

MEMORANDUM

Date: December 9, 2021

Subject: Update – Implementation of Executive Order 14042 – “Ensuring Adequate COVID Safety Protocols for Federal Contractors”

FROM: Kimberly Y. Patrick, Senior Procurement Executive and Director
EPA Office of Acquisition Solutions



TO: All EPA Contractors

On December 7, 2021, the U.S. District Court for the Southern District of Georgia issued a preliminary injunction halting implementation of Executive Order 14042 – “Ensuring Adequate COVID Safety Protocols for Federal Contractors” in all U.S. states and territories (outlying areas). It is important to note that this injunction and the injunction issued by the U.S. District Court for the Eastern District of Kentucky on November 20, 2021, are preliminary and may be supplemented, modified, or vacated, depending on the course of ongoing litigation. Given the uncertainty surrounding the court orders, this updated notice and guidance have been formulated to be applicable even if the existing court orders change or new orders are issued.

OFFICIAL NOTICE:

For existing EPA contracts that contain EPA Clause 52.223-99 (implementing Executive Order 14042), the Government will take no action to enforce the clause implementing requirements of Executive Order 14042, absent further written notice from the agency, where the place of performance identified in the contract is in a U.S. state or outlying area subject to a court order prohibiting the application of requirements pursuant to the Executive Order (hereinafter, “Excluded State or Outlying Area”). In all other circumstances, the Government will enforce the clause, except for contractor employees who perform substantial work on or in connection with a covered contract in an Excluded State or Outlying Area, or in a covered contractor workplace located in an Excluded State or Outlying Area. A current list of such Excluded States and Outlying Areas is maintained at <https://www.saferfederalworkforce.gov/contractors/>.

FURTHER GUIDANCE:

For existing EPA contracts that *do not* include EPA clause 52.223-99 (implementing Executive Order 14042) if the work under such a contract is performed entirely in an Excluded State or Outlying Area, the agency will not attempt to add EPA Clause 52.223-99 into the contract.

For all other contracts to which Executive Order 14042 applies, when exercising an option, issuing a new order under the contract, or extending the term of the contract, the agency will **pursue** bilateral modification of the contract to include EPA Clause 52.223-99. When requesting that a contractor agree to the addition of EPA Clause 52.223-99, the agency will inform the contractor of the following:

“The Government will take no action to enforce the clause implementing requirements of Executive Order 14042, absent further written notice from the agency, where the place of performance identified in the contract is in a U.S. state or outlying area subject to a court order prohibiting the application of requirements pursuant to the Executive Order (hereinafter, “Excluded State or Outlying Area”). In all other circumstances, the Government will enforce the

clause, except for contractor employees who perform substantial work on or in connection with a covered contract in an Excluded State or Outlying Area, or in a covered contractor workplace located in an Excluded State or Outlying Area. A current list of such Excluded States and Outlying Areas is maintained at <https://www.saferfederalworkforce.gov/contractors/>.”

For issued EPA solicitations, if the solicitation indicates that work under the contract to be awarded will be performed entirely in an Excluded State or Outlying Area, Contracting Officers will issue an amendment removing EPA Clause 52.223-99.

For all other solicitations to which Executive Order 14042 applies, the agency will include EPA Clause 52.223-99 implementing requirements of Executive Order 14042 *and* a provision stating as follows:

“The Government will take no action to enforce the clause implementing requirements of Executive Order 14042, absent further written notice from the agency, where the place of performance identified in the contract is in a U.S. state or outlying area subject to a court order prohibiting the application of requirements pursuant to the Executive Order (hereinafter, “Excluded State or Outlying Area”). In all other circumstances, the Government will enforce the clause, except for contractor employees who perform substantial work on or in connection with a covered contract in an Excluded State or Outlying Area, or in a covered contractor workplace located in an Excluded State or Outlying Area. A current list of such Excluded States and Outlying Areas is maintained at <https://www.saferfederalworkforce.gov/contractors/>.”

NOTE:

The court orders only apply to the application of requirements pursuant to Executive Order 14042. There is no change to the Safer Federal Workforce Task Force’s guidance for COVID-19 workplace safety protocols for Federal agencies. Federal agency workplace safety protocols for Federal buildings and Federally controlled facilities still apply in all locations. Contractor employees working onsite in EPA facilities and/or worksites must still follow EPA workplace safety protocols.

If there are any questions regarding this issue, please contact your cognizant Contracting Officer. Thank you for your continued support as we navigate this process.