



September 30, 2021

CAAC Letter 2021-03

MEMORANDUM FOR CIVILIAN AGENCIES

FROM: WILLIAM CLARK
CHAIR
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Class Deviation From the Federal Acquisition Regulation Regarding Implementation of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

This CAAC Letter is being issued to serve 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 or subcontractor workplace locations as published by the Safer Federal Workforce Task Force ([Task Force Guidance](#)) at <https://www.saferfederalworkforce.gov/contractors/>. The clause applies to solicitations and contracts for services, including construction.

Agencies are **required** to include the clause in-

- 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.

To maximize the goal of getting more people vaccinated and decrease 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, agencies are **encouraged, but are not required** to include the clause in-

- contracts that have been or will be awarded prior to November 14, 2021, on solicitations issued before October 15, 2021; 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).

Section 3(a) of the E.O. requires the FAR Council to take initial steps to implement appropriate policy direction to acquisition offices for use of the clause by recommending that agencies exercise their authority under FAR subpart 1.4.

The attached FAR deviation clause is provided consistent with the E.O. and the Task Force Guidance. (See Attachment). Contracting officers should follow the direction for use of the clause set forth in the deviations issued by their respective agencies.

This CAAC Letter constitutes consultation with the Chair of the CAAC required by FAR 1.404(a)(1) if your agency adopts the attached clause language without change in the agency's deviation. If your agency intends to use clause text different from the deviated clause text provided, the agency must consult with the CAAC Chair, William Clark, who will consult with OMB and the Task Force to ensure consistency with Administration policy. Any such request must be emailed to william.clark@gsa.gov. Agencies are advised to review, and update as necessary, any relevant guidance previously provided to contractors to ensure its consistency with the deviated clause text.

Once processed, agencies are requested to share the deviation widely among their workforces to ensure full awareness of and compliance with E.O. 14042. The FAR

Council has opened a case (FAR Case 2021-021, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors) to make appropriate amendments in the FAR to reflect the requirements of E.O. 14042. It is recommended that the deviation be made effective until the FAR is amended or the deviation is otherwise rescinded by the agency.

Agencies are reminded that FAR 1.404 requires agencies to furnish a copy of their approved class deviation (including direction to the workforce, prescription for use of clause, and clause text) to the FAR Secretariat, General Services Administration, by emailing the deviation to GSARegSec@gsa.gov. Agencies must submit their class deviations no later than October 15, 2021.

If you have any questions or require additional information about this Letter, please contact Zenaida Delgado at (202) 969-7207 or at zenaida.delgado@gsa.gov.

Attachment

FAR Deviation Clause

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

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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)]
