

Chief Procurement Officer Message on New Procedures for Contractors and Subcontractors to IRS Facilities in Response to the Ongoing COVID-19 Pandemic

As the global pandemic remains, the IRS continues to update its current operating procedures in response to the updated Centers for Disease Control and Prevention (CDC) Guidance and subsequent information issued by the Administration's Safer Workforce Task Force ("Task Force") concerning COVID-19 Workplace Safety: Agency Model Safety Principles, issued below.

- [July 29, 2021 - Guidance regarding COVID-19 Workplace Safety: Agency Model Safety Principles](#)
- [September 9, 2021 - President Biden to announce new vaccine mandates for government employees & contractors](#)
- [September 14, 2021 - Executive Order 14042 Ensuring Adequate COVID Safety Protocols for Federal Contractors](#)
- [September 24, 2021 - Guidance from the Safer Federal Workforce Task Force - COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors](#)
- [November 4, 2021 – White House announced Federal Contractor COVID-19 Vaccine Deadline Pushed Back to January 4, 2021](#)

The Federal Acquisition Regulatory Council issued a new Federal Acquisition Regulation (FAR) clause that is required by [Executive Order \(E.O.\) 14042](#). In accordance with [E.O. 14042](#), dated October 7, 2021, Treasury submitted a Class Deviation from the FAR to implement the FAR Clause 52.223-99, Ensuring Adequate COVID Safety Protocols for Federal Contractors, for covered contracts. Governmentwide guidance continues to evolve, including on-site contractors and visitors are still required to complete the Office of Management and Budget's (OMB) Certification of Vaccination Form when entering a federal building, or a leased facility *until* the FAR clause implementing E.O. 14042 is incorporated into covered contracts. Contractor employees working under a covered contract need to be fully vaccinated by **January 18, 2022**, unless legally entitled to an accommodation. While it is understood that many contractors must perform work at IRS operations and facilities, compliance with the new guidance is required.

Authority: This clause implements E.O. 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). Directs federal agencies to ensure that the parties that contract with the federal government provide adequate COVID-19 safeguards to their workers performing on or in connection with the contract to decrease the spread of COVID-19, reduce worker absence, lower labor costs and improve the efficiency of contractors and subcontractors at sites where they are performing work.

General Information: Based on the most [recent guidance issued on September 24, 2021, from the COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors](#),

federal contractors and subcontractors with a covered contract will be required to conform to the following workplace safety protocols (see [What's New? | Safer Federal Workforce](#)):

1. COVID-19 vaccination of covered contractor employees. Contractor employees working under a covered contract need to be fully vaccinated by **January 18, 2022**, except in limited circumstances where an employee is legally entitled to an accommodation (*contractor is responsible for considering, and dispositioning, such requests for accommodations regardless of the covered contractor employee's place of performance*).

2. Legally entitled accommodations will be processed by contractor employer. If accommodation is approved, then contractors and visitors will need to provide proof they received a negative COVID-19 test within 3 days prior to entry to a federal building or a leased facility. For example, if a contractor is on-site Monday, Tuesday, and Friday. On Monday they show proof of a negative test taken Sunday. On Tuesday they do not need to show a new test, as the Sunday test is within the 3 days. On Friday they must show a new negative test result from the prior 3 days.

Contractors are responsible for getting their own tests. The COVID-19 test must:

- Be approved by the U.S. Food and Drug Administration, and
- Provide a dated result (for purposes of applying the requirement, it must be from no later than the previous three (3) days). All contractors should seek COVID-19 testing through state and local government testing programs, third-party testing services or employer testing services.

3. Compliance by individuals, including covered contractor employees, with the guidance related to masking and physical distancing while in covered contractor workplaces.

4. Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces. The contractor's COVID-19 coordinator should track and collect completed Certification of Vaccination forms. Contractors must complete the form and keep a copy with them during their time on federal premises because they may be asked to show this information upon entry or anytime while in the facility. **No information or documentation regarding the test result may be collected or stored by the IRS.**

5. [Frequently Asked Questions for Federal Contractors and Subcontractors](#).

6. Contractors entering federal space frequently for limited reasons (such as, FedEx, UPS delivery) shall comply with published OMB and CDC guidance for masking and physical distancing at a covered federal workplace.

7. The Task Force guidance applies to all covered contractor employees and to all contractor or subcontractor workplace locations. While at a federal workplace, covered contractor employees must also comply with any additional agency workplace safety requirements

for that workplace.

8. The IRS will insert Treasury deviated clause 52.223.99 in the following solicitations and contracts for services, including construction:

- All 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, or blanket-purchase agreements).
- All 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, or blanket purchase agreements).
- Extensions or renewals of existing contracts and orders awarded on or after October 15, 2021; and
- Options on existing contracts and orders exercised on or after October 15, 2021.
- The clause applies to contracts not covered in by E.O. 14042 because they are below SAT, but that are above the micro-purchase threshold; and
- Contracts or subcontracts solely for the manufacturing of products.
- For contracts and orders awarded prior to October 15, 2021, where performance is ongoing the deviation clause must be incorporated at the time an option is exercised or an extension to the period of performance is required.

9. The IRS will not include the clause in the following actions: Grants, contract like instruments or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) and solicitations and contracts for work performed outside of the U.S. or it's outlying areas.

Effective: Guidance provided is effective immediately.

Expiration: Guidance provided is in effect until superseded, incorporated into the FAR, or otherwise rescinded.

Applicable Acquisitions: This applies to solicitations, contracts, indefinite delivery vehicle, blanket purchase agreements, task orders and call orders for services (including construction) above the micro-purchase threshold.

Clause Changes: Clause 52.223-99 Ensuing Adequate COVID-19 Safety Protocols for Federal Contractors. (OCT 2021) (**DEVIATION**) shall be used to implement guidance under this correspondence (Attachment 1).

Questions or comments about this class deviation may be directed to your Contracting Officer.

[CPO Signature]

ATTACHMENT 1 - 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors. (OCT 2021) (DEVIATION)

Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

As prescribed in FAR Class Deviation 22-0X Executive Order 14042 Ensuring Adequate COVID Safety Protocols for Federal Contractors, use the following clause:

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 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)