



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 14, 2021

MEMORANDUM TO: Acquisition Management Division and Buyers in the Regions

FROM: Eleni Jernell *Eleni Jernell* Signed by Jernell, Eleni  
Division of Acquisition Management on 10/14/21  
Office of Administration

SUBJECT: CLASS DEVIATION FROM THE FEDERAL ACQUISITION  
REGULATION (FAR) TO IMPLEMENT EXECUTIVE ORDER  
(EO) 14042, ENSURING ADEQUATE COVID SAFETY  
PROTOCOLS FOR FEDERAL CONTRACTORS

**PURPOSE:** To provide a class deviation from the FAR to implement the requirements of Executive Order (EO) 14042, "Ensuring Adequate COVID Safety Protocols for Federal Contractors," signed by the President on September 9, 2021 (and published in the Federal Register on September 14, 2021 at [86 FR 50985](#)).

**GUIDANCE:** Section 2 of EO 14042 directs executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. § 102(4)(A), to ensure that covered contracts and contract-like instruments include a clause requiring contractor and any subcontractors (at any tier) to comply for the duration of the contract with all guidance for covered contractor or subcontractor workplace locations as published by the Safer Federal Workforce Task Force at: <https://www.saferfederalworkforce.gov/contractors/>.

The clause shall require that both contractors and any subcontractors (at any tier) contracting with the Federal Government provide COVID-19 safeguards for their workers and shall apply to any workplace locations in which individuals are performing work on or in connection with a Federal Government contract or contract-like instrument. These safeguards will decrease the spread of COVID-19, which will, in turn, decrease worker absences, reduce labor costs, and improve the efficiency of contractors and subcontractors performing work for the Federal Government.

The Department of Defense (DoD), General Services Administration (GSA), and NASA have started the formal rulemaking process to incorporate this change into the FAR. These rulemaking changes will be published in the Federal Register via FAR Case 2021-021, "Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors," to make appropriate amendments in the FAR to include the requirements of the EO.

The FAR Council and OFPP provided direction to agencies for the incorporation of a clause in solicitations and contracts in the memorandum titled "Issuance of Agency Deviations to

Implement Executive Order 14042", dated September 30, 2021, found here: <https://www.whitehouse.gov/wp-content/uploads/2021/09/FAR-Council-Guidance-on-Agency-Issuance-of-Deviations-to-Implement-EO-14042.pdf>.

**ACTION REQUIRED BY CONTRACTING OFFICERS:**

Effective immediately, Contracting Officers shall insert FAR clause 52.223-99 in the following solicitations, contracts, task orders, delivery orders, and modifications thereof that are for services (including construction) performed in whole or in part within the United States or its outlying areas:

- Solicitations issued on or after October 15, 2021, and contracts, task orders, and delivery orders awarded pursuant to those solicitations, that are expected to exceed the simplified acquisition threshold (SAT).
- Contracts, task orders, and delivery orders, awarded on or after November 14, 2021, from solicitations issued before October 15, 2021, that exceed the SAT.
- All extensions or renewals, issued on or after October 15, 2021, of contracts, task orders, and delivery orders that exceed the SAT.
- All options exercised, on or after October 15, 2021, on contracts, task orders, and delivery orders that exceed the SAT.
- Existing indefinite-delivery, indefinite-quantity contracts that are anticipated to have orders that exceed the SAT and that have an ordering period that extends beyond October 15, 2021.

When modifying existing contracts, task orders, or delivery orders in accordance with this deviation, Contracting Officers shall use a bilateral modification to incorporate the deviation clause.

Section 6(c) of the EO encourages agencies to the extent permitted by law, to ensure that safety protocols consistent with Section 2 of the EO are required under contracts or contract-like instruments that predate the EO's issuance as well as solicitations issued and contracts or contract-like instruments entered into after the EO's issuance date but prior to the date required for inclusion of the new clause.

Accordingly, in accordance with the Safer Federal Workforce Task Force Guidance, Contracting Officers should insert FAR clause 52.223-99 in:

- Solicitations issued prior to October 15, 2021;
- Contracts, task orders, or delivery orders awarded before November 14, 2021, resulting from solicitations issued before October 15, 2021;
- Solicitations, contracts, task orders, and delivery orders that are valued at or below the SAT and are for services (including construction) performed in whole or in part within the United States and its outlying areas; or
- Solicitations, contracts, task orders, and delivery orders for the manufacturing of products.

**AUTHORITY:** This class deviation is issued under the authority of FAR 1.404 and NRC Acquisition Regulation (NRCAR) 2001.404.

This deviation is issued following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a) and NRCAR 2001.404.

**EFFECTIVE DATE:** This class deviation is effective as dated and shall remain in effect until it is incorporated into the FAR, or until this class deviation is otherwise rescinded.

**CLAUSE CHANGES:** FAR clause 52.223-99.

Enclosure

CLASS DEVIATION FROM THE FEDERAL ACQUISITION REGULATION (FAR) TO IMPLEMENT EXECUTIVE ORDER (EO) 14042, ENSURING ADEQUATE COVID SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS DATED OCTOBER 14, 2021

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**Enclosure**

**52.223-99 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 or subcontractor 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)