



# GSA Implementation of Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors

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Industry Session

October 13, 2021

# Agenda

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- **EO Requirements**
- **Taskforce Guidance**
- **Translating the Requirements to Contracting**
- **Implementation Procedures**
- **Business Line Specific Information - FAS, PBS, Leasing**
- **Resources**

# EO Requirements

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- The President signed [Executive Order 14042 on Ensuring Adequate COVID Safety Protocols for Federal Contractors](#) on September 9, 2021
- The EO directs Executive departments and agencies to include a clause in all covered contracts and contract-like instruments requiring contractors to comply with guidance issued by the Safer Federal Workforce Task Force
- The EO directed the Safer Federal Workforce Task Force to issue explanations of protocols required of contractors and subcontractors to comply with workplace safety guidance by September 24, 2021
- FAR Council directed to establish a new clause by October 8, 2021

# Safer Federal Workforce Task Force Guidance

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- The Safer Federal Workforce Task Force guidance has three basic requirements:
  1. Requirement for “covered contractor employees” to be fully vaccinated by December 8, 2021. Requirement flows down to subcontractors
  2. Requirement for “covered contractors” to ensure employees follow CDC protocols as described in [Safer Federal Workforce Task Force Guidance](#)
  3. Requirement for “covered contractors” to designate a lead person for compliance with mandate
- Agencies strongly encouraged to apply the requirement to contracts not called out in the EO
- Covered contractor employees working from home must be vaccinated

# Who Needs to be Vaccinated per the Clause

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Unless there is a legal exception, it applies to:

1.

Any contractor employee working on a covered contract\*

2.

Any contractor employee working “in connection with a covered contract” -- Think anyone in an overhead pool

3.

Anyone who would come into contact with the individuals in circles 1 or 2 at contractor facilities (covered workplace location)\*\*

\* “covered contract” means any contract or subcontract that includes the new clause

\*\* for example, in elevators, restrooms, cafeterias, parking garages/lots, etc.

# Translating the EO and Task Force Guidance to Contracting

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- FAR Council developed a standard clause to include in contracts ahead of a regulation
- Agencies are implementing this through class deviations
  - Rule-making to follow
- Ensuring the health and safety of all GSA employees, contractors, and their families is GSA and the Administration's top priority
- The GSA class deviation provides instructions on how to modify contracts and determine which contracts are covered. Picks up on task force encouragement to apply broadly
- Clause available on the [GSA COVID WEBSITE](#)

# What's a “Covered Contract” or Where the Requirement (Clause) Applies

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- Based on the EO, the clause is required for applicable FAR based and non-FAR based contracts (i.e. “contract like instruments”)
  - Includes leases of real property, concessions, licenses, permits, intergovernmental service agreements, task orders, job orders, etc.
- **Required** for all contracts that **exceed** the simplified acquisition threshold (SAT) or **simplified lease acquisition threshold (SLAT)** for services (as described above) and construction.
- GSA also encouraging it for contracts -
  - At or below the SAT/SLAT
  - For products

# Where the Requirement does not Apply

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- Micro-purchases
- Site acquisitions
- Disposal of real and personal property
- Contractor employees working outside of the United States and its outlying areas
- Contracts with Indian Tribes under the Indian Self Determination and Education Assistance Act (ISDEAA)



# About the Clause

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- Clause directs contractors to follow Safer Federal Workforce Task Force Guidance
- Directs contractors to flow the clause down to applicable subcontracts at all tiers except subcontracts only for products
- All GSA contracts (FAS, PBS, OAS) included in this effort will use the same clause, whether the contract is FAR based or not
- No fill-ins
- No representation or certification
- **No GSA collection of information** about individual contractor employees

# Procedures for Solicitations

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- For all solicitations issued **on or after October 15, 2021**
  - Include the language from the clause at **FAR 52.223-99 Ensuring Adequate COVID Safety Protocols for Federal Contractors**
- For all solicitations issued **prior to October 15, 2021** that have not closed or for awards **not made by October 15, 2021**
  - Amend the solicitation to include the language from the clause at **FAR 52.223-99** or incorporate it into the award of the apparent successful offeror
- Some FAS/PBS specific programs may have earlier implementation timelines

