characters assigned within the Supplier Performance Risk System to each contractor assessment, with the first two characters indicating the confidence level of the assessment.

(b) *Requirements.* The Contractor shall—  
(1)(i) Have a current CMMC certificate or current CMMC self-assessment at the following CMMC level, or higher: \_\_\_\_\_ [Contracting Officer to fill in the required CMMC level]; and

(ii) Consult 32 CFR part 170 related to flowing down information in order to establish the correct CMMC level requirements for subcontracts and other contractual instruments;

(2) Maintain the CMMC level required by this contract for the duration of the contract for all information systems, used in performance of the contract, that process, store, or transmit Federal contract information (FCI) or controlled unclassified information (CUI);

(3) Only process, store, or transmit data on information systems that have a CMMC certificate or CMMC self-assessment at the CMMC level required by the contract, or higher;

(4) Notify the Contracting Officer within 72 hours when there are any lapses in information security or changes in the status of CMMC certificate or CMMC self-assessment levels during performance of the contract;

(5) Complete and maintain on an annual basis, or when changes occur in CMMC compliance status (see 32 CFR part 170), an affirmation of continuous compliance with the security requirements associated with the CMMC level required in paragraph (b)(1) of this clause in the Supplier Performance Risk System (SPRS) (<https://piee.eb.mil>) for each DoD unique identifier (DoD UID) applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract; and

(6) Ensure all subcontractors and suppliers complete and maintain on an annual basis, or when changes occur in CMMC compliance status (see 32 CFR part 170), an affirmation of continuous compliance with the security requirements associated with the CMMC level required for the subcontract or other contractual instrument for each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract.

(c) *Reporting.* The Contractor shall—

(1) Submit to the Contracting Officer the DoD UID(s) issued by SPRS for contractor information systems that will process, store, or transmit FCI or CUI during performance of the contract;

(2) Enter into SPRS the results of self-assessment(s) for each DoD UID applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract; and

(3) Report to the Contracting Officer any changes to the list of DoD UIDs applicable to each of the contractor information systems that process, store, or transmit FCI or CUI and that are used in performance of the contract.

(d) *Subcontracts.* The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (d), and exclude paragraphs (b)(5) and (c), in subcontracts and other contractual instruments, including those for the acquisition of commercial products and commercial services, excluding commercially available off-the-shelf items, when there is a requirement under the subcontract or similar contractual instrument for a CMMC level; and

(2) Prior to awarding a subcontract or other contractual instrument, ensure that the subcontractor has a current CMMC certificate or current CMMC self-assessment at the CMMC level that is appropriate for the information that is being flowed down to the subcontractor.

(End of clause)

■ 6. Add section 252.204–7YYY to read as follows:

**252.204–7YYY Notice of Cybersecurity Maturity Model Certification Level Requirements.**

As prescribed in 204.7504(b) use the following provision:

**Notice of Cybersecurity Maturity Model Certification Level Requirements (Date)**

(a) *Definitions.* As used in this provision, *controlled unclassified information*, *current*, *Cybersecurity Maturity Model Certification*,

and *DoD unique identifier* have the meaning given in the Defense Federal Acquisition Regulation Supplement 252.204–7021, Contractor Compliance With the Cybersecurity Maturity Model Certification Level Requirements, clause of this solicitation.

(b)(1) *Cybersecurity Maturity Model Certification (CMMC) level.* The CMMC certificate or CMMC self-assessment level required by this solicitation is: \_\_\_\_\_

[Contracting Officer insert: CMMC Level 1 self-assessment; CMMC Level 2 certificate or CMMC self-assessment; or CMMC Level 3 certificate]. This CMMC certificate or CMMC self-assessment level, or higher, is required prior to award for each contractor information system that will process, store, or transmit Federal contract information (FCI) or controlled unclassified information (CUI) during performance of the contract.

(2) The apparently successful offeror will not be eligible for award of a contract, task order, or delivery order resulting from this solicitation if the apparently successful offeror does not have the results of a current CMMC certificate or self-assessment entered in the Supplier Performance Risk System (SPRS) (<https://piee.eb.mil>) at the CMMC level required by paragraph (b)(1) of this provision and an affirmation of continuous compliance with the security requirements identified at 32 CFR part 170 in SPRS for each of the contractor information systems that will process, store, or transmit FCI or CUI and that will be used in performance of a contract resulting from this solicitation.

(c) *DoD unique identifiers.* At the request of the Contracting Officer, the apparently successful offeror shall provide the DoD unique identifier(s) issued by SPRS for each contractor information system that will process, store, or transmit FCI or CUI during performance of a contract, task order, or delivery order resulting from this solicitation. The DoD unique identifier(s) are provided in SPRS after the Offeror enters the results of self-assessment(s) for each such information system.

(End of provision)

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 209 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:** Proposed rule.

**SUMMARY:** DoD is proposing to amend 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:** Comments on the proposed rule should be submitted in writing to the address shown below on or before October 15, 2024, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2024–D023, using either of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for DFARS Case 2024–D023. Select “Comment” and follow the instructions to submit a comment. Please include “DFARS Case 2024–D023” on any attached documents.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2024–D023 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Bass, telephone 703–717–3446.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

DoD is proposing to revise the DFARS to implement sections 1044 and 1045 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Pub. L. 118–31), which amend section 1062 of the NDAA for FY 2021 (Pub. L. 116–283). DoD published an interim rule in the **Federal Register** at 88 FR 67607 on September 29, 2023, under DFARS Case 2021–D023 to implement section 1062 of the NDAA for FY 2021. Section 1062 provides that none of the funds authorized to be appropriated or otherwise made available for any fiscal year for DoD may be provided to an institution of higher education that hosts a Confucius Institute, defined as a cultural institute directly or indirectly funded by the government of the People’s Republic of China. In addition, section 1062 provided the authority to

waive the funds limitation. There were no public comments submitted in response to the interim rule.

