



GSA Office of Governmentwide Policy

Class Deviation CD-2021-13
September 30, 2021

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

FROM: JEFFREY A. KOSES DocuSigned by:
Jeffrey A. Koses
21BD80B9E8AC4A0...
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: FAR Class Deviation - Implementation of Executive Order 14042,
Ensuring Adequate COVID Safety Protocols for Federal Contractors

A. Purpose.

This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, signed September 9, 2021.

This memorandum also provides instructions for the GSA acquisition workforce on when to include a new clause in GSA solicitations and contracts and “contract-like instruments” (e.g., licenses, outleases, and tenders).

The instructions include GSA-specific implementation timelines for solicitations, new contracts, and existing contracts.

B. Background.

In order to ensure the health and safety of the federal workforce and contractor community, the President signed [E.O. 14042](#). The E.O. promotes economy and efficiency in Federal procurement by ensuring that contractors and subcontractors that contract with the Federal Government provide COVID-19 safeguards. The E.O. directs the Safer Federal Workforce Taskforce to issue guidance to provide implementation details and the Federal Acquisition Regulatory (FAR) Council to establish a new clause to be included in solicitations and contracts and contract-like instruments.

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

- Vaccination of covered contractor employees,¹ except in limited circumstances where an employee is legally entitled to an accommodation;²
- Requirements related to masking and physical distancing while in covered contractor³ 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 Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2021-03 regarding implementation of E.O. 14042, which serves as consultation with the CAAC Chair to authorize agencies to issue their own class deviations (see Attachment A). This class deviation sets forth GSA's implementation of the E.O. and CAAC Letter.

C. Applicability.

1. Subject to section D of this deviation, the clause is required in the following:
 - Contracts or contract-like instruments for services, construction, or a leasehold interest in real property exceeding the simplified acquisition threshold (SAT) or simplified lease acquisition threshold (SLAT);
 - Contracts or contract-like instruments for services covered by the Service Contract Act, 41 U.S.C. § 6701, *et seq.*; exceeding the SAT/SLAT
 - Contracts or contract-like instruments for concessions, including any concessions contract excluded by Department of Labor regulations at 29 CFR § 4.133(b) exceeding the SAT/SLAT; or,
 - Contracts or contract-like instruments entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public, exceeding the SAT/SLAT.
2. GSA is strongly encouraging the clause in the following:⁴
 - Contracts or subcontracts whose value is equal to or less than the SAT/SLAT; or,
 - Contracts or subcontracts solely for the manufacturing of products, unless exempted by FAS or PBS specific guidance. See Attachments C and D.
3. The new clause is not applicable to:
 - Micro-Purchases;
 - Site Acquisition;

¹ 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.

² Note that contractor employees working from home must be vaccinated but do not have to follow the CDC masking and social distancing protocols, because an employees personal residence is not a covered contractor workplace. See Safer Federal Workforce Task Force FAQs for Federal Contractors.

³ Covered contractor means a prime contractor or subcontractor at any tier who is party to a covered contract.

⁴ While the E.O. does not require the clause in these circumstances, the Safer Federal Workforce Task Force guidance strongly encourages agencies to include it.

- Sales of surplus real and personal property;
- 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); or
- 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).

D. Requirements.

1. Solicitations.

a. **New Solicitations.** Contracting officers shall include the clause at FAR **52.223-99**, Ensuring Adequate COVID Safety Protocols for Federal Contractors in new applicable solicitations issued on or after **October 15, 2021**.

b. **Existing Solicitations.** Contracting officers shall either amend the solicitation to include the clause at FAR 52.223-99 or incorporate it into the award of the apparent successful offeror for applicable solicitations that were issued prior to **October 15, 2021**, that have not closed, or awards that have not been made by **October 15, 2021**.

c. New and existing solicitations for items described in section C.1. and C.2. of this deviation shall include the clause. Solicitations for items described in section C.3. of this deviation shall not include the clause.

2. Contracts.

a. **New Contracts.** Contracting officers shall include the clause at FAR **52.223-99** in new applicable contracts, lease acquisitions, and “contract-like instruments” awarded on or after **October 15, 2021**.

New contracts for items described in section C.1. and C.2. of this deviation shall include the clause. New contracts for items described in section C.3. of this deviation shall not include the clause.

b. **Existing Contracts.** Contracting officers shall send a cover letter⁵ and modification request to add the clause at **FAR 52.223-99** for existing contracts

⁵ The cover letter, among other things, informs the contractor that the modification is strongly encouraged for contracts described in section C.1. and C.2 of this deviation. Also, it informs the contractor that the modification is mandatory before GSA will renew, extend the period of performance, or exercise an option for contracts described in section C.1. of this deviation.

including indefinite delivery, indefinite quantity (IDIQ) contracts,⁶ and contract-like instruments, described in section C.1. and C.2. of this deviation.

