

**To:** Contract & Grant Officers

**Subject:** NASA Restriction on Funding Activity with the People's Republic of China (PRC)

**Purpose**

This memo is issued to assist University of California campuses managing NASA-funded awards that include the "NASA Restriction on Funding Activity with the People's Republic of China (PRC)," originally implemented by NASA pursuant to funding restrictions inserted into its federal funding appropriations as of April 25, 2011.

This guidance was developed in consultation with the University's Office of General Counsel and after careful consideration of the required certifications and clauses appearing in NASA proposal announcements and awards.

**Definitions**

For the purposes of this Guidance document, the following definitions apply:

**China or Chinese-owned Company** means the People's Republic of China (PRC), any company owned by the People's Republic of China or any company incorporated under the laws of the People's Republic of China, **including Chinese universities**. The PRC includes Hong Kong and Macau, but not Taiwan (Republic of China). The statute does not restrict individual involvement based on citizenship or nationality.

**ALL REFERENCES TO "CHINA" OR THE "PRC" IN THIS DOCUMENT ARE UNDERSTOOD TO MEAN CHINA AS DEFINED ABOVE.**

**Bilateral** applies to a policy, program, order, or contract, means a reciprocal policy, program, order, or contract between China and a US entity, where there are no other international parties involved. This is distinct from a multilateral arrangement with parties from multiple countries. **The NASA funding restriction does not apply to multilateral arrangements.**

**Vendor Agreement** means a contract for the acquisition of commercial and non-developmental items.

**Background**

Since federal fiscal year 2011, the continuing appropriations acts that fund the National Aeronautics and Space Administration (NASA)<sup>1</sup> have instituted what is commonly referred to as

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<sup>1</sup> See **Exhibit A** for the specific text from the appropriations acts that contain this prohibition.

the “NASA Restrictions on Funding Activity with the Peoples Republic of China (PRC).” This restriction prohibits NASA and the White House Office of Science and Technology Policy from engaging in or funding any joint scientific activity with China.<sup>2</sup>

For the purpose of understanding the application of this prohibition, the statutory language can be broken down into three parts:

**Part 1** None of the funds made available by this Act may be used for the National Aeronautics and Space Administration (NASA) or the Office of Science and Technology Policy (OSTP)

**Part 2** to develop, design, plan, promulgate, implement, or execute a bilateral policy, program, order, or contract of any kind to

**Part 3** participate, collaborate, or coordinate bilaterally in any way with China or any Chinese-owned company unless such activities are specifically authorized by a law enacted after the date of enactment of this Act.

The effect of this prohibition on UC comes into play in part 3. That is, NASA cannot fund the activities described in parts 1 and 2, and when UC receives funds from NASA, UC must assure that it will not engage in activities described in part 3 in violation of any restriction inserted into our award documents.

NASA’s internal implementation instructions are codified in the Procurement Information Circular (PIC) 12-01A (February 16, 2012) and the Grant Information Circular (GIC) 12-01A (September 26, 2012). Both documents direct NASA Contract & Grant Officers to insert certifications and restrictions in solicitations and awards.<sup>3</sup>

In addition to the PIC 12-01A and the GIC 12-01A, NASA has published a series of frequently asked questions (FAQs) to help their internal and external research community better understand the restrictions. The FAQs apply to both NASA contracts and grants, and are posted in the NASA Research Opportunities in Space and Earth Science (ROSES), a website that lists various

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Department of Defense and Full-Year Continuing Appropriations Act of 2011, Pub.L. No. 112-10, §1340 (Apr. 15, 2011) 125 Stat. 38. <http://www.gpo.gov/fdsys/pkg/PLAW-112publ10/html/PLAW-112publ10.htm>

Consolidated and Further Continuing Appropriations Act of 2012, Pub.L. No. 112-55, § 539(Nov. 18, 2011) 125 Stat. 639. <http://www.gpo.gov/fdsys/pkg/PLAW-112publ55/html/PLAW-112publ55.htm>

Consolidated and Further Continuing Appropriations Act of 2013, Pub.L. No. 113-6, §§535 and 516 (Mar. 26, 2013) 127 Stat. 198. <http://www.gpo.gov/fdsys/pkg/PLAW-113publ6/html/PLAW-113publ6.htm>

<sup>2</sup> These prohibitions were inserted by U.S. Representative Frank Wolf, R-VA, House spending committee chair. For further background, see “Wolf Statement at U.S. - China Commission Hearing on Military and Civil Space Programs in China,” <http://wolf.house.gov/index.cfm?sectionid=34&itemid=1724>.

<sup>3</sup> See <http://www.hq.nasa.gov/office/procurement/regs/pic12-01A.html> and [http://naistst1.nais.nasa.gov/pub/pub\\_library/grantnotices/gic12-01A.html](http://naistst1.nais.nasa.gov/pub/pub_library/grantnotices/gic12-01A.html).

The PIC and GIC 12-01A as of the date of this guidance are attached here for convenience as **Exhibits B and C**, respectively. Note that these documents (PIC12-01A and GIC12-01A) replace previous versions (PIC12-01 and GIC12-01).

NASA calls for proposals in the fields of Astrophysics, Heliophysics, Earth Science, and Planetary Science.<sup>4</sup>

It is important to note that per the GIC and PIC, the award terms and certifications/assurances for contracts differ from those required for grants and cooperative agreements. The table below outlines the award terms and certifications and assurances by category.

GRANT or COOPERATIVE AGREEMENT	CONTRACT
<p>By submission of its proposal, the proposer represents that the proposer is not China or a Chinese-owned company,</p> <p>and that the proposer will not <b>participate, collaborate, or coordinate bilaterally</b> with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, <b>whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.</b></p> <p>The Recipient shall include the substance of this provision in all subawards made hereunder.</p>	<p>By submission of its offer, the offeror represents that the offeror is not China or a Chinese-owned company.</p> <p>The contractor <b>shall not contract</b> with China or Chinese-owned companies for any effort related to this contract except for acquisition of commercial and non-developmental items.</p> <p>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.</p> <p>The contractor shall include the substance of this clause in all subcontracts hereunder.</p>

## Guidance

### I. Best Practices and Certifications

- A. Campuses should promote awareness about the NASA Restriction on Funding Activity with China, including outreach to: Principal Investigators (PI) and others working on a NASA-funded scope of work, Contract and Grant Officers, departmental administrators, and all persons that might be responsible for executing subcontracts, memoranda of understanding, collaboration agreements, or any other type of written agreements.
- B. Subcontracts, subawards, memoranda of understanding, collaboration agreements, or any other type of **written bilateral agreements with China** under NASA-funded awards which contain the restriction regarding activity with China are expressly prohibited regardless of whether the prime award is a grant, cooperative agreement or contract.
- C. The following guidance is provided for each award type. See also **Exhibit F** for a Quick Guide.

