



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION
AND SUSTAINMENT

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Coronavirus Disease 2019 Vaccination: Limited Exception Up to 60 Days

The attached Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors (“Task Force Guidance”), updated November 10, 2021, provides a limited authority for agency heads to approve an exception, for up to 60 days, to allow a covered contractor to have covered contractor employees begin work on a covered contract or at a covered workplace before the employees are fully vaccinated against COVID-19.

This authority may be exercised, without power of re-delegation, at a level no lower than—

- (1) The Service Acquisition Executive for each of the Military Departments;
- (2) The Heads of the Defense Agencies, U.S. Cyber Command, U.S. Special Operations Command, and U.S. Transportation Command; or
- (3) The Principal Director, Defense Pricing and Contracting, for the Defense Field Activities and any Department of Defense (DoD) Components not previously listed.

This authority may be exercised on both Federal Acquisition Regulation (FAR) based contracts and Other Transaction Agreements (including research, development, and/or prototyping).

When this exception is granted, the covered contractor must ensure that all of its covered contractor employees are fully vaccinated no later than 60 days after beginning to work on a covered contract, Other Transaction Agreement, or at a covered work place.

Approving this limited exception neither relieves the requirement to include Defense Federal Acquisition Regulation Supplement (DFARS) Clause 252.223-7999, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 2021-00009), in contracts, task

orders, delivery orders, and Other Transaction Agreements; nor permits a delay in including DFARS Clause 252.223-7999, as prescribed in DFARS Class Deviation 2021-00009, or, for Other Transaction Agreements, as prescribed in the attached Defense Pricing and Contracting (DPC) policy memorandum, “Implementation of Executive Order 14042, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, in Other Transaction Agreements,” dated October 8, 2021. As a reminder, although the date required for full vaccination of covered contractor employees was recently updated in the “Task Force Guidance”, there is **no change** to the other effective dates by which contracting officers must include DFARS Clause 252.223-7999 in covered solicitations, contracts, task orders, delivery orders, Other Transaction Agreements, and modifications

Any limited exceptions of up to 60 days approved pursuant to this authority shall be reported to DPC within one business day after the exception has been approved, using the instructions provided within the attached template.

Additionally, DoD Components shall identify a primary and an alternate exception reporting point-of-contact (POC) to DPC by Monday, December 6, 2021. DPC will provide DoD Component POCs with additional details about how to submit the report.

Please direct any comments or questions, and submit the name of your Component’s exception reporting POCs to DPC, Contract Policy, at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

John M. Tenaglia
Principal Director,
Defense Pricing and Contracting

Attachments:
As stated

Safer Federal Workforce Task Force
COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors
Updated November 10, 2021

Introduction

On September 9, President Biden announced his [Path Out of the Pandemic: COVID-19 Action Plan](#). One of the main goals of this science-based plan is to get more people vaccinated. As part of that plan, the President signed Executive Order 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#), (“the order”) which 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 (“the 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.

The actions directed by the order will ensure that parties who contract with the Federal Government provide COVID-19 safeguards in workplaces with individuals working on or in connection with a Federal Government contract or contract-like instrument. These workplace safety protocols will apply to all covered contractor employees, including contractor or subcontractor employees in covered contractor workplaces who are not working on a Federal Government contract or contract-like instrument. These safeguards will decrease the spread of SARS-CoV-2, the virus that causes COVID-19, which will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors performing work for the Federal Government.

Pursuant to this Guidance, and in addition to any requirements or workplace safety protocols that are applicable because a contractor or subcontractor employee is present at a Federal workplace, Federal contractors and subcontractors with a covered contract will be required to conform to the following workplace safety protocols:

1. COVID-19 vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;
2. Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and
3. Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

The order also sets out a process for OMB and the Safer Federal Workforce Task Force to update the Guidance for covered contractors, which the Task Force will consider doing based on future changes to Centers for Disease Control and Prevention (“CDC”) COVID-19 guidance and as warranted by the circumstances of the pandemic and public health conditions. It also sets out a process for the Federal Acquisition Regulatory Council (“FAR Council”) to implement such protocols and guidance for covered Federal procurement solicitations and contracts subject to the Federal Acquisition Regulation (“FAR”) and for agencies that are responsible for covered contracts and contract-like instruments not subject to the FAR to take prompt action to ensure that those covered contracts and contract-like instruments include the clause, consistent with the order.

