



MEMORANDUM

October 12, 2021

MEMORANDUM FOR ACQUISITION MANAGEMENT DIVISION

From: Daniel J. Fadden
Director of Administration and
Senior Procurement Executive

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR) to implement EO 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

Findings:

E.O. 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) directs agencies to ensure that the parties that contract with the Federal Government provide adequate COVID-19 safeguards to their workers performing on or in connection with the contract to decrease the spread of COVID-19, reduce worker absence, lower labor costs, and improve the efficiency of contractors and subcontractors at sites where they are performing work.

On September 24, 2021, the Safer Federal Workforce Task Force issued guidance to implement the order, COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors. The Task Force guidance requires:

- All covered contractor employees to be fully vaccinated for COVID-19 by December 8, 2021, except in limited circumstances where an employee is legally entitled to an accommodation;
- All individuals, including covered contractor employees and visitors, to comply with published Centers for Disease Control and Prevention guidance for masking and physical distancing at a covered contractor workplace, as discussed in the Task Force guidance; and
- Covered contractors to designate a person or persons to coordinate implementation of and compliance with the Task Force guidance and the required workplace safety protocols at covered contractor workplaces.

Section 3(a) of the order directs the Federal Acquisition Regulatory Council (FAR Council) to develop a contract clause requiring contractors and subcontractors at any tier to comply with all guidance for contractor or subcontractor workplace locations published by the Task Force and to provide initial policy direction to acquisition offices for use of the clause by recommending that agencies exercise their authority under FAR subpart 1.4., Deviations from the FAR. The Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2021-03 on September 30, 2021, authorizing agencies to issue class deviations implementing these provisions pending formal amendment to the Federal Acquisition Regulation (FAR) via FAR case 2021-21, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors.

Determination:

CAAC letter 2021-03 constitutes consultation in accordance with FAR 1.404 with the Chair of the CAAC allowing agencies to authorize a class deviation to implement the changes.

In accordance with FAR 1.404 and RRB Basic Board Order Number 5 (BBO-5) and the communication from Lesley Field, Acting Administrator for Federal Procurement Policy, Office of Management and Budget, dated September 30, 2021, and pending FAR Case 2021-021, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, I have hereby determined that a class deviation is appropriate to implement Executive Order 14042. This deviation is included as the Attachment 1.

Effective immediately, RRB Acquisition Management Division contracting staff shall include the clause provided in the Attachment #1 in all contracts, delivery orders or task orders for performance of services, including construction, that exceed the simplified acquisition threshold by inclusion of this clause in the solicitation, or through contract modification, issued on or after the signature date of this deviation. The Acquisition Management Division staff shall apply the implementation timeline guidance in the CAAC Letter at Attachment 2, but all existing contracts, delivery orders or task orders shall be modified to include the clause no later than the second quarter of FY2022.

Furthermore, as cited in Attachment 2, RRB Acquisition Management Division contracting staff shall include the clause in Attachment #1 in solicitations, orders, and agreements for acquisitions below the simplified acquisition threshold for performance of services, including construction, in any case that the contracting officer believes is appropriate.

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.

Effective Dates and Expiration: This deviation is effective upon issuance and remains in effect until it is incorporated in the FAR or otherwise rescinded.

Questions or comments about this class deviation may be directed to Paul Ahern, Chief of Acquisition Management at paul.ahern@rrb.gov and Stephen Schenk, Supervisory Contract Specialist at stephen.schenk@rrb.gov.

CC: Office of General Counsel

ATTACHMENTS

Attachment 1. 52.233-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION)

Attachment 2. CAAC Letter 2021-03, Class Deviation From the Federal Acquisition Regulation Regarding Implementation of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

ATTACHMENT 1

FAR Deviation Clause

Executive Order 14042 Ensuring Adequate COVID Safety Protocols for Federal Contractors

Baseline is FAC 2021-07, published in the Federal Register on August 11, 2021.
September 24, 2021

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 52.2—Text of Provisions and Clauses

[52.233-99 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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ATTACHMENT 2

CAAC Letter 2021-03, Class Deviation From the Federal Acquisition Regulation Regarding Implementation of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated 09-30-2021