



PROCUREMENT MEMORANDUM 2022-01 (REVISED)

ACTION

MEMORANDUM FOR: Senior Bureau Procurement Officials

FROM: Barry E. Berkowitz
Senior Procurement Executive and
Director for Acquisition Management

SUBJECT: Federal Acquisition Regulation Class Deviation: Ensuring
Adequate COVID-19 Safety Protocols for Federal Contractors

Background

Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*, (“the order”) directs executive departments and agencies to ensure that covered contracts¹ include a clause that the contractor and any subcontractors (at any tier) shall incorporate into lower-tier subcontracts. This clause shall specify 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”), provided that the Director of the Office of Management and Budget (“OMB”) approves the Task Force Guidance (the or this “Guidance”) and determines that the Guidance, if adhered to by covered contractors, will promote economy and efficiency in Federal contracting.

On September 30, 2021, the Civilian Agency Acquisition Council (CAAC) issued 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*, authorizing agencies to issue a class deviation from the Federal Acquisition Regulation (FAR).

Purpose

This class deviation is issued in accordance with FAR 1.404 and partially pursuant to CAAC Letter 2021-03 to include a clause that implements Executive Order 14042 and directs the contractor to comply with all guidance published by the Safer Federal Workforce Task Force, including guidance conveyed through Frequently Asked Questions. This deviation revises the clause provided by the CAAC letter to replace “simplified acquisition threshold” with “micro purchase threshold” in 52.223-99(d).

Required Actions

- A. Contracting officers shall insert the clause 1352.223-99 provided in Attachment A in any new contract; new or existing solicitation for a contract; or an existing contract except for the following:

¹ For purposes of this Procurement Memorandum the term “contract” has the meaning as defined in section 2.101 of the FAR and includes orders under indefinite delivery, indefinite quantity contracts and blanket purchase agreements as well as contracts issued under an other transaction authority.

- (i) contracts or subcontracts whose value is equal to or less than the micro-purchase threshold, as that term is defined in section 2.101 of the FAR;
- (ii) contracts awarded prior to October 15, 2021, with an ultimate end date prior to October 15, 2022, where work is NOT performed on site at a Government facility, that do not contain option periods within this timeframe, and are not otherwise extended;
- (iii) 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).

B. When reporting awards and modifications issued on or after September 30, 2021 that implement the Task Force's COVID-19 safety protocols to the Federal Procurement Data System (FPDS), enter "EO14042" (with no spaces or punctuation breaking up the EO identifier) at the beginning of the Description of Requirement data field on the contract action report (CAR) if the action being reported is (1) a new award (contract or order) that includes the required new clause; or (2) a modification to an existing award (contract or order) that incorporates the new clause. Additional information shall be entered into the Description of Requirement field after the identifier with no further restrictions on spaces or punctuation to provide the actual description of the requirement for either the contract or the specific modification depending on the purpose of the modification.

Modifications or awards issued prior to the issuance of this instruction and on or after September 30, 2021, should be updated in FPDS by December 1, 2021.

The National Interest Action (NIA) Code for COVID (code P20C) should not be entered unless the award itself was issued in response to the pandemic.

Effective Date

This deviation is effective immediately for the following:

- (i) new contracts;
- (ii) solicitations for a contract;
- (iii) extensions or renewals of existing contracts awarded on or after October 15, 2021; and
- (iv) options on existing contracts exercised on or after October 15, 2021.

This deviation is effective January 1, 2022, for existing contracts.

The deviation remains in effect until rescinded or fully incorporated into the FAR.

Exceptions

Exceptions to the requirements of this procurement memorandum may be provided in the below instances and shall be approved by the Senior Bureau Procurement Official, without further delegation, with a copy to oam_mailbox@doc.gov:

- (i) solicitations or contracts whose value is equal to or less than the Simplified Acquisition Threshold, as that term is defined in section 2.101 of the FAR;
- (ii) existing contracts when the modification to add the clause is not in conjunction with:

- a. extensions or renewals of existing contracts and orders awarded on or after October 15, 2021; or
 - b. options on existing contracts and orders exercised on or after October 15, 2021; or
- (iii) solicitations or contracts solely for the provision of products

Questions

Please direct any questions regarding this Procurement Memorandum to
OAM_Mailbox@doc.gov.

Attachment A – Clause 1352.223-99