#### 1. NASA Contracts:

- a. Since the NASA procurement certifications are limited to prohibiting bilateral *contracting* “with China or Chinese-owned companies for any effort related to [the] contract except

<sup>4</sup> See <http://science.nasa.gov/researchers/sara/faqs/prc-faq-roses/>. FAQs as of the date of this guidance are attached here for convenience as **Exhibit E**.

for acquisition of commercial and non-developmental items,”<sup>5</sup> **our only legal obligation under NASA contracts is to assure that we do not enter into bilateral written contracts or subcontracts with China for the performance of any part of the NASA scope of work.** This representation is made as part of the proposal and award certifications.

- b. The PI should certify that s/he will not enter or cause The Regents to enter into a bilateral contract or subcontract with China to perform the scope of work of a NASA-funded contract. A sample PI certification for NASA contracts is included as **Exhibit G**. A certification such as this should be collected by the campus Contracts & Grants/Sponsored Projects Office before The Regents can accept a NASA contract.
- c. A certification should be secured from all entities with whom we enter into subcontracts or other types of written funded agreements (except for Vendor Agreements) for the performance of any part of the scope of work of a NASA-funded contract attesting that they are not China or a Chinese-owned company. The complete certification should be similar to that in the PIC and incorporated into the written subcontracts or other written funded agreements. The applicable NASA FAR clauses must also be flowed down.
- d. If the campus anticipates subcontracting to China, the campus should contact the NASA contracting officer to determine if funding can be used for that purpose.

## **2. NASA Assistance Awards (Grants and Cooperative Agreements):**

- a. Pursuant to Grant Information Circular 12-01A, NASA requires entities submitting proposals for NASA assistance (e.g., in response to a Broad Agency Announcement) to provide an assurance that we “will not participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.”<sup>6</sup> This assurance requirement imposes an award restriction which is broader than the “contracting with China” restriction under NASA contracts and extends to individuals performing part of the NASA-funded Scope of Work who have an affiliation with China or a Chinese-owned company.
- b. At the award stage (or earlier if mandated by the campus), the PI should complete a questionnaire such as that attached as **Exhibit H**, on their own behalf and on behalf of all other UC participants performing part of the NASA grant scope of work (“Participants”) to help determine whether anyone has an affiliation with China that would preclude their participation (whether funded or unfunded or on-campus or remote). If the PI does not know the answers for any Participant, the PI should obtain the necessary information directly from such Participant.

PIs should be directed to consult with the Contract & Grant/Sponsored Projects Office if an affiliation with China is indicated for any project participant. There are no absolute definitions of what constitutes an affiliation, nor has NASA defined the term.

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<sup>5</sup> NASA FAR Supplement Clause 1852.225-71

<sup>6</sup> See **Exhibit C**, NASA Grant Information Circular 12-01A, NASA Assurance of Compliance - China Funding Restriction (Deviation Feb 2012)

However, the following situations are likely to preclude a person from participating in a NASA-funded scope of work:

- The receipt of substantial financial support from China (other than scholarships).
  - Present or committed employment relationships with China.
  - Present or committed student status in China.
- c. If no affiliations with China are indicated on the questionnaire described above, the PI should next complete a certification attesting that bilateral participation, collaboration, or coordination with China, whether funded or unfunded, will not be performed as part of their NASA-funded award. A sample PI certification for NASA assistance awards is attached as **Exhibit I**. The Regents should not accept a NASA award before a certification such as this is in place.
- d. A certification attesting that they are not China or a Chinese-owned company should be secured from all entities with whom we enter into subawards and other types of written funded or unfunded agreements (except for vendors) for the performance of any part of the scope of work of a NASA-funded assistance award. The certification should be similar to that in the GIC and may be incorporated into subawards or other written agreements or separately secured. In addition, the applicable NASA assistance clauses must be flowed down.

## II. Limitations of the NASA Restriction on Funding Activity with the PRC

The impact of the NASA Restriction on Funding Activity with the PRC may be mitigated by keeping in mind the following:

### A. Scope of Work

The prohibition applies **only** to bilateral participation, collaboration, or coordination with China occurring in the performance of a **scope of work under a NASA-funded award (or subaward)** that contains the NASA Restriction on Funding Activity with China. Note that this is true for both NASA-funded activities and for cost shared activities described in the NASA award scope of work.

To the extent that it is feasible, a PI may be able to extract portions of the work that involve the bilateral participation, collaboration, or coordination with China from a NASA proposal so that these stand alone as independently funded and distinct projects that are not part of the NASA scope of work.

### B. Bilateral vs. Multilateral Activities

Since only bilateral activities are covered by the restriction, to the extent that it makes sense and is feasible for a given project, the PI may be able to legitimately include another international party in the participation, collaboration or coordination, making the project multi-lateral. This would require a careful description of the benefits of such international collaboration at the proposal stage and in the subsequent multilateral agreement with all collaborators. Be aware that NASA will carefully review, and may or may not approve, proposed multilateral arrangements.

### **C. No Effect on Open Fundamental Research**

It is important to note that UC performs open fundamental research. Limiting access to data/results based on citizenship is contrary to University policies. Therefore, data/results arising from a NASA project can and should be broadly shared and disseminated. Such dissemination is not prohibited by the NASA Restriction on Funding Activity with China.

### **D. No Effect on General Scientific Discussions**

The NASA ROSES FAQs (see Exhibit E) specifically state that “general scientific discussions with PRC researchers do not constitute a bilateral policy, program, order, or contract and thus are permitted,” and clarify that projects outside of a NASA-funded scope of work are not affected by the restriction. Thus, general interactions with visitors or laboratory colleagues who are not performing any part of the NASA-funded scope of work are permitted without further investigation as to a person’s affiliation with China.

### **E. No Effect on Vendor Agreements**

PIC 12-01A specifically exempts contracts and purchases of “commercial and non-developmental items,” while GIC 12-01A exempts “the purchase of commercial items of supply.” Thus, the NASA Restriction on Funding Activity with the PRC should have no effect on University Vendor Agreements.

Additionally, Section 516 of Public Law 113-6 imposes a separate restriction on NASA regarding the acquisition by NASA of information technology systems produced, manufactured or assembled by the PRC.<sup>7</sup> However, NASA Procurement Information Circular 13-04<sup>8</sup> on this subject specifically defines “acquire” as “procure with appropriated funds by and for the use of NASA through purchase or lease” and further states that IT systems do not include: 1) systems acquired by a contractor incidental to a contract; 2) Imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information; 3) Services in support of IT systems; or 4) flight hardware. Thus, it would be inappropriate for NASA to insert the IT clauses called for in PIC 13-04 (NASA FAR clauses 1852.225-73 and 1852.225-74) in University awards, and the purchase of IT systems from China by the University under research awards is not prohibited.[emphasis added]

### **F. Summary of the Applicability of the Restriction**

In summary, the restriction:

- Only applies to activities described in the scope of work of a NASA award.
- Only applies to Bilateral activities with China.
- Does not restrict individual involvement based on citizenship or nationality.