Covered contractors shall adhere to the requirements of this Guidance. The Director of OMB has, as authorized by Executive Order 14042, approved this Guidance and has, an exercise of the delegation of authority (see 3 U.S.C. § 301) under the Federal Property and Administrative Services Act determined that this Guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. The Director has published such determination in the Federal Register.

Definitions

Community transmission – means the level of community transmission as set forth in the [CDC COVID-19 Data Tracker County View](#).

Contract and contract-like instrument – has the meaning set forth in the Department of Labor’s proposed rule, “Increasing the Minimum Wage for Federal Contractors,” [86 Fed. Reg. 38,816, 38,887](#) (July 22, 2021). If the Department of Labor issues a final rule relating to that proposed rule, this term shall have the meaning set forth in that final rule.

That proposed rule defines a contract or contract-like instrument as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term contract includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term contract shall be interpreted broadly as to include, but not be limited to, any contract within the definition provided in the FAR at 48 CFR chapter 1 or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. The term contract includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not otherwise subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

Contractor or subcontractor workplace location – means a location where covered contract employees work, including a covered contractor workplace or Federal workplace.

Covered contract – means any contract or contract-like instrument that includes the clause described in Section 2(a) of the order.

Covered contractor – means a prime contractor or subcontractor at any tier who is party to a covered contract.

Covered contractor employee – means any full-time or part-time employee of a covered contractor working on or in connection with a covered contract or working at a covered contractor workplace. This includes employees of covered contractors who are not themselves working on or in connection with a covered contract.

Covered contractor workplace – means a location controlled by a covered contractor at which any employee of a covered contractor working on or in connection with a covered contract is likely to be present during the period of performance for a covered contract. A covered contractor workplace does not include a covered contractor employee’s residence.

Federal workplace – means any place, site, installation, building, room, or facility in which any Federal executive department or agency conducts official business, or is within an executive department or agency’s jurisdiction, custody, or control.

Fully vaccinated – People are considered [fully vaccinated](#) for COVID-19 two weeks after they have received the second dose in a two-dose series, or two weeks after they have received a single-dose vaccine. There is currently no post-vaccination time limit on fully vaccinated status; should such a limit be determined by the Centers for Disease Control and Prevention, that limit will be considered by the Task Force and OMB for possible updating of this Guidance.

For purposes of this Guidance, people are considered fully vaccinated if they have received COVID-19 vaccines currently approved or authorized for emergency use by the U.S. Food and Drug Administration (Pfizer-BioNTech, Moderna, and Johnson & Johnson [J&J]/Janssen COVID-19 vaccines) or COVID-19 vaccines that have been listed for emergency use by the World Health Organization (e.g., AstraZeneca/Oxford). More information is available at [Interim Clinical Considerations for Use of COVID-19 Vaccines | CDC](#).

Clinical trial participants from a U.S. site who are documented to have received the full series of an “active” (not placebo) COVID-19 vaccine candidate, for which vaccine efficacy has been independently confirmed (e.g., by a data and safety monitoring board), can be considered fully vaccinated two weeks after they have completed the vaccine series. Currently, the Novavax COVID-19 vaccine meets these criteria. More information is available at the CDC website [here](#).

Mask – means any mask that is consistent with CDC recommendations as set forth in [Types of Masks and Respirators | CDC](#). This may include the following: disposable masks, masks that fit properly (snugly around the nose and chin with no large gaps around the sides of the face), masks made with breathable fabric (such as cotton), masks made with tightly woven fabric (i.e., fabrics that do not let light pass through when held up to a light source), masks with two or three layers, masks with inner filter pockets, and filtering facepiece respirators that are approved by the National Institute for Occupational Safety and Health or consistent with international standards. The following do not constitute masks for purposes of this Guidance: masks with exhalation valves, vents, or other openings; face shields only (without mask); or masks with single-layer fabric or thin fabric that does not block light.

Guidance

Covered contractors are responsible for ensuring that covered contractor employees comply with the workplace safety protocols detailed below. Covered contractor employees must also comply with agency COVID-19 workplace safety requirements while in Federal workplaces.

Consistent with applicable law, agencies are strongly encouraged to incorporate a clause requiring compliance with this Guidance into contracts that are not covered or directly addressed by the order because the contract is under the Simplified Acquisition Threshold as defined in section 2.101 of the FAR or is a contract or subcontract for the manufacturing of products. Agencies are also strongly encouraged to incorporate a clause requiring compliance with this Guidance into existing contracts and contract-like instruments prior to the date upon which the order requires inclusion of the clause.

