



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET NE
WASHINGTON, DC 20549-2000

OFFICE OF
ACQUISITIONS

October 6, 2021

**Class Deviation from Federal Acquisition Regulation
Implementation of Executive Order 14042,
Ensuring Adequate COVID Safety Protocols for Federal Contractors
(2022-001)**

1. **Purpose:** To issue a class deviation in accordance with CAAC Letter 2021-03 and Federal Acquisition Regulation (FAR) subpart 1.404 to implement Executive Order (E.O.) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, signed September 9, 2021. This memorandum also provides instructions for the SEC acquisition workforce on when to include a new clause in SEC solicitations and contracts.

The instructions include GSA-specific implementation timelines for solicitations, new contracts, and existing contracts.

2. **Effective Date:** Immediately
3. **Expiration Date:** Expires when incorporated into the FAR or is otherwise rescinded.
4. **Background:** In order to ensure the health and safety of the federal workforce and contractor community, the President signed [E.O. 14042](#). The E.O. promotes economy and efficiency in Federal procurement by ensuring that contractors and subcontractors that contract with the Federal Government provide COVID-19 safeguards. 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](https://www.saferfederalworkforce.gov) which requires:

- Vaccination of covered contractor employees,¹ except in limited circumstances where an employee is legally entitled to an accommodation;²

¹ 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

- Requirements related to masking and physical distancing while in covered contractor³ workplaces; and
- Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

FAR Case 2021-021 has been opened to implement the appropriate amendments in the FAR to reflect the requirements of E.O. 14042.

- 5. Authority:** This deviation is issued under the authority of FAR 1.404. The required consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) is satisfied by the CAAC Letter 2021-03 issued on September 30, 2021.
- 6. Applicability:** The clause is required in all solicitations, contracts, orders, and agreements for supplies and services, except as indicated below.

The new clause is not applicable to:

- Micro-Purchases
- 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); or
- 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).

- 7. Exceptions:** Contracting Officers should e-mail the HCA with any Contractor requests for exceptions.

The HCA may approve exceptions, via e-mail, for contracts less than the SAT or solely for the manufacturing of products.

The Chief Operating Officer may approve urgent, mission-critical needs for a covered contractor to have covered contractor employees begin work on a covered contract or at a covered workplace before becoming fully vaccinated. In the case of such limited exceptions, the covered contractor must ensure these covered contractor employees are fully vaccinated within 60 days of beginning work on a covered contract or at a covered workplace. The covered contractor must further ensure that such employees comply with masking and physical distancing requirements for not fully vaccinated individuals in covered workplaces prior to being fully vaccinated.

Includes employees of covered contractors who are not themselves working on or in connection with a covered contract.

² Note that contractor employees working from home on covered contracts must be vaccinated but do not have to follow the CDC masking and social distancing protocols, because an employee's personal residence is not a covered contractor workplace. See Safer Federal Workforce Task Force FAQs for Federal Contractors.

³ Covered contractor means a prime or subcontractor at any tier who is party to a covered contract.

8. Requirements:

- **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**.
- **New Contracts.** Contracting officers shall include the clause at FAR 52.223-99 in new applicable contracts, orders, and agreements awarded on or after **October 15, 2021**.
- **Existing Contracts.**
 - By October 11, 2021, OA will notify all contractor POC of the SEC's intent to add the clause at FAR 52.223-99 to its existing contracts, purchase orders, and agreements described in section 6 of this deviation by, using the contractor point of contact information in eFile.
 - Contracting Officers shall send a bilateral modification request to add the clause at FAR 52.223-99 for all existing contracts, orders, and agreements **no later than December 8, 2021**.
 - Contracting Officers **shall not renew, extend the period of performance, or exercise an option on any existing contract, order, or agreement** before it has been bilaterally modified to include the clause at FAR 52.223-99.
 - GSA master contracts are expected to be modified before November 14, 2021. Orders and BPAs against GSA-issued agreements are not required to be modified by the SEC if GSA has modified the base agreement. A dashboard will be provided to check the status of modifications to GSA contracts.
 - COs must contact IAA COs to verify applicable contracts have been modified by the host agency no later than December 8, 2021.

9. **Deviation:** See Attachment A for the changes in the FAR text as revised by this deviation.

10. **Additional Guidance:** In addition to this deviation, all entrants into SEC spaces, including contractor personnel working on-site at SEC facilities, are required to follow the SEC's COVID-19 Workplace Safety Plan available on the SEC's intranet or upon request from the CO.

11. **Point of Contact:** If you have any questions please contact Steven Fennel, Supervisory Procurement Analyst at (202)551-8635 or fennells@sec.gov.

Attachment A – Deviation Text

VANCE J. CATHELL
Director (Senior Procurement Executive)
Office of Acquisitions