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<sup>7</sup> Consolidated and Further Continuing Appropriations Act of 2013, Pub.L. No. 113-6, § 516 (Mar. 26, 2013) 127 Stat. 198. <http://www.gpo.gov/fdsys/pkg/PLAW-113publ6/html/PLAW-113publ6.htm>  
See **Exhibit A** for the specific text from the appropriations act cited above.

<sup>8</sup> PIC 13-04, <http://www.hq.nasa.gov/office/procurement/regs/pic13-04.html>. See **Exhibit D**.

- Does not prohibit dissemination of data/results arising from a NASA project.
- Does not disqualify us from using the Fundamental Research Exclusion under the export control regulations.
- Does not apply to multilateral projects.
- Does not apply to “general scientific discussions.”
- Does not apply to the purchase of commercial and non-developmental items, including the purchase of IT systems by the University under research awards.

### III. Exceptions

The statute allows for the possibility of an exception if NASA (or the Office of Science & Technology Policy) certifies that the activities pose no risk of resulting in the transfer of technology, data, or other information with national security or economic security implications to China, will not involve knowing interactions with officials who have been determined by the United States to have direct involvement with violations of human rights, and submits to the Committees on Appropriations for the House of Representatives and the Senate no later than 30 days prior to the activity in question. However, given political ramifications and Congressional scrutiny, it is unlikely that NASA would be willing to contemplate granting such an exception. For these reasons, **RPAC should be consulted prior to the submission of an exception request.**

### IV. If in Doubt, Contact NASA

Should a question remain about whether a particular situation would be prohibited, the campus contracts & grants office should consult the corresponding NASA program officer.

Contact:

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Wendy D. Streit  
Executive Director  
Research Policy Analysis & Coordination

**Attachments:**

Exhibit A – Public Laws 112-10, 112-55, and 113-6  
Exhibit B – Procurement Information Circular (PIC) 12-01A  
Exhibit C – Grant Information Circular (GIC) 12-01A  
Exhibit D – Procurement Information Circular (PIC) 13-04  
Exhibit E – NASA ROSES FAQ  
Exhibit F – Quick Guide  
Exhibit G – Sample PI Certification for NASA Contracts  
Exhibit H – Sample Questionnaire for NASA Assistance Awards  
Exhibit I – Sample PI Certification for NASA Assistance Awards



## Exhibit A

**Department of Defense and Full-Year Continuing Appropriations Act of 2011, Pub.L. No. 112-10, §1340 (Apr. 15, 2011) 125 Stat. 38.** <http://www.gpo.gov/fdsys/pkg/PLAW-112publ10/html/PLAW-112publ10.htm>

(a) None of the funds made available by this division may be used for the National Aeronautics and Space Administration or the Office of Science and Technology Policy to develop, design, plan, promulgate, implement, or execute a bilateral policy, program, order, or contract of any kind to participate, collaborate, or coordinate bilaterally in any way with China or any Chinese-owned company unless such activities are specifically authorized by a law enacted after the date of enactment of this division.

(b) The limitation in subsection (a) shall also apply to any funds used to effectuate the hosting of official Chinese visitors at facilities belonging to or utilized by the National Aeronautics and Space Administration.

**Consolidated and Further Continuing Appropriations Act of 2012, Pub.L. No. 112-55, § 539 (Nov. 18, 2011) 125 Stat. 639.** <http://www.gpo.gov/fdsys/pkg/PLAW-112publ55/html/PLAW-112publ55.htm>

(a) None of the funds made available by this Act may be used for the National Aeronautics and Space Administration (NASA) or the Office of Science and Technology Policy (OSTP) to develop, design, plan, promulgate, implement, or execute a bilateral policy, program, order, or contract of any kind to participate, collaborate, or coordinate bilaterally in any way with China or any Chinese-owned company unless such activities are specifically authorized by a law enacted after the date of enactment of this Act.

(b) The limitation in subsection (a) shall also apply to any funds used to effectuate the hosting of official Chinese visitors at facilities belonging to or utilized by NASA.

(c) The limitations described in subsections (a) and (b) shall not apply to activities which NASA or OSTP have certified pose no risk of resulting in the transfer of technology, data, or other information with national security or economic security implications to China or a Chinese-owned company.

(d) Any certification made under subsection (c) shall be submitted to the Committees on Appropriations of the House of Representatives and the Senate no later than 14 days prior to the activity in question and shall include a description of the purpose of the activity, its major participants, and its location and timing.

**Consolidated and Further Continuing Appropriations Act of 2013, Pub.L. No. 113-6, §§535 and 516 (Mar. 26, 2013) 127 Stat. 198.** <http://www.gpo.gov/fdsys/pkg/PLAW-113publ6/html/PLAW-113publ6.htm>

### § 535

(a) None of the funds made available by this Act may be used for the National Aeronautics and Space Administration (NASA) or the Office of Science and Technology Policy (OSTP) to develop, design, plan, promulgate, implement, or execute a bilateral policy, program, order, or contract of any kind to participate, collaborate, or coordinate bilaterally in any way with China or any Chinese-owned company unless such activities are specifically authorized by a law enacted after the date of enactment of this Act.

(b) The limitation in subsection (a) shall also apply to any funds used to effectuate the hosting of official Chinese visitors at facilities belonging to or utilized by NASA.

(c) The limitations described in subsections (a) and (b) shall not apply to activities which NASA or OSTP has certified—

(1) pose no risk of resulting in the transfer of technology, data, or other information with national security or economic security implications to China or a Chinese-owned company; and

(2) will not involve knowing interactions with officials who have been determined by the United States to have direct involvement with violations of human rights.

(d) Any certification made under subsection (c) shall be submitted to the Committees on Appropriations of the House of Representatives and the Senate no later than 30 days prior to the activity in question and shall include a description of the purpose of the activity, its agenda, its major participants, and its location and timing.

## **§ 516**

(a) None of the funds appropriated or otherwise made available under this Act may be used by the Departments Administration, or the National Science Foundation to acquire an information technology system unless the head of the entity involved, in consultation with the Federal Bureau of Investigation or other appropriate Federal entity, has made an assessment of any associated risk of cyber-espionage or sabotage associated with the acquisition of such system, including any risk associated with such system being produced, manufactured or assembled by one or more entities that are owned, directed or subsidized by the People's Republic of China.