- 1. Vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation*

Covered contractors must ensure that all covered contractor employees are fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation. Covered contractor employees must be fully vaccinated no later than January 18, 2022. After that date, all covered contractor employees must be fully vaccinated by the first day of the period of performance on a newly awarded covered contract, and by the first day of the period of performance on an exercised option or extended or renewed contract when the clause has been incorporated into the covered contract.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they are not vaccinated against COVID-19 because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer. Requests for “medical accommodation” or “medical exceptions” should be treated as requests for a disability accommodation.

Should a Federal agency have an urgent, mission-critical need for a covered contractor to have covered contractor employees begin work on a covered contract or at a covered workplace before becoming fully vaccinated, the agency head may approve an exception for the covered contractor—in the case of such limited exceptions, the covered contractor must ensure these covered contractor employees are fully vaccinated within 60 days of beginning work on a covered contract or at a covered workplace. The covered contractor must further ensure that such employees comply with masking and physical distancing requirements for not fully vaccinated individuals in covered workplaces prior to being fully vaccinated.

The covered contractor must review its covered employees’ documentation to prove vaccination status. Covered contractors must require covered contractor employees to show or provide their employer with one of the following documents: a copy of the record of immunization from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813_r, published on September 3, 2020), a copy of medical records documenting

the vaccination, a copy of immunization records from a public health or State immunization information system, or a copy of any other official documentation verifying vaccination with information on the vaccine name, date(s) of administration, and the name of health care professional or clinic site administering vaccine. Covered contractors may allow covered contractor employees to show or provide to their employer a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such a record.

The covered contractor shall ensure compliance with the requirements in this Guidance related to the showing or provision of proper vaccination documentation.

Covered contractors are strongly encouraged to incorporate similar vaccination requirements into their non-covered contracts and agreements with non-covered contractors whose employees perform work at covered contractor workplaces but who do not work on or in connection with a Federal contract, such as those contracts and agreements related to the provision of food services, onsite security, or groundskeeping services at covered contractor workplaces.

2. Requirements related to masking and physical distancing while in covered contractor workplaces

Covered contractors must ensure that all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at a covered contractor workplace, as discussed further in this Guidance.

In addition to the guidance set forth below, CDC's guidance for mask wearing and physical distancing in specific settings, including healthcare, transportation, correctional and detention facilities, and schools, must be followed, as applicable.

In areas of high or substantial community transmission, fully vaccinated people must wear a mask in indoor settings, except for limited exceptions discussed in this Guidance. In areas of low or moderate community transmission, fully vaccinated people do not need to wear a mask. Fully vaccinated individuals do not need to physically distance regardless of the level of transmission in the area.

Individuals who are not fully vaccinated must wear a mask indoors and in certain outdoor settings (see below) regardless of the level of community transmission in the area. To the extent practicable, individuals who are not fully vaccinated should maintain a distance of at least six feet from others at all times, including in offices, conference rooms, and all other communal and work spaces.

Covered contractors must require individuals in covered contractor workplaces who are required to wear a mask to:

- Wear appropriate masks consistently and correctly (over mouth and nose).
- Wear appropriate masks in any common areas or shared workspaces (including open floorplan office space, cubicle embankments, and conference rooms).

- For individuals who are not fully vaccinated, wear a mask in crowded outdoor settings or during outdoor activities that involve sustained close contact with other people who are not fully vaccinated, consistent with CDC guidance.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they cannot wear a mask because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer.

Covered contractors may provide for exceptions to mask wearing and/or physical distancing requirements consistent with CDC guidelines, for example, when an individual is alone in an office with floor to ceiling walls and a closed door, or for a limited time when eating or drinking and maintaining appropriate distancing. Covered contractors may also provide exceptions for covered contractor employees engaging in activities in which a mask may get wet; high intensity activities where covered contractor employees are unable to wear a mask because of difficulty breathing; or activities for which wearing a mask would create a risk to workplace health, safety, or job duty as determined by a [workplace risk assessment](#). Any such exceptions must be approved in writing by a duly authorized representative of the covered contractor to ensure compliance with this Guidance at covered contractor workplaces, as discussed further below.

Masked individuals may be asked to lower their masks briefly for identification purposes in compliance with safety and security requirements.

