



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Office of
Procurement
Operations

MEMORANDUM

DATE: October 15, 2021

TO: Office of Personnel Management (OPM) Acquisition Workforce

FROM: Todd Anthony
OPM Senior Procurement Executive
Director, Office of Procurement Operations (OPO)

SUBJECT: Office of Personnel Management Federal Acquisition Regulation
Class Deviation No. 22-01, Implementing Executive Order 14042,
Ensuring Adequate COVID Safety Protocols for Federal
Contractors

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Todd A. Anthony
Date: 2021.10.15
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Purpose. This class deviation is issued in accordance with Federal Acquisition Regulation (FAR) 1.404 to implement Executive Order (E.O.) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors.

Effective Date. Upon Issuance.

Background. E.O. 14042 was signed by the President on September 9, 2021, and published in the Federal Register at 86 Fed. Reg. 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 at <https://www.saferfederalworkforce.gov/contractors>. The clause applies to solicitations and contracts for services, including construction.

On September 30, 2021, the Civilian Agency Acquisition Council (CAAC) issued a memorandum to serve as consultation in accordance with FAR 1.404, allowing agencies to authorize a class deviation to implement E.O. 14042.

Deviation. This OPM FAR class deviation implements E.O. 14042 by prescribing contract clause at FAR 52.223-99 Ensuring Adequate Safety Protocols for Federal Contractor (OCT 2021) (DEVIATION).

Applicability. Contracting Officers shall insert the clause at FAR 52.223-99 in the following solicitations, contracts, task orders, delivery orders, and modifications thereof that are for services (including construction) exceeding the Simplified Acquisition Threshold (SAT) performed in whole or in part within the United States or its outlying areas:

- 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
- By November 14, 2021, existing indefinite-delivery, indefinite-quantity contracts issued by OPM that are anticipated to have orders that exceed the SAT and that have an ordering period that extends beyond October 15, 2021.
- When awarding an order under Government-wide indefinite-delivery vehicles (IDVs), such as the Federal Supply Schedules and other Government-Wide Acquisition Contracts (GWAC), where the order would otherwise be subject to this policy, the Contracting officer must verify whether the clause has been incorporated into the IDV. If the clause has been incorporated, then the order does not need to include the clause. If the clause has not been incorporated into the IDV, then the clause must be incorporated in individual orders that fall within the scope of this deviation.

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 only 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 Date. This class deviation will remain in effect until the clause at FAR 52.223-99 is either incorporated into the FAR or is otherwise rescinded.

Attachment. FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractor (OCT 2021) (DEVIATION)

Additional Information. Please direct any questions on this class deviation to Heather Hirshman, Director, Acquisition Policy and Innovation at (202) 709-0608 or Heather.Hirshman@opm.gov.

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)]
