



SOCIAL SECURITY

MEMORANDUM

Date: October 14, 2021

Refer To: S1QC

To: Office of Acquisition and Grants Staff

From: Kevin P. Muñiz
Technical Advisor, Office of Acquisition Support

Subject: Flash Notice (FN) 23_22-01, Class Deviation from the Federal Acquisition Regulation (FAR) to Implement Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors—ACTION

Purpose

This FN implements the agency's approval (see attached) of a FAR class deviation pursuant to a recently issued Civilian Agency Acquisition Council (CAAC) Letter regarding [Executive Order \(E.O.\) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors](#), and as amended by the agency's consultation with the CAAC dated October 5, 2021. The CAAC letter (see attached) authorized a class deviation to implement the E.O., requiring agencies to include a new clause, or deviation thereto, of 52.223-99, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, in certain solicitations and contracts.

Policy and Procedure

(a) Effectively immediately, include the deviation clause 2352.223-99¹ (see the attachment to the FN) in all solicitations and contracts (to include contract-like instruments as described in Section 5 of the E.O.) for services, including construction, and ancillary services (e.g., maintenance, installation, repair, and alteration services) in connection with supplies acquisitions, above the Simplified Acquisition Threshold (SAT) (and to the maximum extent practicable in solicitations and contracts that exceed the micro-purchase threshold but are equal to or less than the SAT), for commercial and non-commercial actions as follows:

- **New Contracts (and contract-like instruments)** 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);

¹ See Attachment 3 for specific instructions related to inclusion of clause 2352.223-99.

- **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;
- options on existing contracts and orders exercised on or after October 15, 2021;
- existing contracts and orders otherwise having a bilateral modification not tied to an extension, renewal, or option exercise (e.g. change in Statement of Work, change in delivery schedule), on or after October 15, 2021; and
- contracts that will be awarded prior to November 14, 2021 on solicitations issued before October 15, 2021.

Contract-like instruments is inclusive of both GSA (see **Special Note** below) and open market blanket purchase agreements (BPAs). A BPA shall be treated as exceeding the SAT if it is anticipated that the total value of calls issued across the life of the BPA will exceed that amount.

Note: Contracting staff are *strongly encouraged* to issue a bilateral modification to include the deviation clause *before* extending, renewing, or otherwise exercising an option on existing contracts (and contract-like instruments) or orders.

(b) *Exceptions*. The clause shall not apply to:

- contracts and subcontracts with Indian Tribes under the Indian Self-Determination and Education Assistance (Public Law 93-638);
- solicitations and contracts 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
- Micro-Purchases as defined by agency policy.

Special Note for GSA Orders and Schedule BPAs: The new deviation clause will be added to the SSA Streamlined Acquisition System (SSASy) agency-specific clause database and to all clause templates. Note: Clause template 3 is for orders against the GSA's Federal Supply Schedule (FSS). Normally, the GSA Schedule contract contracting officer amends the contract to add new FAR clauses, including any FAR deviation clauses, which would then apply to resultant orders. If the FSS contract is not updated with its own deviation clause in time for a contracting staff member to meet the dates indicated above under paragraph (a), contracting staff can begin including the clause 2352.223-99, as applicable, in the solicitation or award for FSS orders. GSA will develop an external dashboard showing the compliance status of their contracts (e.g. FSS) to aid customer agencies in identifying which contracts have been modified. A link to this dashboard will be provided on customer facing tools such as GSA Advantage, eBUY, and [Contracts Online Home \(gsa.gov\)](https://www.gsa.gov).

Background

On September 9, 2021, the President signed E.O. 14042. Its purpose was to “promote economy and efficiency in procurement by contracting with sources that provide adequate COVID-19 safeguards for their workforce.” Specifically, it aims to maximize vaccination among the general populace and thereby decrease the spread of COVID-19. Therefore, the E.O. requires agencies to include a clause requiring contractors and subcontractors at any tier to comply with all Task Force Guidance², as amended, for contractor workplace locations. (In other words, the clause flows down to subcontractors.) Agencies have been directed to apply the clause as broadly as possible.

Further Information

Please direct *general* questions regarding this FN to Kevin P. Muñoz via email at Kevin.Muniz@ssa.gov, or phone (410) 966-3297.

Please direct *specific* questions (e.g. questions regarding applying the clause to actions exceeding the micro-purchase threshold but are equal to or less than the SAT) to your assigned OAG Office Director (or Division Director) in your respective area.

Attachments

Attachment 1 - CAAC Letter Authorizing Deviation



CAAC Letter 2021-03
Ensuring Adequate CC

Attachment 2 – Agency Deviation Approval Memorandum

[RESERVED]

Attachment 3 – SSASy Clause Instructions for FN 23 22-01

[RESERVED]

Attachment 4 – Agency Deviation Clause 2352.223-99

[SEE BELOW]

² The [Task Force Guidance](#) includes Frequently Asked Questions regarding the application and operation of the clause to contracts and subcontracts.

FAR Deviation Clause

Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 52.2—Text of Provisions and Clauses

2352.223-99 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 (and to the maximum extent practicable in subcontracts that exceed the micro-purchase threshold but are equal to or less than the simplified acquisition threshold), as defined in Federal Acquisition

Attachment 4

Regulation 2.101 on the date of subcontract award, and are for services, including construction, and ancillary services (e.g., maintenance, installation, repair, and alteration services) in connection with supplies acquisitions, performed in whole or in part within the United States or its outlying areas.

(End of clause)