Section 1044 of the NDAA for FY 2024 amends section 1062(d) of the NDAA for FY 2021 by revising the definition of “Confucius Institute” as any program that receives funding or support from the Chinese International Education Foundation, 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.

##### **II. Discussion and Analysis**

No respondents submitted public comments in response to the interim rule published at 88 FR 67607 on September 29, 2023.

###### *A. New Definition*

This proposed rule under DFARS Case 2024–D023 includes revisions to the definition of “Confucius Institute” at DFARS 209.170–1. “Confucius Institute” means any program that receives funding or support from the Chinese International Education Foundation, 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.

###### *B. Waiver of Funds Limitation*

This proposed rule at DFARS 209.170–3 adds a termination date of October 1, 2026, for the authority to issue a waiver. Currently, the funds limitation with respect to an institution of higher education can be waived by the Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)). DFARS 209.170–3 addresses the OUSD(R&E), Confucius Institute Waiver Program procedures.

###### *C. Solicitation Provision*

The solicitation provision at DFARS 252.209–7011, Representation for Restriction on the Use of Certain Institutions of Higher Education, is proposed to be amended to include conforming changes.

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

This rule proposes to amend the solicitation provision at DFARS 252.209–7011, Representation for Restriction on the Use of Certain Institutions of Higher Education. 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. DoD does intend to apply the proposed rule to contracts at or below the SAT, to contracts for the acquisition of commercial products including COTS items, and for the acquisition of commercial services.

###### *A. Applicability to Contracts at or Below the Simplified Acquisition Threshold*

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations. DoD does intend to make that determination. Therefore, this proposed rule will apply at or below the simplified acquisition threshold.

###### *B. Applicability to Contracts for the Acquisition of Commercial Products Including COTS Items and for the Acquisition of Commercial Services*

10 U.S.C. 3452 exempts contracts and subcontracts for the acquisition of commercial products, including COTS items, and commercial services from provisions of law enacted after October 13, 1994, unless the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) makes a written determination that it would not be in

the best interest of DoD to exempt contracts for the procurement of commercial products and commercial services from the applicability of the provision or contract requirement, except for a provision of law that—

- Provides for criminal or civil penalties;
- Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 4862 or that strategic materials critical to national security be bought from American sources pursuant to 10 U.S.C. 4863; or
- Specifically refers to 10 U.S.C. 3452 and states that it shall apply to contracts and subcontracts for the acquisition of commercial products (including COTS items) and commercial services.

Sections 1044 and 1045 of the NDAA for FY 2024 do not impose criminal or civil penalties, do not require purchase pursuant to 10 U.S.C. 4862 or 4863, and do not refer to 10 U.S.C. 3452.

Therefore, sections 1044 and 1045 will not apply to the acquisition of commercial services or commercial products including COTS items unless a written determination is made. Due to delegations of authority, the Principal Director, DPCAP is the appropriate authority to make this determination.

DoD intends to make that determination to apply this statute to the acquisition of commercial products including COTS items and to the acquisition of commercial services. Therefore, this proposed rule will apply to the acquisition of commercial products including COTS items and to the acquisition of commercial services.

#### C. Determinations

To ensure compliance with the limitation on the use of funds, the proposed rule must apply to all contracts with institutions of higher education. An exception for acquisitions at or below the SAT, for the acquisition of commercial products including COTS items, or for the acquisition of commercial services would exclude the contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law and the associated statutory funds limitation.

#### 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, the minimal associated burden exists since the proposed rule still only requires the prospective 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 less than 10 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.

This proposed 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. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the funds limitation affects a very limited number of offerors and,

therefore, has a limited impact. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the definition of Confucius Institute and to implement an end date for the associated waiver authority. The DFARS currently requires that none of the funds authorized to be appropriated or otherwise made available for any fiscal year for DoD may be provided to an institution of higher education that hosts a Confucius Institute. Currently, this prohibition may be waived.

The objective of the rule is to implement sections 1044 and 1045 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024 (Pub. L. 118–31), which is the legal basis for the rule. 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.

To assess the potential impact, the Federal Procurement Data System (FPDS) was queried 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 institutions 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.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

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

DoD invites comments from small business concerns and other interested

parties on the expected impact of this proposed rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2024–D023), in correspondence.

## VII. Paperwork Reduction Act

This proposed 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 and 252

Government procurement.

#### Jennifer D. Johnson,

*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, the Defense Acquisition Regulations System proposes to amend 48 CFR parts 209 and 252 as follows:

- 1. The authority citation for part 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. Amend section 252.209–7011—
  - a. By revising the provision date;
  - b. In paragraph (a) by revising the definition of “Confucius Institute”; and
  - c. By revising paragraph (b).

The revisions read as follows:

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

\* \* \* \* \*

#### Representation for Restriction on the Use of Certain Institutions of Higher Education (Date)

(a) \* \* \*

*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.

\* \* \* \* \*

(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 shall 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>.

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