Covered contractors must check the [CDC COVID-19 Data Tracker County View website](#) for community transmission information in all areas where they have a covered contractor workplace at least weekly to determine proper workplace safety protocols. When the level of community transmission in the area of a covered contractor workplace increases from low or moderate to substantial or high, contractors and subcontractors should put in place more protective workplace safety protocols consistent with published guidelines. However, when the level of community transmission in the area of a covered contractor workplace is reduced from high or substantial to moderate or low, the level of community transmission must remain at that lower level for at least two consecutive weeks before the covered contractor utilizes those protocols recommended for areas of moderate or low community transmission.

- 3. Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.*

Covered contractors shall designate a person or persons to coordinate implementation of and compliance with this Guidance and the workplace safety protocols detailed herein at covered contractor workplaces. The designated person or persons may be the same individual(s) responsible for implementing any additional COVID-19 workplace safety protocols required by local, State, or Federal law, and their responsibilities to coordinate COVID-19 workplace safety protocols may comprise some or all of their regular duties.

The designated individual (or individuals) must ensure that information on required COVID-19 workplace safety protocols is provided to covered contractor employees and all other individuals likely to be present at covered contractor workplaces, including by communicating the required workplace safety protocols and related policies by email, websites, memoranda, flyers, or other means and posting signage at covered contractor workplaces that sets forth the requirements and workplace safety protocols in this Guidance in a readily understandable manner. This includes communicating the COVID-19 workplace safety protocols and requirements related to masking and physical distancing to visitors and all other individuals present at covered contractor workplaces. The designated individual (or individuals) must also ensure that covered contractor employees comply with the requirements in this guidance related to the showing or provision of proper vaccination documentation.

Frequently Asked Questions

Frequently Asked Questions regarding this Guidance can be found here:

<https://www.saferfederalworkforce.gov/faq/contractors/>

All Task Force Guidance, FAQs, and additional information for Federal contractors and subcontractors can be found here:

<https://www.saferfederalworkforce.gov/contractors/>



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DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Implementation of Executive Order 14042, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, in Other Transaction Agreements

This memorandum implements the requirements of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021, which directs agencies to include a clause in certain contracts and contract-like instruments to ensure contractors comply with all guidance for contractor and subcontractor workplace locations. This guidance was published by the Safer Federal Workforce Task Force, and is available at: <https://www.saferfederalworkforce.gov/contractors/>. Class Deviation 2021-O0009 promulgated clause 252.223-7999, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, for use in Federal Acquisition Regulations-based contracts.

Effective immediately, agreements officers shall insert the attached clause, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, in the following Other Transaction Agreements and modifications thereof that are for services (including research, development, and/or prototyping) performed in whole or in part within the United States or its outlying areas:

- Solicitations issued on or after October 15, 2021, and agreements awarded pursuant to those solicitations, that are expected to exceed \$250,000.
- Agreements awarded on or after November 14, 2021, from solicitations issued before October 15, 2021, that exceed \$250,000.
- All extensions or renewals exceeding \$250,000 issued on or after October 15, 2021.
- Award of new work executed on after November 14, 2021, exceeding \$250,000, and within the existing ceiling and period of performance of an agreement irrespective of when the agreement was awarded.
- All options exercised, on or after October 15, 2021, on agreements that exceed \$250,000.

Agreements officers may make modifications to the clause to reflect the characterization of the parties to the agreement if terms other than “contractor” and “subcontractor” are used.

In accordance with the Safer Federal Workforce Task Force Guidance, agreements officers may insert the clause in—

- Solicitations issued prior to October 15, 2021;
- Agreements awarded before November 14, 2021, resulting from solicitations issued before October 15, 2021;
- Extensions or renewals, or award of new work within the existing ceiling and period of performance of the agreement, that are valued at or below \$250,000; and
- Agreements for the manufacturing of products.

When modifying existing agreements, agreements officers shall use a bilateral modification to incorporate the attached clause.

This guidance remains in effect until rescinded. Direct any comments or questions to the Office of the Under Secretary of Defense for Acquisition and Sustainment, Defense Pricing and Contracting, Contract Policy, at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

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John M. Tenaglia
Principal Director,
Defense Pricing and Contracting

Attachment:
As stated

Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors

Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors

As prescribed in Principal Director, DPC memorandum of October 8, 2021, Implementation of Executive Order 14042, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, in Other Transaction Agreements, use the following clause:

ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021)

(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 agreement, 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 \$250,000 and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)