- The modification must be bilateral.
- The language in Attachment B shall be used in the cover letter.
- Contracting officers are ultimately responsible for sending the cover letter and modification request to contractors; however, GSA will use a technology solution to automatically send the cover letter and modification request to the contractor for most GSA contracts. The FAS and PBS specific guidance in Attachments C and D identifies each GSA contracting program that will send the modification using a central mass modification process.⁷

Existing contracts for items described in section C.3. of this deviation shall not include the clause or cover letter.

Contracting officers shall complete as many modifications as possible before **November 14, 2021**. For IDIQs, contracting activities may take interim actions if a signed modification is not returned to GSA by **November 14, 2021**, such as:

- Temporarily hiding contractor information on GSA websites and/or e-tools
- Flagging contractors that have not accepted the modification

Contracting officers shall not exercise an option period or extend the period of performance for existing contracts for items described in section C.1. of this deviation unless the contract has been modified to include the new clause.

E. Authority.

This class deviation is issued under the authority of FAR 1.404 and General Services Administration Acquisition Manual (GSAM) 501.404.

This deviation is issued following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a) and GSAM 501.404(a).

F. Effective Date.

This deviation is effective immediately and remains in effect until the FAR and GSAR are amended or until cancelled.

G. Cancellation.

SPE Memo SPE-2021-16 *Return to Facilities Contractor Guidance* is cancelled in its entirety by this class deviation.

⁶ For IDIQs, once the modification is accepted, it applies to all existing and future orders. Orders placed prior to an IDIQ contract modification can include the clause at the order level, if desired.

⁷ The Office of Administrative Services shall refer to PBS guidance for the automated modifications sent using EASI.

H. Resources.

The Acquisition Portal's [Public Health Emergencies topic page](#) will be updated with additional resources, including GSA FAQs, talking points, and links to all related policies. Questions can be directed to the points of contact listed on the [Acquisition Portal](#).

Attachments

- Attachment A - [CAAC Letter 2021-03](#)
- Attachment B - [Sample Cover Letter](#)
- Attachment C - [FAS Specific Guidance](#)
- Attachment D - [PBS Specific Guidance](#)



Color coding of this template is as follows:

BLACK - standard text

BLUE - text that must be filled in by acquisition team

[Date]

[Contractor's Name]

[Contractor's Street Address]

[Contractor's City, State and Zip Code]

Subject: Contract Modification - New Clause for Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors - [Procurement Instrument Identifier/Lease Contract Number]

Dear [Contractor's POC name],

GSA appreciates the hard work and dedication of our contractors. The health and safety of GSA employees, contractors and their families is our top priority. In order to ensure the health and safety of the Federal workforce and contractor community, the President signed [Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors](#). The requirements in the Executive Order are being implemented via a FAR deviation. The clause in the FAR deviation will be incorporated into GSA contracts via a bilateral modification.

If you hold a GSA contract for services, construction, or a leasehold interest in property that exceeds the simplified acquisition threshold (SAT) or the simplified lease acquisition threshold (SLAT), GSA strongly encourages you to accept this contract modification at this time. The modification is **mandatory** before GSA will renew, extend the period of performance of your contract, or exercise an option.

Acceptance of the contract modification is also **mandatory** for all Federal Supply Schedule contractors.

If you hold a contract at or below the SAT/SLAT or a contract only for products, GSA strongly encourages you to accept the modification.

For IDIQ contracts, including all Federal Supply Schedule contracts, you must sign the modification by **November 14, 2021** to be eligible for new orders. GSA may take

interim actions if a signed modification is not returned to GSA by **November 14, 2021**, such as:

- Temporarily hiding contractor information on GSA websites and/or e-tools
- Flagging contractors that have not accepted the modification

Once an IDIQ contract is modified, the clause applies to the exercise of options on all existing orders and to all future orders.

Based on the urgency of this issue, please return your signed contract modification as soon as possible and no later than **November 14, 2021**.

For more information, please visit <https://gsa.gov/covid19>.