(b) None of the funds appropriated or otherwise made available under this Act may be used to acquire an information technology system described in an assessment required by subsection (a) and produced, manufactured or assembled by one or more entities that are owned, directed or subsidized by the People's Republic of China unless the head of the assessing entity described in subsection (a) determines, and reports that determination to the Committees on Appropriations of the House of Representatives and the Senate, that the acquisition of such system is in the national interest of the United States.



# 12-01A Procurement Information Ci

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)

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**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.

**HEADQUARTERS CONTACT:** Craig Bowers, Contract Management Division, (202) 358-2235, email: [craig.w.bowers@nasa.gov](mailto:craig.w.bowers@nasa.gov).

/s/ Ronald A. Poussard *for*  
William P. McNally  
Assistant Administrator for Procurement

**DISTRIBUTION:**  
**PIC List**



National Aeronautics and  
Space Administration  
Washington, DC 20546

# Grant Information Circular

GIC 12-01A  
September 26, 2012

## CLASS DEVIATION IMPLEMENTING NASA RESTRICTIONS ON FUNDING ACTIVITIES WITH THE PEOPLE'S REPUBLIC OF CHINA (PRC)

**PURPOSE:** To provide a class deviation implementing NASA Restrictions on Funding Activities with the People's Republic of China (PRC) that became effective April 25, 2011. Revision A provides clarification to the guidance.

**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 (NASA's 2011 continuing resolution), and Section 539 of the Consolidated and Further Continuing Appropriation Act of 2012, Public Law 112-55 (NASA's FY 2012 appropriation) from using funding appropriated in the Acts to enter into or fund any grant or cooperative agreement of any kind to participate, collaborate, or coordinate bilaterally in any way with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.

**GUIDANCE:** NASA is restricted by specified application of the Acts from using funding appropriated in the Acts to enter into or fund any grant or cooperative agreement of any kind to participate, collaborate, or coordinate bilaterally in any way with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement. Funds containing the restriction are those FY 2011 funds appropriated on or after April 25, 2011, FY 2012 funds, and all future appropriations. Accordingly, grant officers shall not use any restricted funds to award or fund any grant or cooperative agreement of any kind to participate, collaborate, or coordinate bilaterally in any way with China or any Chinese-owned companies.

If grant officers encounter questions or issues related to a specific announcement, grant, or cooperative agreement, and need additional guidance in determining what constitutes a restricted use of funds, grant officers should consult with the cognizant representative in the NASA Headquarters, Office of Procurement, Program Operations Division. If grant officers encounter questions or issues of a broad policy nature that require guidance beyond that contained herein, grant officers should contact the cognizant representative in the NASA Headquarters Office of Procurement, Contract Management Division.

The restrictions of the Acts and this policy neither limit nor prohibit the purchase of commercial items of supply from China needed to perform a grant or cooperative agreement, because the purchase of commercial items of supply does not involve bilateral participation, collaboration, or coordination.

Grant officers and/or NASA funding sponsors (e.g., Mission Directorates) shall ensure that all Broad Agency Announcements (i.e., Announcement of Opportunities, NASA Research Announcements, and Cooperative

Agreement Notices) include the requirement for the submission of the Assurance of Compliance introduced below. Moreover, grant officers shall ensure that all grants and cooperative agreements awarded or funded with the restricted appropriations include the applicable provision introduced below that prohibit the recipient from spending such funds on restricted activities with China or a Chinese-owned company. Grants and cooperative agreements which used funding that was appropriated on or after April 25, 2011 either as a new award or added to an existing award through amendment 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. Chinese universities and other similar institutions are considered to be incorporated under the laws of the PRC and, therefore, the funding restrictions apply to grants and cooperative agreements that include bilateral participation, collaboration, or coordination with Chinese universities.

### ***ACTION REQUIRED BY GRANT OFFICERS:***

1. When issuing new Broad Agency Announcements (e.g., Announcements of Opportunity, NASA Research Announcements, and Cooperative Agreement Notices), grant officers shall add the following paragraph (iv) to the current proposal requirements set forth at 14 CFR § 1260.10 (c)(1) so that proposers, by submission of their proposal, represent that they are not China or a Chinese-owned company, and that they will not participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.

#### **Assurance of Compliance – China Funding Restriction (DEVIATION FEB 2012)**

(iv) An Assurance of Compliance with The Department of Defense and Full-Year Appropriation Act, Public Law 112-10 Section 1340(a); The Consolidated and Further Continuing Appropriation Act of 2012, Public Law 112-55, Section 539; and future-year appropriations herein after referred to as “the Acts”, whereas:

(1) NASA is restricted from using funds appropriated in the Acts to enter into or fund any grant or cooperative agreement of any kind to participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime recipient level and at all subrecipient levels, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.

(2) 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.

(3) The restrictions in the Acts do not apply to commercial items of supply needed to perform a grant or cooperative agreement.

(4) By submission of its proposal, the proposer represents that the proposer is not China or a Chinese-owned company, and that the proposer will not participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.

2. When awarding new grants and cooperative agreements that are subject to 14 CFR § 1260, grant officers shall add the following provision which restricts the recipient from participating, collaborating, or coordinating bilaterally with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level,

whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.

**Restrictions on Funding Activities with China for Awards Subject to 14 CFR § 1260  
(DEVIATION FEB 2012)**

(a) Pursuant to The Department of Defense and Full-Year Appropriation Act, Public Law 112-10, Section 1340(a); The Consolidated and Further Continuing Appropriation Act of 2012, Public Law 112-55, Section 539; and future-year appropriations (hereinafter, “the Acts”), NASA is restricted from using funds appropriated in the Acts to enter into or fund any grant or cooperative agreement of any kind to participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.

(b) 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.

(c) The restrictions in the Acts do not apply to commercial items of supply needed to perform a grant or cooperative agreement.

(d) Subaward – The recipient shall include the substance of this provision in all subawards made hereunder.”

**[End of Provision]**

3. When issuing new grants or cooperative agreements that are subject to 14 CFR § 1273, grant officers shall add the following provision which restricts the recipient from participating, collaborating, or coordinating bilaterally with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.

**Restrictions on Funding Activities with China for Awards Subject to 14 CFR § 1273  
(DEVIATION FEB 2012)**

(a) Pursuant to The Department of Defense and Full-Year Appropriation Act, Public Law 112-10, Section 1340(a); The Consolidated and Further Continuing Appropriation Act of 2012, Public Law 112-55, Section 539; and future-year appropriations (hereinafter, “the Acts”), NASA is restricted from using funds appropriated in the Acts to enter into or fund any grant or cooperative agreement of any kind to participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.

(b) 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.

(c) The restrictions in the Acts do not apply to commercial items of supply needed to perform a grant or cooperative agreement.

(d) Subawards - State and local governments shall ensure that the substance of the Acts is flowed down to all subawards made.

