



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF FINANCE AND OPERATIONS

October 12, 2021

ACQUISITION ALERT 2022-02

TO: Heads of Contracting Activities
Office of Finance and Operations/Contracts and Acquisitions Management
Federal Student Aid/Federal Student Aid Acquisitions
Executive Officers

FROM: Phillip R. Juengst
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Senior Procurement Executive

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR) Regarding Implementation of Executive Order (EO) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

1. **Purpose:** The purpose of this alert is to issue a class deviation from the FAR as authorized by the Civilian Agency Acquisition Council (CAAC) Chair in CAAC Letter 2021-03 (Attachment A). The class deviation implements EO 14042. This alert also provides guidance to the Acquisition Workforce on when to include a new clause (Attachment B) in ED solicitations and contracts.
2. **Applicability:** This class deviation applies to all solicitations and contracts for services, including construction contracts, regardless of dollar value.
3. **Background:** On September 9, 2021, President Joseph R. Biden signed EO 14042 to ensure the health and safety of the federal workforce and the contractor community. The EO requires agencies include a clause requiring contractors and subcontractors (at any tier) to comply with all guidance for contractor workplace locations as published by the Safer Federal Workforce Task Force. On September 24, 2021, the Safer Federal Workforce Task Force issued workplace safety protocols which require specific actions supporting the goal of getting more people vaccinated and to decrease the spread of COVID-19.
4. **Effective Date:** This deviation is effective immediately.
5. **Expiration Date:** This deviation remains in effect until it is incorporated into the FAR or until otherwise rescinded.

6. **Required Actions:** Contracting officers shall insert the clause (52.223-99) in the following solicitations, contracts, task orders, delivery orders, and modifications:
- a. 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);
 - b. 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, and orders awarded pursuant to those solicitations under existing indefinite-delivery contracts);
 - c. Extensions or renewals of existing contracts and orders awarded on or after October 15, 2021;
 - d. Options on existing contracts and orders exercised on or after October 15, 2021 if the option will be exercised no later than December 8, 2021; and
 - e. All active contracts not already covered by categories a-d above, subject to the following exceptions noted below.

The clause shall **not** be applied to:

- Contracts and subcontracts 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); or
- Solicitations and contracts 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).

In respect to active contracts not covered by a-d above, and where an option would not be exercised until after December 8, 2021, contracting officers shall execute modifications to include clause (52.223-99) no later than December 8, 2021.

7. **Other:** An MS WORD copy of clause (52.223-99) is provided for your use while the clause is being added to CPSS.
8. **Additional Information:** Strategic Acquisition Management Initiatives Division, SAMI_Policy@ed.gov.

9. **Attachments:**

- A. CAAC Letter 2021-03
- B. FAR DEVIATION CLAUSE 52.223-99
- C. MS WORD copy of FAR CLAUSE 52.223-99