



**U.S. Department of Housing and Urban Development**  
Washington, D.C. 20410

CHIEF PROCUREMENT OFFICER

**Class Deviation From the Federal Acquisition Regulation (FAR) Regarding  
Implementation of Executive Order 14042, Ensuring Adequate COVID Safety Protocols  
for Federal Contractors**

On September 30, 2021, the Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2021-03. This letter implements Executive Order 14042 (E.O.), [\*Ensuring Adequate COVID Safety Protocols for Federal Contractors\*](#), signed by the President on September 9, 2021, (and published in the Federal Register on September 14, 2021 at 86 FR 50985). The CAAC letter indicated that its issuance constitutes consultation with the Chair of the CAAC pursuant to FAR Section 1.404(a)(1), allowing agencies to authorize a class deviation. Pursuant to the foregoing, the Department of Housing and Urban Development (HUD) is hereby issuing this deviation to add FAR Clause 52.223-99 and the prescription for use in all existing and new HUD solicitations and contracts over the micro purchase threshold. This prescription and clause implement the requirements of E.O. 14042.

E.O. 14042 directs executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. § 102(4)(A), to ensure that covered contracts and contract-like instruments include a clause requiring contractors and any subcontractors (at any tier) to comply with all guidance for covered contractor or subcontractor workplace locations as published by the Safer Federal Workforce Task Force at: <https://www.saferfederalworkforce.gov/contractors/>.

Contracting Officers shall apply the FAR Clause 52.223-99 according to the prescription below on or around October 15, 2021, effective immediately upon full execution.

**PRESCRIPTION:** The clause applies to all solicitations and existing and new contracts above the micro purchase threshold except as indicated 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).

HUD will share the deviation widely among the workforces to ensure full awareness of and compliance with E.O. 14042. The FAR Council has opened a case (FAR Case 2021-021, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors) to make appropriate amendments in the FAR to reflect the requirements of E.O. 14042. This deviation will be effective until the FAR is amended, or the deviation is otherwise rescinded.

A copy of this deviation (including direction to the workforce, prescription for use of clause, and clause text) will be provided to the FAR Secretariat, General Services Administration, by emailing the deviation to [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please contact Patricia Broome if you have any questions or concerns at [patricia.a.broome@hud.gov](mailto:patricia.a.broome@hud.gov) or (202) 402-5290.



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Ronald C. Flom  
Chief Procurement Officer

October 7, 2021

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Date

Attachment

**FAR Deviation Clause**  
**Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors**

*September 30, 2021*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**Subpart 52.2—Text of Provisions and Clauses**

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**52.223-99 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, 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)