**[End of Provision]**

4. When issuing new grants or cooperative agreements subject to 14 CFR §1274, grant officers shall add the

following provision which restricts the recipient from participating, collaborating, or coordinating bilaterally with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.

**Restrictions on Funding Activities with China for Awards Subject to 14 CFR § 1274  
(DEVIATION FEB 2012)**

(a) Pursuant to The Department of Defense and Full-Year Appropriation Act, Public Law 112-10, Section 1340(a); The Consolidated and Further Continuing Appropriation Act of 2012, Public Law 112-55, Section 539; and future-year appropriations (hereinafter, “the Acts”), NASA is restricted from using funds appropriated in the Acts to enter into or fund any grant or cooperative agreement to participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.

(b) “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.

(c) The restrictions in the Acts do not apply to commercial items of supply necessary to perform a grant or cooperative agreement.

(d) Subawards – The recipient shall include the substance of this provision in all subawards made hereunder.

**[End of Provision]**

5. With respect to existing grants and cooperative agreements, grant officers shall attempt to negotiate bilaterally with the recipient to include the applicable provision at no costs in all existing awards that have used or will use appropriations received by NASA after April 25, 2011. If additional funds are added to an existing grant or cooperative agreement after the effective date of this deviation, grant officers must obtain the Assurance of Compliance and must include the appropriate provision in the grant or cooperative agreement concurrent with the funding action.

**EFFECTIVE DATE:** This GIC is effective as dated and shall remain in effect until rescinded or added to the NASA Grant and Cooperative Agreement Handbook.

**HEADQUARTERS CONTACT:** R. Todd Lacks, Contract Management Division, (202) 358-0799, e-mail: todd.lacks@nasa.gov.

**/s/**

William P. McNally  
Assistant Administrator for Procurement





13-04

## Procurement Information Cir

June 6, 2013

### RESTRICTIONS ON ACQUIRING INFORMATION TECHNOLOGY SYSTEMS AND CLASS DEVIATION TO NFS 1825

**PURPOSE:** To provide procurement guidance on and a class deviation to NFS 1825 for the purpose of implementing the restrictions on using FY 2013 appropriations to acquire information technology (IT) systems.

**BACKGROUND:** Section 516 of the Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113-6, enacted March 26, 2013, provides:

SEC. 516. (a) None of the funds appropriated or otherwise made available under this Act may be used by the Departments of Commerce and Justice, the National Aeronautics and Space Administration, or the National Science Foundation to acquire an information technology system unless the head of the entity involved, in consultation with the Federal Bureau of Investigation or other appropriate Federal entity, has made an assessment of any associated risk of cyber-espionage or sabotage associated with the acquisition of such system, including any risk associated with such system being produced, manufactured or assembled by one or more entities that are owned, directed or subsidized by the People's Republic of China.

(b) None of the funds appropriated or otherwise made available under this Act may be used to acquire an information technology system described in an assessment required by subsection (a) and produced, manufactured or assembled by one or more entities that are owned, directed or subsidized by the People's Republic of China unless the head of the assessing entity described in subsection (a) determines, and reports that determination to the Committees on Appropriations of the House of Representatives and the Senate, that the acquisition of such system is in the national interest of the United States.

**GUIDANCE:** This PIC provides procurement guidance regarding the restrictions placed by Section 516 on acquiring IT systems. The NASA OCIO will use NIST 800-53, Security and Privacy Controls for Federal Information Systems and Organizations, to assess new IT systems. The guidance in this PIC supplements current IT security requirements of FAR 39.101(d), NFS 1804.470-2, IT Security Requirements; [NPD 2810.1](#), NASA Information Security Policy; and NPR 2810.1, Security of Information Technology. Additionally, purchase cardholders shall continue to obtain and document the CIO special approval required in PIC 10-14, Special Approvals for Purchase Card Transactions, prior to placing any orders. Contracting Officers and purchase cardholders shall not obligate FY 2013 funds to acquire an IT system without following the procedures described in this PIC.

For the purpose of the Section 516 restrictions, the following definitions apply:

"Acquire" means procure with appropriated funds by and for the use of NASA through purchase or lease.

"Entity owned, directed or subsidized by the People's Republic of China" means any organization incorporated under the laws of the People's Republic of China.

"Information Technology (IT) System" means the combination of hardware components, software, and other equipment to make a system whose core purpose is to accomplish a data processing need such as the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission or reception of data. IT systems include ground systems in support of flight hardware. IT systems do not include—

- (i) Systems acquired by a contractor incidental to a contract;
- (ii) Imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology systems;
- (iii) Services in support of IT systems, such as help desk services; or
- (iv) Flight hardware, which includes aircraft, spacecraft, artificial satellites, launch vehicles, balloon systems, sounding rockets, on-board instrument and technology demonstration systems, and equipment operated on the International Space Station; as well as prototypes, and engineering or brass boards created and used to test, troubleshoot, and refine air- and spacecraft hardware, software and procedures.

### ACTIONS REQUIRED BY CONTRACTING OFFICERS AND PURCHASE CARDHOLDERS:

#### 1. Review of Purchase Requests

Prior to purchasing an IT system, purchase cardholders and contracting officers shall ensure the item is either a) listed on the NASA OCIO's Assessed and Approved IT List (A&A IT) or b) the procurement request includes an approved Request for Investigation Form. Where the IT system is not listed on the A&A IT and the vendor or product information for the Request for Investigation Form is not known, then the procedures in paragraph two below shall be followed. The latest versions of both the A&A IT and the Request for Investigation Form are available at [Section-516-Documents](#).

#### 2. Request for Proposals, Quotations, or Invitation for Bids

When issuing a request for proposals, quotations, or invitation for bids, to acquire IT systems using FY 2013 funds, the contracting officer shall insert a provision substantially the same as the provision at 1852.225-73, Acquiring Information Technology Systems from Entities Owned, Directed or Subsidized by the People's Republic of China. The provision requires that offerors

either represent no IT system has been produced, manufactured or assembled by one or more entities that are owned, directed or subsidized by the People's Republic of China, or provide a list of items that are. Before making award under a solicitation to acquire IT systems using FY 2013 funds, the contracting officer shall amend the solicitation to include the provision.

### 3. Review of Offers

If the apparent successful offeror lists IT systems produced, manufactured or assembled by one or more entities that are owned, directed or subsidized by the People's Republic of China, the CO shall provide the Agency OCIO a list of the IT system(s) being offered, the company(ies) providing the system, including company name and complete address, and the quantity of the IT system proposed. The Agency OCIO has established a Shared Mailbox, [hq-section-516@mail.nasa.gov](mailto:hq-section-516@mail.nasa.gov), for coordination and communications of this information. The CO shall make no award unless the Agency OCIO has reviewed and approved the items offered which are produced, manufactured or assembled by one or more entities that are owned, directed or subsidized by the People's Republic of China and determined that their purchase complies with the requirements of Section 516.

