



U.S. Department of Justice
Justice Management Division
Senior Procurement Executive

Washington, D.C. 20530

MEMORANDUM FOR BUREAU PROCUREMENT CHIEFS

FROM: Arthur E. Gary
Senior Procurement Executive

SUBJECT: Federal Acquisition Regulation Class Deviation Regarding Implementation of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

1. PURPOSE

This class deviation is issued under the authority of Federal Acquisition Regulation (FAR) 1.404 authorizing agencies to issue a class deviation to implement Executive Order 14042 (“the order”), [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#). In addition to guidance, this memorandum prescribes a contract clause, which implements the order.

2. BACKGROUND

Executive Order 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 order 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”) at <https://www.saferfederalworkforce.gov/contractors/> (“Task Force Guidance”). The clause applies to solicitations and contracts for services, including construction.

Section 3(a) of the order requires the Federal Acquisition Regulatory Council to develop a contract clause and provide initial policy direction to acquisition office for use of the clause by recommending that agencies exercise their authority under FAR subpart 1.4.

3. AUTHORITY

This class deviation is issued under the authority of FAR 1.404.

4. DEVIATION

See Attachment 1 for the new FAR clause created by this deviation.

5. **EFFECTIVE DATE AND EXPIRATION**

This deviation is effective immediately and remains in effect until the FAR is amended or the deviation is otherwise rescinded.

6. **SCOPE AND APPLICABILITY**

The attached FAR deviation clause is provided consistent with the order and the Task Force Guidance. Agencies are **required** to include the clause in –

- 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; and
- options on existing contracts and orders exercised on or after October 15, 2021.

The clause applies to solicitations and contracts for services, including construction.

To maximize the goal of getting more people vaccinated and decreasing 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, agencies are **encouraged, but are not required** to include the clause in –

- contracts that will be awarded prior to November 14 on solicitations issued before October 15; and
- contracts that are not covered or directly addressed by the order because the contract or subcontract is under the simplified acquisition threshold or is a contract or subcontract for the manufacturing of products.

The clause shall not be applied to:

- contracts and subcontracts with Indian Tribes under the Indian Self-Determination and Education Assistance (Public Law 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).

7. **ADDITIONAL INFORMATION**

If you have questions, please contact DOJAcquisitionPolicy@usdoj.gov.

8. ATTACHMENTS

Attachment 1 – FAR Deviation Clause, *Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors*

**CLASS DEVIATION
FINDINGS AND DETERMINATION
EXECUTIVE ORDER 14042, ENSURING ADEQUATE COVID SAFETY PROTOCOLS
FOR FEDERAL CONTRACTORS**

Findings

1. Executive Order 14042 (“the order”) was signed by the President on September 9, 2021 and published in the Federal Register at 86 FR 50985 on September 14, 2021. The order 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.
2. The Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2021-03 on September 30, 2021, authorizing agencies to issue class deviations implementing these provisions pending formal amendment to the Federal Acquisition Regulation (FAR) via FAR case 2021-21, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors.
3. CAAC letter 2021-03 constitutes consultation in accordance with FAR 1.404 with the Chair of the CAAC allowing agencies to authorize a class deviation to implement the changes.

Determination

It is hereby determined that a class deviation is appropriate to implement Executive Order 14042. This class deviation will be effective as stated and will remain in effect until cancelled or the authority expires.

Lee J. Lofthus
Assistant Attorney General
for Administration

Date

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 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)]