# Procedures for Contracts

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- Applicable contracts and lease acquisitions, **awarded on or after October 15, 2021**, shall include the clause at **FAR 52.223-99**
- Applicable contracts and lease acquisitions, **awarded before October 15, 2021** shall be bilaterally modified to include the clause at **FAR 52.223-99**
  - For **non-IDIQs**, Services will set aggressive deadlines to modify
  - For **IDIQs**, we have asked contractors to sign the modifications no later than November 14, 2021.
    - Agencies asking GSA to modify Schedule contracts so they do not need to modify TOs. GSA's modification will apply to all options on existing orders
    - Modifications not signed by November 14, 2021 will require CO follow-up
  - Adding the clause to contracts for products and contracts below the SAT/SLAT is strongly encouraged, not required
- To simplify and reduce work, modifications will go out automatically with a cover letter

# Procedures for Contracts

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For contracts for services, construction, etc. above the SAT/SLAT...

- **No options or extensions** will be exercised until the modification has been finalized

For **IDIQs**...

- Contracting activities may take interim actions if a signed modification is not returned to GSA by November 14, 2021, such as:
  - Temporarily hiding contractor information on GSA websites and/or e-tools;
  - Flagging non-compliant contractors

# Enforcement

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- CO will enforce just like any other contractual requirement.
- Taskforce Guidance tells contractors that they may assume the subcontractor is complying with the clause absent credible evidence otherwise.
- If concerns arise about vaccination status of a particular employee, CO should ask the contractor to confirm the employee compliance with the vaccination requirement.
- COs should not be directly requesting employee vaccination information. Work through contract administration POCs.

# FAS Implementation of E.O. 14042

# Overview

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- [GSA Class Deviation CD-2021-13](#) (Attachment C) clarifies applicability for FAS contract vehicles
- FAS will include the clause at FAR 52.223-99 in all new applicable contracts and “contract-like instruments” awarded on or after October 15, 2021.
- FAS will bilaterally modify all existing contracts and “contract-like instruments” awarded before October 15, 2021, to include the clause at FAR 52.223-99, as applicable.

# Applicability

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## **FAS will require 52.223-99 in:**

- All Federal Supply Schedule contracts
- Government-wide Acquisition Contracts (GWACs)
- Multi Agency Contracts (MACs)
- Commercial Solutions Opening (CSO)
- Tenders of Service over SAT (T&C documents)

**Assisted Acquisitions:** For acquisitions where GSA is not the funding agency, GSA COs will follow policies of the funding agency.

COs will **strongly encourage** contractors to accept a bilateral modification to include FAR Clause 52.223-99 for the following:

- Automotive contracts solely for products
- Commercial Platform contracts (orders for micro-purchases)
- Tenders of Service below the SAT



# Orders Against FAS IDIQs

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## New Orders

- Beginning November 14, 2021, prior to placing orders, COs shall review the contract to ensure that FAR clause 52.223-99 has been incorporated in the underlying contract.
- If the clause has not been incorporated in the contract, COs shall include the clause in the solicitation and resultant order, as applicable.

## Existing Orders against GSA IDIQ contracts

- COs shall review the contract's T&Cs to determine whether FAR clause 52.223-99 has been incorporated.
- If the underlying contract has not been modified to include the clause, or the underlying contract has expired, the order-level CO shall modify the order (by bilateral modification) to include FAR clause 52.223-99 prior to exercise of the option period or extension.

# Implementation

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## Federal Supply Schedule

- Solicitation Refresh issued October 8, 2021
- FAR clause 52.223-99 will be incorporated into new awards made following refresh
- FAS has begun issuing bilateral modifications for existing Schedule contracts (acceptance required by November 14, 2021)

## Non-Schedule IDIQs/IDVs

- FAS will issue bilateral modifications for most existing contracts around November 15, 2021 (acceptance required by November 14, 2021)
- FAS will use an automated mass modification process to the maximum extent practicable

# Compliance Dashboard

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FAS will develop an external dashboard showing mod acceptance status for FAS IDVs to support customer agencies

|                 |                  |                 |               |         |
|-----------------|------------------|-----------------|---------------|---------|
| Contract Number | Contract Vehicle | Contractor Name | Business Size | Status  |
| (All) ▼         | (All) ▼          |                 | (All) ▼       | (All) ▼ |

| BUSINESS SIZE             | STATUS   |                           |         |
|---------------------------|----------|---------------------------|---------|
|                           | ACCEPTED | DECLINED/CANCELLED/CLOSED | PENDING |
| OTHER THAN SMALL BUSINESS | 2,944    | 5                         |         |
| SMALL BUSINESS            | 13,761   | 42                        | 1       |
| UNDETERMINED              | 107      |                           | 2       |
| GRAND TOTAL               | 16,812   | 47                        | 3       |