### 4. Modification of Existing Contracts

With regard to existing contracts, contracting officers shall also negotiate a bilateral modification to include a clause substantially the same as the clause at 1852.225-74, Notification Prior to Acquiring Information Technology Systems from Entities Owned, Directed or Subsidized by the People's Republic of China, if the contract involves the acquisition of IT systems and also uses FY 2013 funds. If the contractor proposes to provide IT systems from the People's Republic of China, then the CO shall provide the Agency OCIO a list of the IT system(s) being offered, the company(ies) providing the system, including company name and complete address, and the quantity of the IT system proposed. The Agency OCIO has established a Shared Mailbox, [hq-section-516@mail.nasa.gov](mailto:hq-section-516@mail.nasa.gov), for coordination and communications of this information. The CO shall make no award unless the Agency OCIO has reviewed and approved the items offered which are produced, manufactured or assembled by one or more entities that are owned, directed or subsidized by the People's Republic of China and determined that their purchase complies with the requirements of Section 516.

#### **1852.225-73 Information Technology Systems from Entities Owned, Directed or Subsidized by the People's Republic of China.**

As prescribed in paragraph two of this PIC, the contracting officer shall insert a provision substantially the same as the following provision:

**INFORMATION TECHNOLOGY SYSTEMS  
FROM ENTITIES OWNED, DIRECTED OR SUBSIDIZED BY THE  
PEOPLE'S REPUBLIC OF CHINA  
(JUNE 2013) (DEVIATION)**

(a) Definitions –

“**Acquire**” means procure with appropriated funds by and for the use of NASA through purchase or lease.

“**Entity owned, directed or subsidized by the People's Republic of China**” means any organization incorporated under the laws of the People's Republic of China.

“**Information Technology (IT) System**” means the combination of hardware components, software, and other equipment to make a system whose core purpose is to accomplish a data processing need such as the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission or reception of data. IT systems include ground systems in support of flight hardware. IT systems do not include—

- (i) Systems acquired by a contractor incidental to a contract;
- (ii) Imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology systems;
- (iii) Services in support of IT systems, such as help desk services; or
- (iv) Flight hardware, which includes aircraft, spacecraft, artificial satellites, launch vehicles, balloon systems, sounding rockets, on-board instrument and technology demonstration systems, and equipment operated on the International Space Station; as well as prototypes, and engineering or brass boards created and used to test, troubleshoot, and refine air- and spacecraft hardware, software and procedures.

(b) Section 516 of the Consolidated and Further Continuing Appropriation Act, 2013 (Pub. L. 113-6), requires NASA's Office of the Chief Information Officer (OCIO) to assess the risk of cyber-espionage or sabotage of an information technology (IT) system that is produced, manufactured, or assembled by an entity owned, directed or subsidized by the People's Republic of China. By submitting an offer in response to this solicitation, the Offeror understands and agrees that the Government retains the right to reject any offer or response to this solicitation made by the Offeror, without any further recourse by, or explanation to, the Offeror, if the Government determines the Offeror or the equipment or software offered by the Offeror, in whole or in part, presents an unacceptable risk to national security.

(c) *Representation.* The Offeror represents that any information technology system offered, except those listed in paragraph (d) of this provision, is not produced, manufactured, or assembled by an entity owned, directed or subsidized by the People's Republic of China.

(d) Information technology system(s) produced, manufactured, or assembled by an entity owned, directed or subsidized by the People's Republic of China:

ITEM	VENDOR/MANUFACTURER'S COMPANY NAME AND ADDRESS
_____	_____
_____	_____
_____	_____

[List as necessary]

(e) The Contracting Officer will provide the list referenced in paragraph (d) to the NASA Office of the Chief Information Officer (OCIO) which will assess the risk of cyber-espionage or sabotage and make a determination if the acquisition of such system is in the national interest. Only items so approved may be provided under the contract. The Contracting Officer will advise the Offeror if any items are not approved and may provide the Offeror an opportunity to revise its proposal.

**(End of provision)**

#### **1852.225-74, Notification Prior to Acquiring Information Technology Systems from Entities Owned, Directed or Subsidized by the People's Republic of China**

As prescribed in paragraph four of this PIC, the contracting officer shall insert a clause substantially the same as the following clause:

**NOTIFICATION PRIOR TO ACQUIRING INFORMATION TECHNOLOGY SYSTEMS FROM ENTITIES OWNED, DIRECTED OR SUBSIDIZED BY THE  
PEOPLE'S REPUBLIC OF CHINA (JUNE 2013) (DEVIATION)**

(a) Definitions –

“**Acquire**” means procure with appropriated funds by and for the use of NASA through purchase or lease.

“**Entity owned, directed or subsidized by the People's Republic of China**” means any organization incorporated under the laws of the People's Republic of China.

“**Information Technology (IT) System**” means the combination of hardware components, software, and other equipment to make a system whose core purpose is to accomplish a data processing need such as the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission or reception of data. IT systems include ground systems in support of flight hardware. IT systems do not include—

- (i) Systems acquired by a contractor incidental to a contract;
- (ii) Imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology systems;
- (iii) Services in support of IT systems, such as help desk services; or
- (iv) Flight hardware, which includes aircraft, spacecraft, artificial satellites, launch vehicles, balloon systems, sounding rockets, on-board instrument and technology demonstration systems, and equipment operated on the International Space Station; as well as prototypes, and engineering or brass boards created and used to test, troubleshoot, and refine air- and spacecraft hardware, software and procedures.

(b) Section 516 of the Consolidated and Further Continuing Appropriation Act, 2013 (Pub. L. 113-6), requires NASA's Office of the Chief Information Officer (OCIO) to assess the risk of cyber-espionage or sabotage of an information technology (IT) system that is produced, manufactured, or assembled by an entity owned, directed or subsidized by the People's Republic of China (PRC). The Government retains the right to reject any IT system tendered for acceptance under this Contract, without any further recourse by, or explanation to, the Contractor, if the Government determines the IT system, in whole or in part, presents an unacceptable risk to national security.

(c) The Contractor shall obtain the approval of the Contracting Officer before acquiring any IT system(s) from entities owned, directed or subsidized by the People's Republic of China under this contract. Any Contractor request to use such items shall include adequate information for Government evaluation of the request, including—

- (1) A brief description of the item(s); and
- (2) Vendor/manufacturer's company name and address;

(d) The Contracting Officer will provide the information referenced in paragraph (c) to the NASA Office of the Chief Information Officer (OCIO) which will assess the risk of cyber-espionage or sabotage and make a determination if the acquisition of such system is in the national interest. Only items so approved shall be provided under the contract.

