



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Class Deviation

PCD 12-01A
February 16, 2012

CLASS DEVIATION IMPLEMENTING NASA RESTRICTIONS ON FUNDING ACTIVITY WITH THE PEOPLES REPUBLIC OF CHINA (PRC)

PURPOSE: To provide a class deviation implementing NASA Restrictions on Funding Activity with the Peoples Republic of China (PRC) which became effective April 25, 2011. **Revision A** provides clarification that contracts for commercial and non-developmental items are not included in the appropriation restriction and are not affected by the guidance provided in this PIC.

BACKGROUND: NASA is restricted by specific applications of Section 1340(a) of The Department of Defense and Full-Year Appropriations Act, Public Law 112-10 and Section 539 of the Consolidated and Further Continuing Appropriation Act of 2012, PL 112-55, from using funding appropriated in the Acts to contract to participate, collaborate or coordinate bilaterally in any way with China or any Chinese-owned company, at the prime contract or any tier subcontract level.

GUIDANCE: NASA is restricted by specified application of the Acts from using funding appropriated in the Acts to enter into a contract of any kind to participate, collaborate, or coordinate bilaterally in any way with China or any Chinese-owned company. Funds containing the restriction are those FY 2011 funds appropriated on or after April 25, 2011, FY 12 funds, and all future appropriations. Accordingly, contracting officers shall make no awards to China or Chinese-owned companies with funds appropriated by the Acts or any funds appropriated subsequent to the Acts. This policy applies to all contracts except those for commercial and non-developmental items. The restrictions of the Acts and this policy neither limit nor prohibit the purchase of commercial or non-developmental items.

Contracting officers shall ensure that contracts funded with the restricted appropriations include the provision and clause below that prohibit the contractor from spending such funds on restricted activities with China or a Chinese-owned company. The restrictions of the Acts do not restrict contractors from acquiring commercial and non-developmental items from China or Chinese-owned companies. Contracts which used funding that was appropriated after April 25, 2011 either as a new award or through a modification are subject to this restriction.

“China” or “Chinese-owned Company” means the People’s Republic of China, any company owned by the People’s Republic of China or any company incorporated under the laws of the People’s Republic of China.

ACTIONS REQUIRED BY CONTRACTING OFFICERS: Insert clause 1852.225-71, Restriction on Funding Activities with China, in all new solicitations and awards **except those for commercial and non developmental items.** Attempt to negotiate no cost, bilateral agreement to include the clause in existing contracts **except those for commercial and non developmental items** that have used or will use appropriations received by NASA after April 25, 2011. Insert the provision 1852.225-72, Restriction on Funding Activities with China – Representation, in all solicitations and awards **except those for commercial and non developmental items.**

1852.225-71 Restriction on Funding Activity with China.

(a) Definition - “China” or “Chinese-owned company” means the People’s Republic of China, any company owned by the People’s Republic of China or any company incorporated under the laws of the People’s Republic of China.

(b) Public Laws 112-10, Section 1340(a) and 112-55, Section 539, restrict NASA from contracting to participate, collaborate, coordinate bilaterally in any way with China or a Chinese-owned company using funds appropriated on or after April 25, 2011. Contracts for commercial and non developmental items are exempted from the prohibition because they constitute purchase of goods or services that would not involve participation, collaboration, or coordination between the parties.

(c) This contract may use restricted funding that was appropriated on or after April 25, 2011. The contractor shall not contract with China or Chinese-owned companies for any effort related to this contract except for acquisition of commercial and non-developmental items. If the contractor anticipates making an award to China or Chinese-owned companies, the contractor must contact the contracting officer to determine if funding on this contract can be used for that purpose.

(d) Subcontracts - The contractor shall include the substance of this clause in all subcontracts made hereunder.

(End of clause)

1852.225-72 Restriction on funding Activity with China – Representation.

(a) Definition - “China” or “Chinese-owned” means the People’s Republic of China, any company owned by the People’s Republic of China or any company incorporated under the laws of the People’s Republic of China.

(b) Public Laws 112-10, Section 1340(a) and 112-55, Section 536, restrict NASA from contracting to participate, collaborate, or coordinate bilaterally in any way with China or a Chinese-owned company with funds appropriated on or after April 25, 2011. Contracts for commercial and non-developmental items are excepted from the prohibition as they constitute purchase of goods or services that would not involve participation, collaboration, or coordination between the parties.

(c) Representation. By submission of its offer, the offeror represents that the offeror is not China or a Chinese-owned company.

(End of provision)

EFFECTIVE DATE: This PIC is effective immediately and shall remain in effect until rescinded or added to the NFS.

CANCELLATION: PIC [12-01](#) is hereby cancelled.

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