**CD-2021-13 EO 14042 COVID Safety Protocols for Federal Contractors:
Attachment C - Guidance Specific to the Federal Acquisition Service**

The following provides FAS-specific guidance for implementing GSA Class Deviation 2021-13:

Applicability

FAS will include the clause at **FAR 52.223-99** in all new applicable contracts and “contract-like instruments” awarded on or after October 15, 2021.

FAS will bilaterally modify all existing contracts and “contract-like instruments” awarded before October 15, 2021, to include the clause at FAR 52.223-99, as applicable. Additional clarifications and exceptions regarding applicability of FAS contract vehicles are provided below.

1. **Federal Supply Schedule (FSS):** FAS COs shall incorporate the clause at FAR 52.223-99, in all new and existing FSS contracts above the micro-purchase threshold, including contracts that are solely for products. The Safer Federal Workforce Task Force guidance strongly encourages agencies to incorporate the clause into contracts that are solely for products. It is not administratively feasible to distinguish FSS contracts that are solely for products from FSS contracts that are primarily for products but also include ancillary-type services (e.g., installation, maintenance, training, ancillary services acquired via the Order-Level Materials SIN, etc.). Requiring the clause in all FSS contracts will simplify compliance tracking, vendor communication, and customer messaging efforts.
2. **Blanket Purchase Agreements (BPAs):** For BPAs established under FAR Part 13 procedures, applicable orders and calls must include the clause at FAR 52.223-99 for all new and existing orders and calls unless the clause is already incorporated into the BPA. For applicable BPAs established under FAR Part 8 procedures, the objective is to get the clause into the Schedule contract as soon as possible. If necessary, FAS COs shall incorporate FAR 52.223-99 for all new and existing orders and calls awarded unless the clause is already part of the contract under which the BPA was established or incorporated into the BPA. FAS COs may, at their discretion, modify (by bilateral modification) existing BPAs to incorporate the clause at FAR 52.223-99.
3. **Government-wide Acquisition Contracts (GWACs), Multi Agency Contracts (MACs), and Agency-specific IDV/IDIQs:** FAS COs shall incorporate FAR 52.223-99, in all new and existing GWACs, MACs, and IDV/IDIQ contracts, including contracts that are solely for products, except as provided below. The

Safer Federal Workforce Task Force guidance strongly encourages agencies to incorporate the clause into contracts that are solely for products. Requiring the clause in all GWAC and MAC contracts will simplify compliance tracking, vendor communication, and customer messaging efforts.

- a. **GSA SmartPay® Program:** FAS COs shall incorporate FAR Clause 52.223-99 in the GSA SmartPay master contracts prior to exercise of option or extension. Agencies shall not issue new task orders until the master contract has been modified, unless FAR Clause 52.223-99 is incorporated at the order level. All charge card transactions under the program may continue unabated prior to modification of the master contracts.
 - b. **GSA City Pair Program:** FAS COs shall incorporate FAR Clause 52.223-99 for all GSA City Pair Program new contract awards or prior to extending existing GSA City Pair contracts. Transactions under the GSA City Pair Program (i.e., booking flights) may continue without modifying existing GSA City Pair contracts.
 - c. **Automotive IDV/IDIQs:** The FAS COs should strongly encourage Automotive contractors to accept bilateral modifications to incorporate FAR Clause 52.223-99. FAR Clause 52.223-99 is not required in Automotive contracts because they are contracts solely for products.
4. **Orders:** On or after November 14, 2021, prior to placing orders, COs shall review the contract to ensure that the clause at FAR 52.223-99 has been incorporated in the underlying contract. If the clause has not been incorporated in the contract, COs shall include the clause in the solicitation and resultant order, as applicable.

For existing orders against IDV/IDIQ contracts (e.g., FSS, GWACs, and MACs), COs shall review the contract's terms and conditions to determine whether the clause at FAR Clause 52.223-99 has been incorporated. If the underlying contract has not been modified to include the clause, or the underlying contract has expired, the order-level CO shall modify the order (by bilateral modification) to include FAR Clause 52.223-99 prior to exercise of the option period or extension.

5. **Assisted Acquisitions:**

- a. For acquisitions where GSA is not the funding agency, COs shall follow policies of the funding agency.

