



# Office of the Procurement Executive

## SENIOR PROCUREMENT EXECUTIVE MEMORANDUM 22- 01

DATE: October 7, 2021

TO: All Domestic Contracting Officers Only

FROM: Michael W. Derrios - Senior Procurement Executive

SUBJECT: Federal Acquisition Regulation (FAR) Class Deviation -- Implementing Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

- 1. Purpose:** This class deviation is issued in accordance with Federal Acquisition Regulation (FAR) 1.404. The purpose of this deviation is to implement [Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors](#).

This SPE Memorandum also provides instructions for the Department of State (DOS) acquisition workforce on when to include a new clause in DOS *domestic* solicitations, contracts, and “contract-like instruments” (e.g., licenses, leasehold agreements for real property, personal services contracts, tenders for freight household goods, and Interagency Agreements).

- 2. Background:** On September 9, 2021, [Executive Order \(EO\) 14042 Ensuring Adequate COVID Safety Protocols for Federal Contracts](#) was signed by the President and published in the Federal Register at [86 FR 50985](#) on September 14, 2021. The E.O. directs the Safer Federal Workforce Taskforce to issue guidance to provide implementation details and the Federal Acquisition Regulatory (FAR) Council to establish a new clause to be included in solicitations and contracts and contract-like instruments.

The Safer Federal Workforce Task Force issued guidance on September 24, 2021, at [saferfederalworkforce.gov](#) which requires:

- Vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;
- Requirements related to masking and physical distancing while in covered contractor workplaces; and
- Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

On September 30, 2021, the Civilian Agency Acquisition Council (CAAC) issued [CAAC Letter 2021-03](#) regarding implementation of E.O. 14042, which serves as consultation with the CAAC Chair to authorize agencies to issue their own class deviations. This class deviation sets forth the Department's implementation of the E.O. and CAAC Letter.

The FAR Council has undertaken rulemaking to formally incorporate the requirements of EO 14042 under FAR Case 2021-021, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors. Thus, pending publication of the amendment to the FAR via FAR Case 2021-021, DOS is issuing a class deviation to comply with EO 14042. The deviation will remain effective until the FAR is amended or the deviation is otherwise rescinded by the agency.

**3. Applicability:**

a. Subject to Section 4 of this deviation, the clause at FAR 52.223-99 (Attachment 1) 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);
- Contracts or contract-like instruments covered by the Service Contract Act, 41 U.S.C. § 6701, *et seq.*;
- 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; 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, exceeding the SAT.

b. DOS encourages, but does not require, the clause be included in the following:

- Contracts or subcontracts whose value is less than or equal to the SAT;
- Contracts or subcontracts solely for the manufacturing of products; or
- Contracts awarded prior to November 14, 2021, on solicitations issued before October 15, 2021.

c. The new clause ***is not*** applicable to:

1. Actions at or below the micro-purchase threshold;
2. 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);
3. Sales of surplus real and personal property; or
4. Contracts and subcontracts with Indian Tribes under the Indian Self Determination and Education Assistance Act (Public Law 93-638) (the exclusion would not apply to a procurement contract or subcontract under the FAR to an Indian-owned or tribally owned business entity).

**4. Requirements:**

Contracting Officers must include the clause into the following:

- 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);
- 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, 2021, 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; and
- Existing DOS single and multiple award indefinite delivery/indefinite quantity contracts, requirements contracts, and blanket purchase agreements (BPA).

Contracting Officers should issue bilateral modifications to existing contracts, task orders, or BPA calls, in accordance with this deviation, to incorporate the clause.

**5. Applicability:**

This class deviation is issued under the authority of FAR 1.404 and Department of State Acquisition Regulation (DOSAR) 601.404.

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

**6. Effective Date:**

This deviation is effective immediately and remains in effect until it is incorporated into the FAR or is rescinded.

**7. Attachment:**

52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (OCT 2021) (DEVIATION)

**8. Point of Contact:**

Any questions or concerns regarding this Class Deviation should be directed to the Acquisition Policy mailbox at [AcquisitionPolicy@state.gov](mailto:AcquisitionPolicy@state.gov).

## Attachment 1

### **52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (OCT 2021) (DEVIATION)**

#### **Executive Order 14042, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors**

As prescribed in FAR Class Deviation 22-0X Executive Order 14042 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, use the following clause:

### **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 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)