



Office of the Chief
Acquisition Officer

Procurement Class Deviation

PCD 22-01
October 7, 2021

Class Deviation - Implementation of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

Purpose. To provide a class deviation from the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors (the order), signed September 9, 2021. This memorandum also provides instructions for the acquisition workforce on when to include the new clause in solicitations and contracts and “contract-like instruments”. The instructions include specific implementation timelines for solicitations, new contracts, and existing contracts.

BACKGROUND. The order directs agencies to ensure that the parties that contract with the Federal Government provide adequate COVID-19 safeguards to their workers performing on or in connection with the covered contract to decrease the spread of COVID-19, reduce worker absence, lower labor costs, and improve the efficiency of contractors and subcontractors at sites where they are performing work.

On September 24, 2021, the Safer Federal Workplace Task Force (Task Force) issued guidance to implement the COVID-19 Workplace Safety Guidance for Federal Contractors and Subcontractors. The Task Force guidance requires:

- All covered contractor employees to be fully vaccinated for COVID-19 by December 8, 2021, except in limited circumstances where an employee is legally entitled to an accommodation;
- All individuals, including covered contractor employees and visitors, to comply with published Centers for Disease Control and Prevention guidance for mask wearing and physical distancing at a covered contractor workplace, as discussed in the Task Force guidance; and
- Covered contractors to designate a person or persons to coordinate implementation of and compliance with the Task Force guidance and the required workplace safety protocols at covered contractor workplaces.

GUIDANCE. The FAR Council has developed the attached clause pursuant to section 3(a) of the order to support agencies in meeting the applicability requirements and deadlines set forth in the

order. Contracting Officers should follow the direction for use of the clause set forth in the deviations issued by their respective agencies.

Applicability and effective dates. In accordance with section 5 of the order, agencies are required to include an implementing clause in solicitations and contracts for services, including construction, in accordance with the following dates specified in section 6 of the order:

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

APPLICABILITY.

Subject to Section 5 of the order, the clause is required in the following:

- Contracts or contract-like instruments for services, construction, or a leasehold interest in real property exceeding the simplified acquisition threshold (SAT) or simplified lease acquisition threshold (SLAT);
- Contracts or contract-like instruments for services covered by the Service Contract Act, 41 U.S.C. § 6701, *et seq.*; exceeding the SAT/SLAT;
- Contracts or contract-like instruments for concessions, including any concessions contract excluded by Department of Labor regulations at 29 CFR § 4.133(b) exceeding the SAT/SLAT; or,
- Contracts or contract-like instruments entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

The clause is not required for the following:

- 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;
- contracts or subcontracts whose value is equal to or less than the simplified acquisition threshold, as that term is defined in section 2.101 of the Federal Acquisition Regulation;

- employees who perform work outside the United States or its outlying areas, as those terms are defined in section 2.101 of the Federal Acquisition Regulation; or
- subcontracts solely for the provision of products.

ACTION REQUIRED BY CONTRACTING OFFICERS: Effective immediately,

Solicitations

- ***New Solicitations.*** Contracting officers shall include the clause at FAR **52.223-99**, Ensuring Adequate COVID Safety Protocols for Federal Contractors in new applicable solicitations issued on or after **October 15, 2021**.
- ***Existing Solicitations.*** Contracting officers shall either amend the solicitation to include the clause at FAR 52.223-99 or incorporate it into the award of the apparent successful offeror for applicable solicitations that were issued prior to **October 15, 2021**, that have not closed, or awards that have not been made by **October 15, 2021**.

Contracts

- ***New Contracts.*** Contracting officers shall include the clause at FAR **52.223-99** in new applicable contracts, lease acquisitions, and “contract-like instruments” include the clause.
- ***Existing Contracts.*** Contracting officers shall send a cover letter and modification request to add the clause at **FAR 52.223-99** for existing contracts including indefinite delivery, indefinite quantity (IDIQ) contracts, and contract-like instruments. The modification must be bilateral.
- Contracting officers shall complete as many modifications as possible before **November 14, 2021**.
- Contracting officers shall not exercise an option period or extend the period of performance for existing contracts for items of this deviation unless the contract has been modified to include the new clause.

EFFECTIVE DATE: This Procurement 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 or extended.

CONTACT: Please submit any questions about this guidance to Lisa Miller, Office of the Chief Acquisition Officer, lisa.miller@nara.gov or at (301) 837-0712.

La Verne A. Fields

LA VERNE A. FIELDS
Chief Acquisition Officer (Z)

Attachment

**FAR Deviation Clause
Executive Order 14042**

Ensuring Adequate COVID Safety Protocols for Federal Contractors

Baseline is FAC 2021-07, published in the Federal Register on August 11, 2021.

September 24, 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 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)

.....