- b. For applicable open market contracts, FAS COs should include FAR Clause 52.223-99 in solicitations and new awards.
 - c. For orders against IDV/IDIQs, FAS CO shall follow the guidance in paragraph 4.
- 6. **Commercial Solutions Opening (CSO):** GSA's pilot program is not governed by the FAR and uses CSO procedures to competitively award innovative commercial items for products, technology and services. Nevertheless, CSOs are considered "contract-like instruments" and are subject to the requirements of the E.O. and GSA Class Deviation. FAS COs shall incorporate FAR Clause 52.223-99 in CSO contracts. See GSAM 571 for additional guidance about CSOs.
- 7. **Commercial Platforms:** The FAS CO should strongly encourage Commercial Platform contractors to accept bilateral modifications to incorporate FAR Clause 52.223-99. FAR Clause 52.223-99 is not required in the Commercial Platform contracts because they are no-cost service contracts whose value is less than the simplified acquisition threshold. Orders placed under Commercial Platform contracts are equal to or less than the micro-purchase threshold and are not required to incorporate FAR Clause 52.223-99.
- 8. **Tenders of Service:** FAS uses a tender procurement method for freight and household goods transportation and other services. FAS considers tenders of service a "contract-like instrument" under the E.O. FAS will therefore modify applicable terms and conditions documents (e.g., a GSA Standard Tender of Service) to include language equivalent to FAR 52.223-99. FAS will communicate to agencies that any bills of lading which exceed the simplified acquisition threshold should include language equivalent to FAR 52.223-99. Consistent with the Safer Federal Workforce Task Force, FAS will strongly encourage any bills of lading at or below the simplified acquisition threshold to include language equivalent to FAR 52.223-99, but it is not required

Implementation

- 1. **Modifications:**
 - a. Modification Begin Date: FAS will begin to bilaterally modify all existing contracts and "contract-like instruments" awarded before October 15, 2021 to include the clause at FAR 52.223-99, as applicable.
 - b. Automated Modifications: FAS will use an automated mass modification process for applicable contracts in FSS-19.

- c. Non-automated Modifications: FAS COs are responsible for modifying all applicable contracts that are not in FSS-19.

2. Internal Compliance Tracking Dashboard:

- a. FAS Office of Policy and Compliance (OPC) will develop an internal dashboard showing the compliance of FAS contracts modified to include FAR 52.223-99.
- b. FAS OPC will regularly notify FAS Heads of Contract Activity (HCAs) with modification status on FAS contracts.
- c. For non-automated modifications, FAS HCAs will provide regular status updates to FAS OPC.

3. Customer Support:

- a. FAS OPC will develop an external dashboard showing the compliance status of MAS/GWAC/MAC contracts to aid our customer agencies in identifying which contracts have been modified to include FAR 52.223-99. A link to this dashboard will be provided on customer facing tools such as GSAAAdvantage and eBuy.
- b. For FSS contracts, COs can also review the current terms and conditions in [Contracts Online](#) to determine if the contractor is in compliance. For contracts that are manually modified (i.e., not a mass modification), the FAS CO shall provide modification status updates using a spreadsheet link to be provided by OPC.

4. Acquisition Workforce Training: Training will be provided to the FAS acquisition workforce by the FAS OPC and OGP's Office of Acquisition Policy.

5. Contractor Communications:

- a. All contractor communications will be posted at [GSA's COVID website](#).
- b. An advance Interact Notice will be posted to inform FAS contract vehicle holders on solicitation updates and modification requirements.

CD-2021-13 EO 14042 COVID Safety Protocols for Federal Contractors:
Attachment D - Guidance Specific to the Public Buildings Service

The following provides PBS-specific guidance for implementing GSA Class Deviation 2021-13:

1. Acquisitions.

A. Mass Modification Process

a. Mass Modification (i.e. “The Bot”) Points of Contact (POCs)

- Each Region must identify a POC and alternate on the Mass Modification POC List to work with OAM no later than October 5, 2021.
- The Mass Modification POCs are responsible for reviewing the PBS E.O. 14042 Dashboard and tracking regional progress.

b. Modifications to Existing Contracts and Contract-Like Instruments in EASi

- The following contract actions will be modified through the Bot process:
 - Stand-Alone Contracts
 - Blanket Purchase Agreements (BPAs)
 - BPA Calls
 - Indefinite-Delivery Indefinite-Quantity (IDIQ) Contracts
 - Task Orders and Delivery Orders
 - Purchase Orders

c. The Bot Process

- Bilateral modifications will be partially automated using a bot.
- The mass modifications for existing contracts and contract-like instruments will incorporate the clause at FAR 52.223-99.
- The Bot will create the cover letters and modifications to existing contracts and contract-like instruments in EASi and email them to the contractors. The CO for each contract will be copied on each email.
- Each contractor must sign the modification and return it to the CO. After the contractor returns the signed modification, the CO must sign and finalize the modification in EASi (including preparing an FPDS report) and return a copy of the signed modification to the contractor.
- It is anticipated that the Bot process will commence on or about October 8, 2021 and will be completed by October 15, 2021.

