



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Acquisition Bulletin No: 22-01
Deviation No. 2022-00001

Date: October 7, 2021

MEMORANDUM FOR TREASURY ACQUISITION PERSONNEL

FROM: NICOLE EVANS *Nicole Evans*
SENIOR PROCUREMENT EXECUTIVE

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR) Regarding Executive Order (E.O.) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

- PURPOSE:** To issue a class deviation from the FAR to implement E.O. 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors. This memorandum also provides instructions to the Treasury acquisition workforce on applicability and timeline for implementation of the deviation clause.
- EFFECTIVE DATE:** Immediately upon issuance.
- BACKGROUND:** On September 30, 2021, the Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2021-03 authorizing agencies to issue a class deviation in accordance with FAR 1.404 to implement E.O. 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors.

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 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 \(Task Force Guidance\)](#). This clause applies to solicitations and contracts for services, including construction.

On September 24, 2021, the Safer Federal Workplace Task Force (Task Force) released [guidance on COVID-19 workplace safety protocols for Federal contractors and subcontractors](#), which requires federal contractors and subcontractors with a covered contract to conform to the following workplace safety protocols:

- (1) Covered contractor employees are required to receive the COVID-19 vaccination, except in limited circumstances where an employee is legally entitled to an accommodation;
 - *Covered contract* – means any contractor or contract-like instrument that includes the FAR clause described in Section 2 (a) of Executive Order 14042.
 - *Covered contractor* – means a prime contractor or subcontractor at any tier who is a party to a covered contract.

- *Covered contractor employee* – means any full-time or part-time employee of a covered contractor working on or in connection with a covered contract or working at a covered contractor workplace. This includes employees of covered contractors who are not themselves working on or in connection with a covered contract.
- *Federal workplace* – means any place, site, installation, building, room, or facility in which any Federal executive department or agency conducts official business, or is within an executive department or agency’s jurisdiction, custody, or control.

(2) Masking and physical distancing is required while in covered contractor workplaces; and

- Covered contractor must ensure that all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at a covered contractor workplace.
- *Contractor or subcontractor workplace location* - means a location where covered contract employees work, including a covered contractor workplace or Federal Workplace.

(3) Covered contractors must designate a person or persons to coordinate implementation of and compliance with these workplace safety protocols at covered contractor workplaces.

4. **AUTHORITY:** In accordance with FAR 1.404, DTAR 1001.404, and as authorized by CAAC [Letter 2021-03](#), Treasury bureaus are required to use the attached deviation version of FAR 52.223-99 – Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors

5. **REQUIREMENTS:**

Effective immediately, Contracting Officers **shall** include the clause into the following solicitations and contracts for services, including construction:

- All 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, or blanket-purchase agreements);
- All new solicitations issued **on or after** October 15, 2021 and contracts awarded pursuant to those solicitations (this includes new solicitations issued on or after October 15 and orders awarded pursuant to those solicitations under existing indefinite-delivery contracts, or blanket purchase agreements);
- 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.

- For contracts and orders awarded **prior to** October 15, 2021, where performance is ongoing the deviation clause must be incorporated at the time an option is exercised or an extension to the period of performance is required.

Contracting officers **are strongly encouraged, but are not required**, to include the clause into the following:¹

- Contracts that have been or will be awarded prior to November 14, 2021 on solicitations issued before October 15, 2021;
- Contracts that are not covered or directly addressed by E.O. 14042 because the contract or subcontract is equal to or less than the simplified acquisition threshold, as defined in FAR 2.101; and
- Contracts or subcontracts solely for the manufacturing of products.

The clause **shall not** be applied to:

- Grants;
- Contracts, contract-like instruments, or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), as amended, (the exclusion would not apply to a procurement contract or subcontract under the FAR to an Indian-owned or tribally owned business entity); or
- Solicitations and contracts if performance is outside the United States or its outlying areas (the exclusion is limited to contractor employees who are performing work outside the U.S. or its outlying areas).

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

¹ Although E.O. 14042 does not require inclusion of the clause in these circumstances, guidance issued by the Safer Federal Workforce Task Force strongly encourages agencies to incorporate the clause into contracts that are not covered or directly addressed by the order.

6. **EXPIRATION DATE:** Until superseded, incorporated into the FAR, or otherwise rescinded.
7. **ADDITIONAL INFORMATION:** The point of contact for this Acquisition Bulletin is Ms. Joy Garnett who can be reached at Joy.Garnett@treasury.gov.

Attachment:

Attachment 1 – 52.223-99 Ensuing Adequate COVID-19 Safety Protocols for Federal Contractors.
(OCT 2021) (DEVIATION)

ATTACHMENT 1

FAR Deviation Text shown as **[bolded, bracketed additions]**; Deletions shown as ~~strike throughs~~; and FAR text unchanged shown as asterisks * * * or * * * * *.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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Subpart 52.2—Text of Provisions and Clauses

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[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 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)]

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