



NATIONAL SCIENCE FOUNDATION
2415 Eisenhower Avenue • Alexandria, VA 22314

October 8, 2021

MEMORANDUM

TO: National Science Foundation, Division of Acquisition and Cooperative Support
National Science Foundation Acquisition Workforce

FROM: Patrick K. Breen
Senior Procurement Executive

SUBJECT: Class Deviation From the Federal Acquisition Regulation Regarding
Implementation of Executive Order 14042, Ensuring Adequate COVID Safety
Protocols for Federal Contractors.

PURPOSE: This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) to implement [Executive Order \(E.O.\) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors](#), signed September 9, 2021.

This memorandum also provides instructions for the NSF acquisition workforce on when to include a new clause in NSF's FAR-based solicitations and contracts. The instructions include NSF-specific implementation timelines for solicitations, new contracts, and existing contracts.

BACKGROUND: To ensure the health and safety of the federal workforce and contractor community, the President signed E.O. 14042. The E.O. promotes economy and efficiency in Federal procurement by ensuring that contractors and subcontractors that contract with the Federal Government provide COVID-19 safeguards. In pertinent part, the E.O. directs the Safer Federal Workforce Taskforce to issue guidance to provide implementation details and the Federal Acquisition Regulatory (FAR) Council to establish a new clause for inclusion in FAR-based solicitations and contracts.

On September 24, the Safer Federal Workforce Task Force issued guidance to implement the E.O., available at saferfederalworkforce.gov/contractors/, which, among other things, requires:

- Vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;
- Requirements related to masking and physical distancing while in covered contractor workplaces; and
- Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

On September 30, 2021, the Civilian Agency Acquisition Council (CAAC) issued [CAAC Letter 2021-03](#) regarding implementation of E.O. 14042, which serves as consultation with the CAAC Chair to authorize agencies to issue their own class deviations.

This class deviation sets forth NSF's implementation of the E.O. and CAAC letter as to its FAR-based solicitations and contracts.

APPLICABILITY: To promote the goal of getting more people vaccinated and decrease the spread of COVID-19, the Safer Federal Workforce Task Force's guidance strongly encourages agencies to apply the requirements of its guidance broadly, consistent with applicable law.

Consistent with the E.O. and the Task Force guidance, I am requiring NSF's Contracting Officers to include the attached clause in **all** of NSF's existing/active (*i.e.*, unexpired) and new FAR-based procurement solicitations, contracts, BPAs, task orders, delivery orders, and modifications thereof (*e.g.*, renewals, option exercises, extensions) that are for services (including construction), except for the following narrow categories:¹

- Micro-Purchases;
- 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); and
- 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 contractor or subcontractor under the FAR to an Indian-owned or tribally owned business entity).

ACTIONS REQUIRED BY CONTRACTING OFFICERS: Subject to the Applicability section above, NSF's Contracting Officers shall include the attached clause, (*see* Attach. A, FAR 52.223-99), in procurement solicitations and contracts as follows:

Contract Formation

- a. *New Solicitations Issued On Or After October 15, 2021.* Contracting Officers shall include the clause at FAR 52.223-99, Ensuring Adequate COVID Safety Protocols for Federal Contractors in new applicable solicitations issued on or after October 15, 2021.
- b. *Pending Solicitations Issued Before October 15, 2021.* Contracting Officers shall either amend the solicitation to include the clause at FAR 52.223-99 or incorporate it into the award of the apparent successful offeror for applicable solicitations that were issued prior to October 15, 2021, that have not closed, or awards that have not been made by October 15, 2021.

¹ In the exercise of my discretion and only to the extent it becomes necessary to do so, I reserve all rights to exclude other specific FAR-based procurement transactions from coverage consistent with the E.O., the Safer Federal Workforce Task Force guidance, and/or other applicable law.

- c. *New Contracts*. Contracting officers shall include the clause at FAR 52.223-99 in new applicable contracts awarded on or after October 15, 2021.

Contract Administration

- a. *Options, Extensions, Renewals*. On or after October 15, 2021, Contracting Officers shall NOT exercise an option, renew an existing contract, or otherwise extend the period of performance of an existing contract unless the contract has been modified to include the new clause at FAR 52.223-99.
- b. *Existing Contracts*. For existing FAR-based procurement contracts, Contracting Officers shall send a cover letter and a bilateral modification request to add the clause at FAR 52.223-99 for existing contracts subject to the following:
- *Timeline: Above the SAT v. Below the SAT*.
 - *Above SAT*. Contracting Officers shall promptly complete as many modifications as possible before November 14, 2021, prioritizing applicable contracts above the simplified acquisition threshold.
 - *Below SAT*. For applicable contracts below the simplified acquisition threshold but above the micro-purchase threshold, Contracting Officers shall process modifications with haste as soon as practicable.
 - *Bilateral*. Consistent with FAR Subpart 43, the applicable contract's Changes Clause, and/or other applicable authority, the initial proposed modification should be bilateral and Contracting Officers should generally consider using SF30 to document the change.
 - *Template Language*. Language substantially similar to what is in Attachment C shall be used in the cover letter, or email, to the NSF contractor. At the discretion of NSF's Contracting Officers, the language may be tailored, if necessary.
 - *Non-compliance Remedial Options*. Contracting Officers are authorized to pursue all applicable contractual remedies to the extent a contractor does not timely (e.g., by November 14, 2021) return a signed modification to NSF.

AUTHORITY: This class deviation is issued under the authority of FAR 1.404 and/or other applicable authority. This deviation is issued following consultation with the Chair of the Civilian Acquisition Council (CAAC) in accordance with FAR 1.404(a).

EFFECTIVE DATE: This deviation is effective as dated and shall remain in effect until it is incorporated into the FAR, or until this class deviation is rescinded, extended, or amended.

POINT OF CONTACT: Contact Raymond McCollum at 703-292-4225 or rmccollu@nsf.gov

ATTACHMENTS:

Attachment A:

FAR 52.223-99, ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR
FEDERAL CONTRACTORS (OCT 2021) (DEVIATION)

Attachment B:

Contracting Officer Sample Cover Letter

ATTACHMENT A

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

52.223-99 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 micro-purchase 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)

ATTACHMENT B

Contracting Officer Sample Cover Letter



NATIONAL SCIENCE FOUNDATION
2415 Eisenhower Avenue • Alexandria, VA 22314

[Date]

[Contractor's Name]

[Contractor's Street Address]

[Contractor's City, State and Zip Code]

Subject:

Dear [Contractor's POC Name],

NSF appreciates the hard work and dedication of our contractors. The health and safety of NSF employees, contractors and their families is our top priority. In order to ensure the health and safety of the Federal workforce and contractor community, the President signed Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors. The requirements in the Executive Order are being implemented via a FAR deviation. The clause in the FAR deviation will be incorporated into NSF contracts via a bilateral modification under the authority of the Changes clause and/or other applicable authority.

If you hold an NSF FAR-based procurement contract for services or construction that exceeds the micro-purchase threshold, NSF requests that you promptly accept this bilateral contract modification. The modification is mandatory before NSF will renew, extend the period of performance of your contract, or exercise an option.

NSF's Senior Procurement Executive has authorized NSF's Contracting Officers to pursue all remedial options if a signed modification is not promptly returned to NSF by November 14, 2021.

Based on the urgency of this issue, please return your signed contract modification as soon as possible and no later than November 14, 2021.

For more information, please visit <https://www.saferfederalworkforce.gov/contractors/>.