



**Homeland
Security**

MEMORANDUM FOR: Heads of the Contracting Activities

FROM: Paul R. Courtney
Chief Procurement Officer

SUBJECT: **Federal Acquisition Regulation Class Deviation (Number 22-01) – Executive Order 14042 Ensuring Adequate COVID Safety Protocols for Federal Contractors**

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.

Effective Date: Immediately.

Background: On September 30, 2021, Civilian Agency Acquisition Council (CAAC) Letter 2021-03 Class Deviation From the Federal Acquisition Regulation Regarding Implementation of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors was issued. CAAC Letter 2021-03 serves as consultation in accordance with FAR 1.404, authorizing agencies to issue a class deviation to implement Executive Order 14042 Ensuring Adequate COVID Safety Protocols for Federal Contractors.

Executive Order (E.O.) 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 E.O. 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 \(Task Force Guidance\)](#). This clause applies to solicitations and contracts for services, including construction.

Requirement: Contracting Officers shall include the clause into the following:

- 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.

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Contracting officers are encouraged, but are not required, to include the clause into the following:

- 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 E.O. 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 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); 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).

When modifying existing contracts, task orders, or delivery orders in accordance with this deviation, contracting officers shall use a bilateral modification to incorporate the deviation clause.

Expiration: This class deviation will remain in effect until it is incorporated into the FAR or is rescinded.

Attachments:

Attachment 1: 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors. (OCT 2021) (DEVIATION)

Attachment 2: CAAC Letter 2021-03, Class Deviation From the Federal Acquisition Regulation Regarding Implementation of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

Additional Information: DHS Component contracting activities should update their contract writing systems (CWS) to include the solicitation language found at sections A(1) and B(1) of this deviation. In order to provide access to the solicitation language in Component CWS, Component Acquisition Policy Chiefs should coordinate with the appropriate Component CWS personnel to determine if the addition of the solicitation language to their CWS is possible.

Questions or comments about this class deviation may be directed to Catherine Benavides at Catherine.Benavides@hq.dhs.gov or Ben Shih at Ben.Shih@hq.dhs.gov.

Attachment 1 - **52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors. (OCT 2021) (DEVIATION)**

Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

As prescribed in FAR Class Deviation 22-0X Executive Order 14042 Ensuring Adequate COVID 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)