



MEMORANDUM

October 12, 2021

To: CSOSA Contracting Officers and Office of Procurement Personnel

From: Senior Procurement Executive
Court Service and Offender Supervision Agency (CSOSA)

Subject: Class Deviation – Implementation Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

1. Purpose.

a. This memorandum issues a class deviation in accordance with Federal Acquisition Regulation (FAR) 1.404, to implement Executive Order (E.O.) 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#). Federal agencies are authorized by the Civilian Agency Acquisition Council letter [2021-03](#), dated September 30, 2021 to issue a class deviation.

b. This memorandum also provides instructions for CSOSA Contracting Officers and Office of Procurement personnel on when to include a new clause in CSOSA solicitations, contractual instruments, and delegated lease acquisitions.

2. Background.

a. In order to ensure the health and safety of the federal workforce and contractor community, the President signed E.O. 14042 on September 9, 2021 and the E.O. was published in the Federal Register at [86 FR 50985](#) on September 14, 2021. 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 contractual instruments for services, including construction, and delegated lease acquisitions.

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

(1) Vaccination of covered contractor employees¹, except in limited circumstances where an employee is legally entitled to an accommodation²;

¹ Covered contractor employee means any full-time or part-time employee of a covered contractor working on or in connection with a covered contractual instrument 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 contractual instrument.

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 employee's personal residence is not a covered contractor workplace. See Safer Federal Workforce Task Force FAQs for Federal Contractors.

(2) Requirements related to masking and physical distancing while in covered contractor³ workplaces; and

(3) Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

c. 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. This class deviation sets forth CSOSA's implementation of the E.O. and CAAC Letter.

3. Effective Date. This class deviation is effective immediately and remains in effect until incorporated into the FAR or is otherwise cancelled.

4. Applicability.

a. The clause at FAR 52.223-99, Ensuring Adequate COVID Safety Protocols for Federal Contractors, provided in Attachment 1 of this class deviation, is applicable to:

(1) Solicitations and contractual instruments for services, including construction, exceeding the simplified acquisition threshold (SAT); and

(2) Delegated lease acquisitions exceeding the simplified lease acquisition threshold (SLAT).

b. While the E.O. does not require the clause at FAR 52.223-99 to be used under the below circumstances, the Safer Federal Workforce Task Force guidance strongly encourages the clause to be used for the following:

(1) New solicitations and contractual instruments whose value is equal to or less than the SAT;

(2) New solicitations and contractual instruments solely for the manufacturing of products; and

(3) New designated lease acquisitions under the SLAT.

c. The clause at FAR 52.223-99 shall not be applied to:

(1) Contractual instruments and subcontracts with Indian Tribes under the Indian Self-Determination and Education Assistance (Public Law 93-638) (the exclusion would not apply to a procurement contractual instrument or subcontract under the FAR to an Indian-owned or tribally-owned business entity);

(2) Solicitations and contractual instruments if performance is outside the United States or its outlying areas (the exclusion is limited to employees who are performing work outside the U.S. or its outlying areas); or

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

(3) Micro-purchases.

5. Required Action. CSOSA Contracting Officers and Office of Procurement personnel are **required** to include the clause at FAR 52.223-99, provided in Attachment 1, in the following applicable acquisitions (i.e., acquisitions meeting the applicability identified in paragraph 4 above):

a. Solicitations.

(1) ***New solicitations.*** CSOSA Contracting Officers and Office of Procurement personnel 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**.

(2) ***Existing Solicitations.*** CSOSA Contracting Officers and Office of Procurement personnel 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**.

b. Contractual Instruments.

(1) ***New Contractual Instruments.*** CSOSA Contracting Officers and Office of Procurement personnel shall include the clause at FAR 52.223-99 in new applicable contractual instruments awarded on or after **October 15, 2021**.

(2) ***Existing Contractual Instruments.***

(a) CSOSA Contracting Officers and Office of Procurement personnel shall send a cover letter⁴ and modification request to add the clause at **FAR 52.223-99** for applicable existing contractual instruments. The modification must be bilateral. Attachment 2, Sample Cover Letter, provides the language to be used when issuing the cover letter.

(b) CSOSA Contracting Officers and Office of Procurement personnel shall begin completing modifications to add the clause at FAR 52.223-99 as expeditiously as possible. CSOSA Contracting Officers shall not exercise an option or extend the period of performance for existing applicable contractual instruments unless the contractual instrument has been modified to include the clause at FAR 52.223-99.

⁴The cover letter, among other things, informs the contractor that the modification is strongly encouraged for any existing contractual instrument. Also, it informs the contractor that the modification

is mandatory before CSOSA will renew, extend the period of performance, or exercise an option to any existing contractual instrument. For IDIQs & BPAs, once the modification is accepted, it applies to all existing and future orders. Orders placed prior to an IDIQ contract or BPA modification can include the clause at the order level, if desired.

c. Delegated Lease Acquisitions.

(1) *New Designated Lease Acquisitions.* CSOSA Contracting Officers and Office of Procurement personnel shall include the clause at FAR 52.223-99 in new applicable designated lease acquisitions effective on or after **October 15, 2021**.

(2) *Existing Designated Lease Acquisitions.* CSOSA Contracting Officers and Office of Procurement personnel shall modify existing applicable designated lease acquisitions to add the clause at **FAR 52.223-99** as expeditiously as possible.

6. For any questions regarding this class deviation, contact, Mr. Elijah Anderson, CSOSA, Head of the Contracting Activity, at Elijah.Anderson@csosa.gov or (202) 352-0537 (mobile) / (202) 220-5795 (office).

Attachment 1: FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 2022-0001)

Attachment 2: Sample Cover Letter

Attachment 1

FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 2022-0001)

As prescribed in Class Deviation 2022-0001 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, use the following clause:

ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION 2022-0001) (OCT 2021)

(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)

Attachment 2 Sample Cover Letter

The below letter shall be issued on the appropriate CSOSA Office of Administration letterhead. All information required below, as indicated by red font, is to be filled in by the CSOSA Office of Procurement personnel in black font. Remove all red font information prior to finalizing each cover letter.

Date

Name of Contractor Point of Contact

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 – **Insert Procurement Instrument Identifier or Designated Lease Number**

Dear **Insert Name of Contractor Point of Contact**,

CSOSA appreciates the hard work and dedication of our contractors. The health and safety of CSOSA 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 deviation to the Federal Acquisition Regulation (FAR). The deviation requires FAR 52.223-99, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 2022-0001), be incorporated into CSOSA awards via a bilateral modification.

For contractual instruments (other than IDIQ contracts or BPAs) that require inclusion of FAR 52.223-99 (as per paragraph 4.a.(1) of the class deviation), include the following:

CSOSA strongly encourages you to accept the attached modification at this time. The modification is **mandatory** before CSOSA will renew, extend the period of performance, or exercise an option to the subject award.

For IDIQ contracts or BPAs that require inclusion of FAR 52.223-99 (as per paragraph 4.a.(1) of the class deviation), include the following:

CSOSA strongly encourages you to accept the attached modification at this time. The modification must be signed before CSOSA will renew, extend the period of performance, exercise an option to the subject award, or issue any new orders.

For contractual instruments that address inclusion of FAR 52.223-99 (as per paragraph 4.b.(1) and (2) of the class deviation), include the following:

CSOSA strongly encourages you to accept the attached modification at this time.

Please sign and return the attached modification to *insert CSOSA point of contact that where the modification should be returned, i.e., name and email address.*

Elijah Anderson
Contracting Officer