



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

October 15, 2021

Memorandum

To: All Bureaus and Offices that Award Contracts or Contract-Like Instruments

From: Megan Olsen
Director, Office of Acquisition and Property Management
Senior Procurement Executive

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Date: 2021.10.15 13:12:10 -04'00'

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Re: FAR 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 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors](#) (“the order”), signed September 9, 2021.

This memorandum also provides instructions for the Department of the Interior (DOI) workforce regarding when to include a new clause (“the clause”) in solicitations, contracts, and “contract-like instruments.” The clause specifies that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (“Task Force”). As directed by the order, on September 24, 2021, the Task Force issued [COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors](#) to provide the initial guidance.

On September 30, 2021, the Civilian Agency Acquisition Council (CAAC) issued [CAAC Letter 2021-03](#) regarding implementation of the order, which serves as consultation with the CAAC Chair to authorize agencies to issue their own class deviations. This class deviation sets forth DOI’s implementation of the order and the CAAC Letter.

B. Applicability

1. Subject to sections B and C 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; and,
 - 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. DOI is strongly encouraging the clause be included in the following:
- Contracts, subcontracts, or contract-like instruments whose value is equal to or less than the SAT/SLAT; and,
 - Contracts or subcontracts solely for the manufacturing of products.
3. The clause is not applicable to:
- Micro-Purchases;
 - Grants;
 - Solicitations, contracts, and contract-like instruments 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, subcontracts, and contract-like instruments 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).

C. **Implementation for Procurement Contracts**

1. Solicitations
- a. *New Solicitations.* Contracting officers shall include clause 52.223-99 in solicitations for applicable contracts (in accordance with Section B) 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 (in accordance with Section B) that were issued prior to October 15, 2021, and that have not closed, or awards that have not been made by October 15, 2021.

2. Contracts

- a. *New Contracts*. Contracting officers shall include the clause at FAR 52.223-99 in new applicable contracts (in accordance with Section B) awarded on or after **October 15, 2021**.
- b. *Existing Contracts*. Contracting officers shall modify applicable existing contracts (in accordance with Section B) to add the clause at FAR 52.223-99.
 - The modification must be bilateral, even if an option is also being exercised simultaneously. Prior to agreeing to any contract price increase resulting from incorporating this clause into an existing contract, Contracting Officers must submit the proposed contract modification to the Office of the Solicitor for review, even if the modification would not otherwise be subject to legal review under DOI-AAAP-075, *Legal Review of Acquisition Actions*.
 - Contracting officers shall complete as many modifications of existing contracts as possible before **November 14, 2021** rather than waiting to add the clause with the next option or extension for the contract.

3. Indefinite Delivery Vehicles

- a. Agencies that manage Government-wide indefinite-delivery vehicles (IDVs), such as the Federal Supply Schedules and other Government-Wide Acquisition Contracts (GWAC), will be modifying those vehicles to add the clause.
- b. DOI Contracting officers who manage IDVs that were awarded by DOI shall review each IDV and modify those that fall under the scope of the order to add clause 52.223-99 in accordance with this guidance.
- c. When awarding an order under any such IDV, where the order would otherwise be subject to this policy, the Contracting officer must check to see whether the clause has been incorporated into the IDV. If the clause has been incorporated, then the order does not need to include the clause. If the clause has not been incorporated into the IDV, then the clause must be incorporated in individual orders that fall within the scope of Section B.

D. Implementation for Contract-Like Instruments. This section provides supplemental implementation instructions for certain types of DOI contract-like instruments. The list should not be considered a comprehensive list of covered contract-like instruments for DOI.

1. Review of Contract-Like Instruments

- a. Any DOI official who is responsible for any type of contract-like instrument must review the order, the Task Force's guidance, and this document, and determine

whether the clause must be included in the instrument. The order should be interpreted broadly, within the parameters of law.

