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Homeland
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MEMORANDUM FOR: Heads of Contracting Activities

FROM: Paul Courtney
Chief Procurement Officer

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Date: 2021.10.18 14:44:22 -04'00'

SUBJECT: **Implementation of Executive Order 14042 Ensuring Adequate COVID Safety Protocols for Federal Contractors for Contract-Like Instruments**

Purpose: The purpose of this memorandum is to implement Executive Order 14042 Ensuring Adequate COVID Safety Protocols for Federal Contractors for covered contracts and contract-like instruments and awards that are not issued under the authority of the Federal Acquisition Regulation. (For FAR based actions, see DHS FAR Class Deviation 22-01.)

Effective Date: Immediately.

Background: Executive Order (E.O.) 14042 was signed by the President on September 9, 2021, and published in the Federal Register at [FR 86 50985](#) on September 14, 2021. The E.O. requires agencies to 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 \(Task Force Guidance\)](#). This clause applies to contracts and contract like instruments, which includes:

- procurement contracts or contract-like instruments
- for services, construction, or leasehold interests in real property;
- contract or contract-like instruments for services covered by the Service Contract Act, 41 U.S.C. 6701 et seq.;
- contracts or contract-like instruments for concessions, including any concessions contract excluded by Department of Labor regulations at 29 C.F.R. 4.133(b); or
- 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.

A contract or contract-like instrument includes an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. The definition of contract or contract-like agreement includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term *contract* includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term *contract* shall be interpreted broadly as to include, but not be limited to, any contract within the definition provided in the

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Federal Acquisition Regulation (FAR) at 48 CFR chapter 1 or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications.

A clause was provided in the September 30, 2021, Civilian Agency Acquisition Council (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. For consistency, the same clause will also be utilized for contracts and contract-like instruments that are not issued under the authority of the Federal Acquisition Regulation.

Requirement: Contracting Officers and Agreement Officers for contract and contract-like instruments shall include the clause in Attachment 1 in the following:

- new awards issued on or after November 14 from solicitations issued before October 15 (this includes new orders awarded on or after November 14 from solicitations issued before October 15 under existing awards);
- new solicitations issued on or after October 15 and contracts awarded pursuant to those solicitations (this includes new solicitations issued on or after October 15 for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts);
- extensions or renewals of existing awards and orders awarded on or after October 15, 2021; and
- options on existing awards and orders exercised on or after October 15, 2021.

It is encouraged, but are not required to include the clause into the following:

- contracts that will be awarded prior to November 14 on solicitations issued before October 15; and
- contracts that are not covered or directly addressed by the E.O. because the contract or subcontract is under the simplified acquisition threshold or is a contract or subcontract for the manufacturing of products.

The clause shall not be applied to:

- awards 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 awards 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).

When modifying existing awards, including orders, in accordance with this memorandum, agreement officers shall use a bilateral modification to incorporate the deviation clause.

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Applicability: This memorandum applies to all contract and contract-like instruments as defined by the Department of Labor’s proposed rule, “Increasing the Minimum Wage for Federal Contractors,” 86 Fed. Reg. 38,816, 38,887 (July 22, 2021) or subsequent final rule, (see definition at [Safer Federal Workforce](#)) awarded on or after the issuance date of this memorandum.

Expiration: This memorandum remains in effect until E.O. 14042 expires or the memorandum is rescinded.

Attachments:

Attachment 1: 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

Questions or comments on this memo may be directed to Catherine Benavides at Catherine.Benavides@hq.dhs.gov or Ben Shih at Ben.Shih@hq.dhs.gov.

**Attachment 1 -Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors.
(OCT 2021) (DEVIATION)**

**Executive Order 14042, Ensuring Adequate COVID 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 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)