

Date: October 1, 2021

From: Executive Director, Office of Acquisition and Logistics (003A), and Senior Procurement Executive

Subj: Class Deviation from the Federal Acquisition Regulation Regarding Implementation of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors (VIEWS 06042621)

To: Heads of the Contracting Activities

1. Purpose. To issue a class deviation in accordance with Federal Acquisition Regulation (FAR) 1.404, to implement Executive Order (E.O.) 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#). Federal agencies are authorized by the Civilian Agency Acquisition Council letter [2021-03](#), dated September 30, 2021 to issue a class deviation.

2. Effective Date. Immediately.

3. Expiration Date. This deviation expires when incorporated into the FAR or is otherwise rescinded.

4. Applicability. This class deviation applies to solicitation and contracts for services, including construction.

5. Current FAR Policy. There is no current FAR policy.

6. Need for Deviation. E.O. 14042 was signed by the President on September 9, 2021 and published in the Federal Register at [86 FR 50985](#) on September 14, 2021. The E.O. requires agencies to include a clause in applicable contracts requiring contractors and subcontractors at any tier to comply with all guidance for contractor workplace locations as published by the [Safer Federal Workforce Task Force \(Task Force Guidance\)](#). The clause applies to solicitations and contracts for services, including construction.

7. Required Action. Contracting officers are **required** to include the clause in—

- New contracts awarded on or after November 14, 2021 from solicitations issued before October 15, 2021 (this includes new orders awarded on or after November 14, 2021 from solicitations issued before October 15, 2021 under existing indefinite-delivery contracts):
- New solicitations issued on or after October 15, 2021 and contracts awarded pursuant to those solicitations (this includes new solicitations issued on or

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after October 15, 2021 for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts);

- Extensions or renewals of existing contracts and orders awarded on or after October 15, 2021; and
- Options on existing contracts and orders exercised on or after October 15, 2021.

To maximize the goal of getting more people vaccinated and decrease the spread of COVID-19, the Task Force strongly encourages agencies to apply the requirements of the Task Force Guidance broadly, consistent with applicable law. Accordingly, in VA contracting officers are **encouraged, but are not required** to include the clause in-

- Contracts that will be awarded prior to November 14, 2021 on solicitations issued before October 15, 2021; and
- Contracts that are not covered or directly addressed by the E.O. because the contract or subcontract is under the simplified acquisition threshold.

The clause shall not be applied to:

- Contracts and subcontracts with Indian Tribes under the Indian Self-Determination and Education Assistance (P.L. 93-638); or
- Solicitations and contracts if performance is outside the United States or its outlying areas (the exclusion is limited to employees who are performing work outside the U.S. or its outlying areas).

The attached FAR deviation clause is provided consistent with the E.O. and the Task Force Guidance. (See attachment).

8. Additional information. Send questions to va.procurement.policy@va.gov.

Angela Billups, Ph.D.

Attachment

Attachment

FAR Deviation Clause

**Executive Order 14042, Ensuring Adequate COVID Safety Protocols
for Federal Contractors**

September 30, 2021

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 52.2—Text of Provisions and Clauses

[52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors.

**ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL
CONTRACTORS (OCT 2021) (DEVIATION)**

(a) *Definition.* As used in this clause -

***United States or its outlying areas* means—**

- (1) The fifty States;**
- (2) The District of Columbia;**
- (3) The commonwealths of Puerto Rico and the Northern Mariana Islands;**
- (4) The territories of American Samoa, Guam, and the United States Virgin Islands; and**
- (5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.**

(b) *Authority.* This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 50985).

(c) *Compliance.* The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.

(d) *Subcontracts.* The Contractor shall include the substance of this clause,

including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)]