**(End of clause)**

**PROVISION AND CLAUSE CHANGES:** One provision, 1852.225-73, Acquiring Information Technology Systems from Entities Owned, Directed or Subsidized by the People's Republic of China, and one clause, 1852.225-74, Notification Prior to Acquiring Information Technology Systems from Entities Owned, Directed or Subsidized by the People's Republic of China, are added as a result of this policy.

**EFFECTIVE DATE:** This PIC is effective as dated and shall remain in effect until canceled or superseded.

**HEADQUARTERS CONTACT:** For questions concerning information technology security, contact Willie Crenshaw at 202.358.0947 or [willie.d.crenshaw@nasa.gov](mailto:willie.d.crenshaw@nasa.gov). Questions concerning procurement of IT systems, contact Marilyn E. Chambers on 202.358.5154 or [marilyn.chambers@nasa.gov](mailto:marilyn.chambers@nasa.gov).

**/s/**

William P. McNally  
Assistant Administrator for Procurement

## PRC FAQ for ROSES

**Q1:** What is the procedure for getting clarification on whether existing grants or contracts, or proposals submitted in response to the 2012 ROSES NRA are subject to the restriction on bilateral activity with China (Public Law 112-55)?

**A1:** NASA is implementing the restriction in Public Law 112-55 via Grant Information Circular 12-01A, which provides instructions to its procurement officers. Specifically, contracting officers must include in grants, contracts and solicitations clauses that inform recipients and offerors that they may be ineligible for FY 2011 & FY 2012 funding if their on-going or proposed work involves bilateral activity with China or Chinese owned companies. For existing grants and contracts, this means that NASA may be unable to incrementally fund a research team that includes bilateral Chinese involvement. For proposals under evaluation, NASA may find that a proposal is ineligible for award if it involves bilateral involvement with China. Inquiries regarding existing awards should be directed to cognizant contracting officers and inquiries regarding solicitations should be directed to the NASA point of contact for that solicitation. For ROSES 2012 all questions should be directed to [SARA@NASA.gov](mailto:SARA@NASA.gov).

**Q2:** What about my existing ROSES project from a prior year, is that affected by this? Does the restriction apply to existing research projects that are not yet completed that have involved Chinese involvement in the past?

**A2:** If a research project continues to involve persons affiliated with China or a Chinese entity, NASA cannot provide incremental funds. If affiliations with China or Chinese entities have ceased and there will be no further affiliation with China or a Chinese entity related to the NASA-funded activity, you should indicate to the contracting officer that this is the case so that funding may continue.

**Q3:** What about my graduate student, post-doctoral fellow, or other investigator on my team who is not at a Chinese institution but is a Chinese citizen?

**A3:** The statute does not restrict individual involvement based on citizenship or nationality. Rather, individuals are subject to the restriction if they are affiliated with institutions of the People's Republic of China or Chinese-owned companies incorporated under the laws of China. Thus, a team member who is a Chinese citizen may work on a NASA project, but an individual affiliated with an institution of the Chinese state will be subject to the statutory restriction.

Q4: May I travel to China to attend conferences?

A4: Public Law 112-55 states that NASA may not engage in any bilateral activities with China or Chinese-owned companies. However, NASA employees, contractors and grant recipients are permitted to attend some multilateral, widely-attended conferences such the 2012 IAU General Assembly held in Beijing.

Q5: I note that the language in the law and in ROSES specifies that the restriction is on "bilateral" work, implying that multilateral work funded by NASA may involve investigators at Chinese institutions. What about web sites, are they bilateral?

A5: Work that involves investigators affiliated with institutions in other countries in addition to the PRC and USA and/or work done under the auspices of a multilateral organization is generally permitted. For example, posting content to a publicly accessible web page content does not constitute a bilateral activity. Chinese institutions will continue to have access to NASA public data, data products, publications etc., and NASA funded investigators can use publically available data from China.

Q6: What about co-authorship of papers in preparation or in press describing research that was done with investigators at Chinese institutions previously when there was no restriction?

A6: Papers that include authors from only the USA and PRC are considered bilateral activities, so NASA FY 2012 or FY 2011 funds allocated to an award after June 2011 may not be used to cover page charges and other expenses. Papers that include authors from other countries in addition to the USA and PRC are generally considered to be multilateral activities; thus, NASA funds may be used.

Q7: May I use Chinese data (e.g., from ground stations) to perform scientific research?

A7: Yes, if the data is publicly available. Because of the restrictions on bilateral activities with China, NASA-sponsored researchers are not allowed to enter into any agreement with Chinese organizations to obtain access to data (e.g., a NASA researcher may not sign or orally agree to any contract or agreement). If access can be obtained without such agreement, or through the data archives of multilateral groups which include China as a member then the activity is permitted.

Q8: May a NASA employee or contractor conduct general scientific discussions with PRC researchers?

A8: General scientific discussions do not constitute a bilateral policy, program, order,

or contract and thus are permitted. However, these discussions must not involve discussions of bilateral collaboration between NASA and Chinese entities.

Q9: If I conduct NSF funded research in the PRC and/or with scientists affiliated with a PRC institution, am I barred from getting a NASA grant?

A9: The restriction only applies to NASA funds. It is acceptable as long as you keep your NASA projects and your PRC related projects separate, i.e., don't use any NASA funds for projects with the PRC and don't involve any scientists affiliated with an institution in the PRC in your NASA projects.

Q10: May I review a manuscript submitted to a science journal by authors affiliated with a Chinese institution?

A10: Yes. The restriction does not apply if serving as a journal reviewer is not part of your NASA project nor otherwise funded by NASA. If serving as a reviewer is funded by NASA, then you may still review manuscripts from journals that are not in the PRC, even those that have authors affiliated with institutions in the PRC.

### **Subscribe to the SARA mailing list:**

## Exhibit F

### Quick Guide for the Processing of NASA Awards

1. Does the Call for Proposals or Award contain the NASA Restriction on Funding Activity with the People's Republic of China?

**If no, process per usual Campus protocol.**

2. Does the proposal anticipate a subcontract/subaward arrangement with 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, including Chinese universities (hereinafter referred to as "China")?

**If no, skip to steps described in Section 4 below. If yes, answer Section 3 below.**

3. Does proposal describe a multi-lateral arrangement with international parties, in addition to China? (The campus C&G Office should review arrangement and may want to confer with NASA, at campus discretion, to confirm that subcontract/subaward arrangement is multilateral, in accordance with the Statute.)

