



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Administration

CLASS DEVIATION – ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS

TO: CFTC Contracting Officers and Purchasing Agents

FROM: William M. Roberson, Senior Procurement Executive

DATE: October 08, 2021

SUBJECT: Implementing Contract-Related Requirements of Executive Order 14042 of September 9, 2021

1. **Purpose:** To provide a class deviation from the Federal Acquisition Regulation (“FAR”) to implement guidance issued by the Safer Federal Workforce Task Force (“Task Force”) pursuant to Executive Order 14042 of September 9, 2021, Ensuring Adequate COVID Safety Protocols for Federal Contractors (“the order”).
2. **Guidance:** 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 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 Task Force issued guidance to implement the order, [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 masking 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.

Pursuant to section 3(a) of the order, the Federal Acquisition Regulatory Council developed a contract clause requiring contractors and subcontractors at any tier to comply with all guidance for contractor or subcontractor workplace locations published by the Task Force. This class deviation implements the clause, as amended by CFTC to lower the threshold for incorporating the substance of the clause into subcontracts from above the simplified acquisition threshold to above the micro-purchase threshold, as defined in FAR 2.101.

3. Action Required by Contracting Officers: Contracting Officers shall include the attached clause in—

- new contracts awarded on or after the effective date of this class deviation from solicitations issued before the effective date of this class deviation (this includes new orders awarded on or after the effective date of this class deviation from solicitations issued before the effective date of this class deviation under existing indefinite-delivery contracts);
- new solicitations issued on or after the effective date of this class deviation and contracts awarded pursuant to those solicitations (this includes new solicitations issued on or after the effective date of this class deviation for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts);
- extensions or renewals of existing contracts and orders awarded on or after the effective date of this class deviation; and
- options on existing contracts and orders exercised on or after the effective date of this class deviation.

The clause shall be included in all solicitations, contracts, task orders, delivery orders and other contract-like instruments for services, including construction, performed in whole or in part within the United States or its outlying areas, with a value exceeding the micro-purchase threshold. (see FAR 2.101, Definitions)

The clause shall not be included in:

- contracts and subcontracts with Indian Tribes under the Indian Self-Determination and Education Assistance Act (the exclusion does 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 employees who are performing work only outside the U.S. or its outlying areas).
4. **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.
 5. **Attachment:** FAR clause 52.223-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION CFTC-22-01).

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 CFTC-22-01)

(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 micro-purchase 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)]
