



**U.S. Department
of Transportation**

1200 New Jersey Ave., S.E.
Washington, DC 20590

Office of the Secretary
of Transportation

October 12, 2021

SUBJECT: Class Deviation No. 2022-01 from the Federal Acquisition Regulation regarding implementation of Executive Order No. 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*.

FROM: Dr. Willie H. Smith
Senior Procurement Executive

TO: Department of Transportation Chiefs of the Contracting Offices

- I. Purpose:** This class deviation (CD) is issued in accordance with Federal Acquisition Regulation (FAR) 1.404 to implement [Executive Order \(EO\) No. 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*](#) (86 FR 50985). It authorizes a deviation from the FAR and establishes FAR Clause 52.223-99, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors as outlined herein.

This CD also provides guidance to DOT contracting officers on when to include the new clause in DOT solicitations, contracts, orders and “contract-like instruments”¹ (e.g. certain Other Transaction Authority awards).

This CD is being issued to implement regulatory changes associated with the EO No. 14042 while the FAR is updated via the rulemaking process.

- II. Effective Date:** Immediately
- III. Background:** To maximize the goal of getting more people vaccinated and decrease the spread of COVID-19, President Biden signed EO No. 14042. The EO promotes economy and efficiency in Federal procurement by ensuring that contractors and subcontractors that contract with the Federal Government provide COVID-19 safeguards. The EO directs the [Safer Federal Workforce Taskforce](#) (“Task Force”) to issue guidance to provide implementation details and the FAR Council to establish a new clause to be included in solicitations, contracts and contract-like instruments.

¹ As defined by the September 24, 2021 Task Force guidance, available [here](#).

The Task Force issued guidance on September 24, 2021 at [saferfederalworkforce.gov](https://www.saferfederalworkforce.gov), which requires:

- Vaccination of covered contractor employees², except in limited circumstances where an individual 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 FAR Council issued a [memorandum](#) to Senior Procurement Executives and Chief Acquisition Officers regarding implementation of EO 14042. Subsequently, the Chair of the Civilian Agency Acquisition Council (CAAC) issued CAAC Letter No. [2021-03](#), which serves as consultation with the CAAC Chair in accordance with FAR 1.404(a)(1) to authorize agencies to issue their own class deviations. This class deviation sets forth DOT's implementation of the EO, CAAC Letter and FAR Council memorandum.

DOT Acquisition Directive (DAD) No. [2021-02](#) – *COVID-19 Entry Procedures for On-Site Contractors Reporting to DOT Facilities* will continue to apply to all contracts and orders for on-site contractor support where the FAR clause has not yet been incorporated into the contract/order. DOT's acquisition workforce and contractors should also review the [Frequently Asked Questions](#) (FAQ) developed to answer common questions regarding the DAD.

IV. Applicability: This CD applies to and shall be inserted in DOT solicitations, contracts and orders as outlined below.

In accordance with EO 14042 and subsequent guidance from the FAR Council, contracting officers **are required** to include the clause found in Attachment A of this CD in the following solicitations and awards **for services and construction**:

- New contracts or contract-like instruments and orders³ awarded on or after November 14, 2021 that exceed the simplified acquisition threshold⁴ (SAT);
- New solicitations issued on or after October 15, 2021, and contracts or contract-like instruments or orders awarded pursuant to those solicitations that exceed the SAT;
- Extensions or renewals of existing contracts contract-like instruments or orders that exceed the SAT awarded on or after October 15, 2021; and

² 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 includes employees of covered contractors who are not themselves working on or in connection with a covered contract.

³ As used in this CD, "order" means blanket purchase agreement (BPA) calls, task and delivery orders. If an order was issued under an existing Government-wide contract or Federal Supply Schedule, contracting officers should review the base contract award vehicle to determine if the clause has been incorporated prior to incorporating at the order-level.

⁴ As defined at FAR 2.101.

- Options on existing contracts or contract-like instruments and orders that exceed the SAT exercised on or after October 15, 2021.

In addition to requirements outlined in the EO (and associated subsequent guidance), DOT contracting officers **are also required** to include the clause found in Attachment A of this CD in the following solicitations and awards **for services and construction**:

- New contracts (e.g., purchase orders) and orders awarded on or after November 14, 2021 that exceed the micro-purchase threshold⁵ (MPT);
- New solicitations issued on or after October 15, 2021, and contracts or orders awarded pursuant to those solicitations that exceed the MPT;
- Extensions or renewals of existing contracts or orders that exceed the MPT awarded on or after October 15, 2021;
- Options on existing contracts and orders that exceed the MPT exercised on or after October 15, 2021; and
- Existing indefinite-delivery, indefinite-quantity (IDIQ) contracts that are anticipated to have orders that exceed the MPT and that have an ordering period that extends beyond October 15, 2021.

In addition, DOT Contracting officers **are strongly encouraged** to include the clause in:

- New contracts and orders awarded prior to November 14, 2021;
- Contracts, orders or subcontracts solely for the manufacturing of products above the MPT; and
- Existing contracts and orders otherwise having a bilateral modification not tied to an extension, renewal, or option exercise (e.g. change in Statement of Work, change in delivery schedule), on or after October 15, 2021.

Prime contractors are required to flow down the text of the FAR clause in subcontracts at any tier that exceed the SAT.

See Attachment A – *Line-In/Line-Out: FAR Text* for the changes in the FAR text as revised by this CD.

This CD does not apply to:

- Purchases at or below the micro-purchase threshold⁶ (MPT);
- 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); and
- 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

⁵ As defined at FAR 2.101.

⁶ As defined at FAR 2.101.

procurement contract or subcontract under the FAR to an Indian-owned or tribally-owned business entity).

V. Expiration Date: This CD will remain in effect until it is incorporated into the FAR or is otherwise rescinded.

VI. Point of Contact.

Questions or comments regarding this class deviation may be directed to DOTAcquisitionPolicy@dot.gov.

Attachments:

Attachment A – Line-In/Line-Out: FAR Text

ATTACHMENT A

FAR DEVIATION TEXT

Additions are **[bolded and bracketed]**, deletions are indicated by ~~strikethroughs~~.

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

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 2022-01)

(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 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)]