**If no, STOP. Award cannot be accepted without removal of subcontract/subaward to China.**

**If yes, proceed to steps described in Section 4 below.**

4. Complete the following steps for specific award type.

<b>If award is a Contract:</b>	<b>If award is a Grant or Cooperative Agreement:</b>
<ol style="list-style-type: none"><li>a) The PI should certify that they will not enter or cause The Regents to enter into a bilateral subcontract with China to perform the scope of work of a NASA funded contract.</li><li>b) The campus should obtain a certification from any subcontractor confirming that they are not China. The certification can be included as part of the subcontract.</li><li>c) The campus must include the NASA Restriction on Funding Activity with the Peoples Republic of China in all subcontracts.</li></ol>	<ol style="list-style-type: none"><li>a) The PI should complete a questionnaire on their own behalf and on behalf of all persons performing part of the NASA grant scope of work to help determine if anyone has an affiliation with China that would preclude their participation in the project.</li><li>b) If the PI does not know the answers for any person performing part of the NASA grant scope of work, the PI should obtain the necessary information from these Participants.</li><li>c) If the questionnaire does not raise any issues, the PI should complete a certification attesting that bilateral participation, collaboration, or coordination with China, whether funded or unfunded, will not be performed as part of their NASA funded grant. (The completed questionnaire should be submitted to the C&amp;G Office, which should follow up on any issues raised by the responses.)</li><li>d) The campus should obtain a certification from any subawardee performing of any part of the NASA grant scope of work confirming that they are not China. The certification may be included as part of the subaward or separately obtained.</li><li>e) The campus must include the NASA Restriction on Funding Activity with the Peoples Republic of China in all subawards for the performance of the NASA grant scope of work.</li></ol>

Exhibit G

**Sample Principal Investigator Certification for CONTRACTS containing the  
NASA CHINA FUNDING RESTRICTION**

When submitting proposals and executing NASA contracts, the University is required to accept the clause show below. In order to assure compliance, the Principal Investigator is required to provide the certification in the box below.

**1852.225-71 Restriction on Funding Activity with China.<sup>1</sup>**

(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.*

In accordance with the above, as Principal Investigator, I certify that I will not enter or cause The Regents to enter into a bilateral contract or subcontract with The People's Republic of China (PRC), any company owned by the People's Republic of China or any company **(including a Chinese university)** incorporated under the laws of the People's Republic of China (including Hong Kong and Macau, but not Taiwan) to perform the scope of work of the NASA prime contract identified below, whether or not such contracts or subcontracts are funded by the NASA prime contract. (Vendor agreements for acquisition of commercial and non-developmental items are excluded from this certification.)

Proposal or Award ID \_\_\_\_\_

PI Signature \_\_\_\_\_

PI Name \_\_\_\_\_

Date \_\_\_\_\_

<sup>1</sup> As of 9/30/13



## Exhibit H

### Sample Questionnaire for NASA Assistance Awards

**The PI must complete and return this questionnaire to the Campus Contracts & Grants Office, on their own behalf and on behalf of all persons performing any part of the Scope of Work on a NASA grant or cooperative agreement ("Participants"), whether this performance is funded or unfunded, on-campus or remote. Should PI not know the answers for any Participant, the PI must obtain the necessary information from these Participants.**

1. Is any Participant employed by the Chinese government or a Chinese owned company or university?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Does any non-student Participant receive salary support from the Chinese government or a Chinese owned company or university?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Does any non-student Participant receive any incidental financial compensation, such as housing or transportation, from the Chinese government or a Chinese owned company or university?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Does any Participant have a written agreement to become (or to return as) an employee of the Chinese government or a Chinese owned company or university?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>STOP: IF YOU HAVE ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, YOU (or a Participant) WILL LIKELY NOT BE ABLE TO PARTICIPATE ABSENT NASA APPROVAL. SPEAK TO YOUR CONTRACT &amp; GRANT OFFICER. IF YOU HAVE ANSWERED "NO," CONTINUE WITH THIS QUESTIONNAIRE.</b>	
5. Is any Participant enrolled at a Chinese university or does any Participant have a written agreement to become (or to return as) as a student of a Chinese university?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. If a Participant is a student, does such Participant receive any type of financial support (other than a scholarship) from the Chinese government or a Chinese owned company or university?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. Does any Participant receive research materials or any other type of goods from China or a Chinese owned company or university? (Do not include the purchase of commercial supplies needed to perform the NASA award scope of work.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. Is any Participant co-authoring a paper with a person from China or a Chinese owned company or university that is the result of activity funded by NASA after April 2011?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>IF YOU ANSWERED "YES" TO ONE OR MORE OF QUESTIONS 5-8, YOU (or a Participant) ARE NOT NECESSARILY EXCLUDED FROM PARTICIPATION, BUT YOU MUST CONSULT WITH YOUR CONTRACT &amp; GRANT OFFICER FOR FURTHER ANALYSIS AND GUIDANCE.</b>	
Name _____ Signature: _____ Date: _____	

## Exhibit I

### **Sample Principal Investigator Certification for ASSISTANCE AWARDS containing the NASA CHINA FUNDING RESTRICTION**

When submitting proposals and accepting NASA grants or cooperative agreements, the University is required to accept the clause show below. In order to assure compliance, the Principal Investigator is required to provide the certification in the box below.

#### **Assurance of Compliance – China Funding Restriction (DEVIATION FEB 2012)<sup>1</sup>**

(iv) *An Assurance of Compliance with The Department of Defense and Full-Year Appropriation Act, Public Law 112-10 Section 1340(a); The Consolidated and Further Continuing Appropriation Act of 2012, Public Law 112-55, Section 539; and future-year appropriations herein after referred to as “the Acts”, whereas:*

(1) *NASA is restricted from using funds appropriated in the Acts to enter into or fund any grant or cooperative agreement of any kind to participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime recipient level and at all subrecipient levels, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.*

(2) *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.*

(3) *The restrictions in the Acts do not apply to commercial items of supply needed to perform a grant or cooperative agreement.*

(4) *By submission of its proposal, the proposer represents that the proposer is not China or a Chinese-owned company, and that the proposer will not participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.*

I have completed the NASA Questionnaire for Assistance Awards on behalf of myself and all individuals performing any part of the scope of work of project identified below, and have determined and hereby certify that in accordance with the above:

Bilateral participation, collaboration, or coordination with The People's Republic of China (PRC), any company owned by the People's Republic of China or with any company (**including a Chinese university**) incorporated under the laws of the People's Republic of China (including Hong Kong and Macau, but not Taiwan) will **not** take place as part of the NASA scope of work for this award, whether or not such participations, collaborations, or coordinations are funded by the NASA award.

Further, I certify that I will not enter or cause The Regents to enter into a bilateral subaward, memorandum of understanding, collaboration agreement, or any other type of written bilateral agreement with the PRC as defined above. (Vendor agreements for acquisition of commercial and non-developmental items are excluded from this certification.)

Proposal or Award ID \_\_\_\_\_

PI Signature \_\_\_\_\_

PI Name \_\_\_\_\_

Date \_\_\_\_\_

<sup>1</sup> As of 9/30/13