- b. If a bureau or office is uncertain whether the clause must be included in a specific instrument of a type that is not addressed directly in this guidance, the bureau or office must elevate the question to the Director of the Office of Acquisition and Property Management for a final determination.
 - c. DOI officials shall use the same clause for covered contract-like instruments that has been adopted for procurement contracts.
 - d. The clause shall be used in exact text. If substantive edits are needed to tailor the language to a specific agreement or type of agreement, those edits must be approved by the Solicitor's Office and the Senior Procurement Executive prior to being included in any contract-like agreement.
2. Concessions Contracts
- a. *New Contracts*. The clause must be inserted in all applicable (in accordance with Section B) new DOI concessions contracts awarded after **October 15, 2021**.
 - b. *Existing Contracts*. Bureaus and offices shall modify existing applicable (in accordance with Section B) concessions contracts to incorporate the clause, consistent with normal procedures for modifying the terms and conditions of concession contracts or the law applicable to concession contracts, as soon as practicable following the date of this policy. Bureau and offices shall complete as many modifications as possible by **November 15, 2021**.
 - c. *Similar Instruments*. The guidance above also applies to any other type of contract-like instrument (such as a Memorandum of Understanding, Memorandum of Agreement, Commercial Use Authorization, permit, lease of DOI building, etc.) that meets the definition: "contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public."
3. Cooperative Agreements
- a. *Covered Cooperative Agreements*. Bureaus and offices must include the clause in cooperative agreements in accordance with the thresholds in Section B if:
 - It is a cooperative agreement 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" or
 - It is a cooperative agreement under which the recipient's staff and/or one or more subrecipients, including subcontractors, are performing work subject to the Service Contract Act, 41 U.S.C. 6701 et seq.
 - b. *New Cooperative Agreements*. Bureaus and offices shall include the clause in any new covered agreement awarded after **October 15, 2021**.

- c. *Existing Cooperative Agreements.* Bureaus and offices shall amend existing covered agreements to incorporate the clause as soon as practicable. Bureau and offices shall complete as many amendments as possible by **November 15, 2021**.
 - d. *Legal Review.* Prior to including the clause in any cooperative agreement, bureaus and offices shall obtain legal review of the notice or amendment.
- 4. Real Property Leases
 - a. *GSA Leases.* The General Services Administration (GSA) will be modifying their covered real property leases to incorporate the clause. Therefore, DOI employees do not need to take any action with regard to Occupancy Agreements with GSA, as the clause will be incorporated into the leases by the awarding agency.
 - b. *New Direct Leases.* For DOI's direct leases (under GSA delegated or statutory authority) for real property, where DOI has a contract directly with the landlord, DOI Leasing Contracting Officers (LCO) must incorporate the clause into all new applicable leases (in accordance with Section B) issued after **October 15, 2021**. In accordance with Section B, LCOs are strongly encouraged to include the clause in solicitations for new leases below the SLAT if there is a significant benefit to adding the clause in accordance with the goals outlined in the order. Further guidance is provided in GSA Leasing Alert 21-15 – Implementation of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors.
 - c. *Existing Direct Leases.* DOI LCOs shall modify existing applicable leases (in accordance with Section B) to incorporate the clause as soon as practicable. LCOs shall complete as many amendments as possible by **November 15, 2021**.
- 5. Water-related contracts under Federal reclamation law
 - a. *Covered Contracts.* Bureaus and offices shall include the clause in water-related contracts entered into under Federal reclamation law in accordance with the applicability requirements and thresholds in Section B.
 - 1. *New Contracts.* If a contract is covered under Section B, bureaus and offices shall include the clause in any new covered contract awarded after **October 15, 2021**.
 - 2. *Existing Contracts.* If a bureau or office amends an existing contract covered under Section B, bureaus and offices shall incorporate the clause.
 - b. *Legal Review.* Prior to including the clause in any water-related contracts entered into under Federal reclamation law, bureaus and offices shall obtain legal review of the contract or amendment.

E. Effect of this Deviation on Prior DOI Guidance

- DOI previously issued [COVID Policy Bulletin 2021-02: Visitors and Contractors](#) and the Senior Procurement Executive's August 23, 2021 memo on [Implementation of certification of vaccination for contractor employees working in any Federal building](#)

or Federally controlled indoor worksite. Those previous documents remain in effect and are not in rescinded by this guidance.

- As DOI implements the order and adds the clause to certain contracts and contract-like instruments, contractors who are operating under this clause will no longer have to comply with the certification of vaccination for contractor employees working in Federal buildings or Federally controlled indoor worksites. The contractors operating under a contract or contract-like agreement that contains the clause will abide by the terms and conditions in their contract regarding COVID health and safety, including while working in Federal buildings or Federally controlled indoor worksites.
- Any contractor employee working under a contract or other instrument that does not contain the clause must continue to comply with the requirements in [COVID Policy Bulletin 2021-02: Visitors and Contractors](#), and Contracting Officers and other similar officials within DOI must continue to notify contractors of these requirements in accordance with existing guidance if they are not subject to the clause.
- Recipients of federal financial assistance awards must follow the procedures for visitors when entering DOI facilities.

Attachments:

- [Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors](#)
- [Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors](#)
- [Civilian Agency Acquisition Council Letter 2021-03](#)
- [COVID Policy Bulletin 2021-02: Visitors and Contractors](#)
- [DOI Senior Procurement Executive's August 23, 2021 memo on *Implementation of certification of vaccination for contractor employees working in any Federal building or Federally controlled indoor worksite*](#)