# Compliance Tracking

For Schedule contracts, customers can also view the latest terms and conditions by contract at [Contracts Online](#)

GSA Contracts Online

**Welcome to GSA Contracts Online!**

Contracts Online is designed to provide access to specific contract terms and conditions for a selected contract. Exceptions taken by the contractor to any standard contract clauses in the solicitation are also noted for your convenience. Contracts Online was developed to provide greater visibility of GSA contract information when performing market research and/or placing orders.

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**MAS Schedule:** MAS - Multiple Award Schedule

**Point of Contact:** FAS National Customer Service Ctr  
Phone: 1-800-488-3111  
e-mail: [ncsccustomer.service@gsa.gov](mailto:ncscustomer.service@gsa.gov)

- ➔ To view contract clauses for a contractor, click on the "view" link under the Clauses heading.
- ➔ If the contractor has taken exception to any clause, a "view" link will also appear under the Exceptions heading. Clicking this link will show both the standard clause and the exception taken.
- ➔ To view the contractor's GSA Price Catalog, click on the contractor's name.

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| Contractor                                 | Clauses | Exceptions | Contractor                     | Clauses | Exceptions | Contractor           | Clauses | Exceptions |
|--|---------|------------|--------------------------------|---------|------------|----------------------|---------|------------|
| 'JM' TEMPORARY SERVICES & AFFILIATES, INC. | View    |            | AETOS SYSTEMS, INC.            | View    |            | AOC CONNECT LLC      | View    |            |
| 1 SOURCE CONSULTING, INC.                  | View    |            | AEW ENGINEERING INC            | View    |            | AOC SOLUTIONS INC    | View    |            |
| 1 STOP ELECTRONICS CENTER, INC.            | View    |            | AF&S PRODUCTS & SERVICES, INC. | View    |            | AON CONSULTING, INC. | View    |            |
| 1 STOP MECHANICAL INC.                     | View    |            | AF&S PRODUCTS & SERVICES, INC. | View    |            | AON CONSULTING, INC. | View    |            |

# **PBS Acquisition Implementation of E.O. 14042**

# PBS Acquisition

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## *Existing Contracts - Mass Modifications*

- Majority of PBS contracts/orders (approximately 14,000 actions)
- Bilateral modifications will be partially automated using a “Bot”
  - The Bot will create cover letters and modifications in EASi and email to contractors
  - Contractors required to sign the modifications, return to the COs
  - COs will finalize the modifications

# PBS Acquisition

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## *New and Existing Solicitations*

- Existing solicitations must be amended
- New solicitations and contracts must include the new clause
- PBS Construction Templates will be updated to include the new clause

# PBS Acquisition

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## *Implementation*

- Incorporating the clause
  - Mass Modification Bot Process
  - Manual contract modifications (actions outside of EASi)
  - Solicitation amendments
- Dashboard to track progress
  - Daily progress reports



# **PBS Leasing Implementation of E.O. 14042**

# PBS Leasing

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## *Existing Leases*

- Office of Leasing (OL) to automate issuance of bilateral lease amendments to Lessors for signature
- Zonal ALCOs will counter-sign lease amendments
- Tracking system will note status of lease amendments

# PBS Leasing

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## *Existing Leases*

- For leases at or below SLAT:
  - Lessor agreement is encouraged, not mandatory
- For leases above SLAT:
  - LCO cannot extend or renew if Lessor does not agree to this clause

# PBS Leasing

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## *New Leases*

- Office of Leasing updated General Clauses to include FAR clause
- New Request for Lease Proposals (RLPs) issued on or after October 15, 2021 must include updated General Clauses
- RLP issued before October 15, 2021:
  - If not past date for Final Proposal Revision (FPR), issue amendment
  - If past date for FPR, send FAR clause or updated General Clauses to apparent successful offeror

# Resources

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- [GSA COVID WEBSITE](#)
- [GSA CONTRACTS ONLINE](#)
- [GSA SAFETY STANDARDS](#)
- [SAFER FEDERAL WORKFORCE FAQs](#)
- [SAFER WORKFORCE VACCINATION REQUIREMENTS](#)

