

## Small Business Administration Acquisition Alert (SBA-AA)

<b>Title</b>	Class Deviation from Federal Acquisition Regulation (FAR) for Executive Order (EO) 14042 – Ensuring Adequate COVID Safety Protocols for Federal Contractors
<b>Reference Number</b>	2022-01
<b>Version Number</b>	
<b>Point of Contact</b>	Nauman A. Ansari
<b>Source of this Requirement</b>	EO 14042
<b>Regulatory Reference</b>	FAR 1.404

### Purpose

The purpose of this SBA Acquisition Alert (AA) is to issue a deviation from the FAR to implement EO 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors.

This SBA AA prescribes a contract clause, 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (OCT 2021)(DEVIATION), which implements the order.

### Effective Date

This AA will be effective upon issuance and will remain in effect until clause 52.223-99 is incorporated into the FAR or this deviation is otherwise rescinded.

### Background

EO 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.

Section 3(a) of the order requires the Federal Acquisition Regulatory Council to develop a contract clause and provide initial policy direction to acquisition office for use of the clause by recommending that agencies exercise their authority under FAR subpart 1.4.

### Action

Effective immediately, contracting officers shall insert the clause 52.223-99 in the following solicitations, contracts, task orders, delivery orders, and modifications thereof that are for services (including construction) performed in whole or in part within the United States or its outlying areas.

The clause **shall** apply to:

- 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; and
- options on existing contracts and orders exercised on or after October 15, 2021.
- Existing indefinite-delivery, indefinite-quantity contracts that are anticipated to have orders that exceed the SAT and that have an ordering period that extends beyond October 15, 2021.

To maximize the goal of getting more people vaccinated and decreasing the spread of COVID-19, the Task Force strongly encourages agencies to apply the requirements of the Task Force Guidance broadly, consistent with applicable law. Accordingly, CO's **may apply the clause to:**

- 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 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.

**Point of Contact**

Questions regarding this AA should be directed to Nauman Ansari at [nauman.ansari@sba.gov](mailto:nauman.ansari@sba.gov)

**Attachments**

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

**Approval Signature**

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Nauman A. Ansari  
Senior Procurement Executive

**FAR Deviation Clause**

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

*September 30, 2021*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**Subpart 52.2—Text of Provisions and Clauses**

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**[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)]**

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