



NATIONAL ENDOWMENT FOR THE HUMANITIES

OFFICE OF ACQUISITION

October 6, 2021

Class Deviation from the Federal Acquisition Regulation Regarding Implementation of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors (CD 2022-01)

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 by the President on September 9, 2021 (and published in the Federal Register on September 14, 2021 at 86 FR 50985).

The attached FAR deviation clause is provided consistent with [E.O. 14042](#), the [Safer Federal Workforce Task Force guidance](#), and [Civilian Agency Acquisition Council \(CAAC\) Letter 2021-03](#) regarding implementation of E.O. 14042.

BACKGROUND

As directed by E.O. 14042, agencies are to ensure that new solicitations, contracts, extensions, modifications, and exercised options contain a clause that mandates contractor and subcontractor(s) compliance with all guidance as published by the Safer Federal Workforce Task Force ([website](#)). The clause, which applies to solicitations, contracts, and orders for services, including construction, is required for-

- 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-

- Solicitations issued before October 15, 2021;
- Contracts that have been or will be awarded prior to November 14, 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 (SAT) or is a contract or subcontract for the manufacturing of products.

On September 30, 2021, the 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. This class deviation sets forth NEH's implementation of the E.O., the Task Force guidance, and the CAAC Letter.

SCOPE AND APPLICABILITY

NEH Contracting Officers shall include the clause provided in *Attachment A* in all contracts, by inclusion in the solicitation or through contract modification, issued after the signature date of this deviation for all contracts and orders that exceed the SAT.

Additionally, the clause shall be included all solicitations, orders, and contracts with a total value between the micro-purchase threshold (MPT) and the SAT when the acquisition is for-

- The manufacturing of products;
- Services which full-time or part-time contractor staff are working on or in connection with an NEH-awarded contract or order for services; and
- Services in which full-time or part-time contractor staff are working at a covered contractor workplace¹ or at a Federal workplace².

Lastly, the clause shall be included in orders awarded against a General Services Administration (GSA) multiple award schedule (MAS) contract pursuant to FAR 8.4 and orders awarded against an indefinite-delivery contract pursuant to FAR 16.5 unless the contract includes a comparable clause.

EXCLUSIONS

The clause shall not be included in the following:

- Solicitations, contracts, or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638); or
- Solicitations, contracts, or agreements if employees who are performing the work are doing so entirely outside the U.S. or its outlying areas.

EFFECTIVE DATE AND EXPIRATION

In accordance with FAR 1.404, this deviation is effective immediately and remains in effect until the FAR is amended or the deviation is otherwise rescinded.

POINT OF CONTACT

Questions or comments about this class deviation may be directed to Lindsay Simon at LSimon@neh.gov.

ATTACHMENTS:

Attachment A: FAR Deviation Clause – Ensuring Adequate COVID Safety Protocols for Federal Contractors

¹ Contractor or subcontractor workplace location means a location where covered contract employees work, including a covered contractor workplace or Federal workplace. ([Task Force Guidance issued September 24, 2021](#))

² Federal workplace means any place, site, installation, building, room, or facility in which any Federal executive department or agency conducts official business, or is within an executive department or agency's jurisdiction, custody, or control. ([Task Force Guidance issued September 24, 2021](#))

Attachment A: FAR Deviation Clause – 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.
(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 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)