B. Contracts and Contract-Like Instruments outside of EASi

The Bot process will only work for contracts and contract-like instruments that are in EASi. For those actions that are outside of the EASi system, the CO must follow normal procedures for bilaterally modifying the action to include the clause at FAR 52.223-99. The CO shall send the cover letter provided in Attachment B of the class deviation along with the modification request.

C. Existing Solicitations

- Existing solicitations must be amended to include the clause at FAR 52.223-99.

- Existing solicitations include solicitations for stand-alone contracts, BPAs, BPA calls, IDIQ contracts, Delivery Orders, Task Orders, and Purchase Orders.
- ***NOTE:*** For orders and GSA Schedule BPAs, if it becomes known by the Contracting Officer that the base IDIQ has already been modified to include the clause at FAR 52.223-99, then the solicitation does not need to be modified. To see if the base IDIQ has been modified:
 - For FSS contracts, review the contract's current terms and conditions in [Contracts Online](#)
 - For PBS IDIQs, review the PBS E.O. 14042 Dashboard or contact the IDV CO
 - For all other IDIQs, contact the IDIQ CO or review the program website, if available.
- If offers have already been received by the Government, in lieu of amending the solicitation, the CO may incorporate the clause at FAR 52.223-99 into the contract/order of the apparent successful offeror, which must be signed bilaterally.

D. New Solicitations (as of October 15, 2021).

- The CO must include the clause at FAR 52.223-99 in the solicitation and resultant award.
- Updated PBS Construction Contract Templates are available in EASi and on [InSite](#).

E. Solicitations for orders under IDIQs.

- *Until the base IDIQ has been modified* to include the clause at FAR 52.223-99 the CO must also include this clause in the solicitation and resultant orders.
- To see if the base IDIQ has been modified:
 - For FSS contracts, review the contract's current terms and conditions in [Contracts Online](#).
 - For PBS IDIQs, review the PBS E.O. 14042 Dashboard or contact the IDV CO.
 - For all other IDIQs, contact the IDIQ CO or review the program website, if available.

2. Leases.

A. Mass Modification Process - Bilateral Lease Amendments to Existing PBS Leases (Issuance of Lease Amendments to Lessors for signature)

- PBS Office of Leasing will issue bilateral lease amendments to Lessors for signature.
- All existing leases, regardless of dollar value, will be modified through this process.
- Bilateral amendments will be generated and sent using automation (e.g., Docusign, Google script, Macro, etc).
- The mass modifications for existing leases will incorporate the clause at FAR 52.223-99.

- Each Lessor signs the modification and returns it to the Administrative Lease Contracting Officer (ALCO). After the Lessor returns the signed modification, the ALCO will countersign and return the fully signed modification to the Lessor.
- ALCOs will be responsible for executing the bilateral lease amendments and tracking progress/status.
- The PBS Office of Leasing will issue lease amendments to lessors for signature no later than October 15, 2021.

B. Existing Request for Lease Proposals (RLPs)

- For leases awarded on or after October 15, 2021:
 - Existing solicitations must be amended to include the clause at FAR 52.223-99, if Final Proposals Revisions (FPR) have not been received prior to October 15, 2021.
- If FPR has been received, in lieu of reopening discussions, the LCO may incorporate the clause at FAR 52.223-99 into the contract of the apparent successful offeror, which must be signed bilaterally.

C. New RLPs (issued on or after October 15, 2021)

- The LCO must include the clause at FAR 52.223-99 in the RLP and resultant lease contract by using updated General Clauses (GSA Forms 3517A or 3517B).
- Prior to October 15, 2021, Office of Leasing will update the General Clauses (GSA Forms 3517A and 3517B) to incorporate the clause at FAR 52.223-99. LCOs must use the updated General Clauses in new RLP packages. Updated GSA Forms 3517A and 3517B will be available on the Office of Leasing Google site and in the G-REX Templates Management Library.

3. PBS Training.

A. Implementation of E.O. 14042 and Class Deviation 2021-01 Training

Training will be provided to the PBS acquisition workforce regarding PBS-specific implementation and guidance regarding PBS acquisition programs.

B. Mass Modification Informational Sessions

The Office of Acquisition Management and the Office of Leasing will host mass modification information sessions for COs, ALCOs, and Mass Modification POCs on a regular basis regarding the mass modification process, the PBS E.O. 14042 Dashboard and tracking regional progress.