

Agency	Summary of FAR Deviation	Link to Deviation
<p>Dept. of Agriculture (DOA)</p>	<ul style="list-style-type: none"> <li>• The DOA’s Deviation <i>requires its COs to include FAR 52.223-99, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (hereinafter “the clause”)</i>, in the following solicitations, contracts, task orders, delivery orders, and modifications thereof <i>that are for services (including construction)</i>:               <ul style="list-style-type: none"> <li>○ New solicitations issued on or after October 15, 2021, and contracts, task orders, and delivery orders awarded pursuant to those solicitations, that are expected to exceed the simplified acquisition threshold (“SAT”).</li> <li>○ New contracts, task orders, and delivery orders, awarded on or after November 14, 2021, from solicitations issued before October 15, 2021, that exceed the SAT.</li> <li>○ All extensions or renewals of existing contracts, task orders, and delivery orders awarded on or after October 15, 2021, that exceed the SAT.</li> <li>○ All options exercised, on or after October 15, 2021, on contracts, task orders, and delivery orders that exceed the SAT.</li> <li>○ Existing IDIQ contracts that are anticipated to have orders that exceed the SAT and that have an ordering period that extends beyond October 15, 2021.</li> </ul> </li> <li>• DOA COs <i>may, at their discretion</i>, insert the deviation clause in the following:               <ul style="list-style-type: none"> <li>○ All solicitations issued prior to October 15, 2021;</li> <li>○ Contracts, task orders, or delivery orders awarded before November 14, 2021, from solicitations issued before October 15, 2021;</li> <li>○ All solicitations, contracts, task orders, and delivery orders valued at or below the SAT and that are for services (including construction); or</li> <li>○ All solicitations, contracts, task orders, and delivery orders for the manufacturing of products.</li> </ul> </li> </ul>	<p><a href="#">DOA Deviation</a></p>

	<ul style="list-style-type: none"> <li>The DOA's Deviation is <b>not</b> applicable to (1) 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 contract or subcontract under the FAR to an Indian-owned or tribally-owned business entity); or (2) 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).</li> </ul>	
<p><b>Dept. of Commerce (DOC)</b></p>	<ul style="list-style-type: none"> <li>The DOC's Deviation requires its COs to include the clause <b><i>in any new contract; new or existing solicitation for a contract; or an existing contract, except</i></b> for the following: <ul style="list-style-type: none"> <li>Contracts or subcontracts <b><i>whose value is equal to or less than the micro-purchase threshold ("MPT")</i></b>;</li> <li>Contracts awarded prior to October 15, 2021, with an ultimate end date prior to October 15, 2022, where work is NOT performed on site at a government facility, that do not contain option periods within this timeframe, and are not otherwise extended; or</li> <li>Solicitations and contracts if performance is outside the United States or its outlying areas (the exclusion is limited to employees who are performing work outside the U.S. or its outlying areas).</li> </ul> </li> <li>The DOC's Deviation is effective immediately for new contracts; solicitations for a contract; extensions or renewals of existing contracts awarded on or after October 15, 2021; and options on existing contracts exercised on or after October 15, 2021. <b><i>For existing contracts, however, the Deviation is effective January 1, 2022.</i></b></li> <li>Exceptions to the requirements of this procurement memorandum may be provided in the below instances and <b><u>shall</u></b> be approved by the Senior Bureau Procurement Official, without further delegation: <ul style="list-style-type: none"> <li>Solicitations or contracts <b><i>whose value is equal to or less than the SAT</i></b>;</li> <li>Existing contracts when the modification to add the clause is not in conjunction with (i) extensions or renewals of existing contracts and orders awarded on or after October 15, 2021; or (ii) options on existing contracts and orders exercised on or after October 15, 2021; or</li> <li><b><i>Solicitations or contracts solely for the provision of products.</i></b></li> </ul> </li> </ul>	<p><a href="#">DOC Deviation</a></p>
<p><b>Dept. of Defense (DoD)</b></p>	<ul style="list-style-type: none"> <li>The DoD's Deviation <b><i>requires</i></b> its COs to include DFARS 252.223-7999 in the following solicitations, contracts, task orders, delivery orders, and modifications thereof <b><i>that are for services (including construction) performed in whole or in part within the United States or its outlying areas</i></b>: <ul style="list-style-type: none"> <li>Solicitations issued on or after October 15, 2021, and contracts, task orders, and delivery orders awarded pursuant to those solicitations, <b><i>that are expected to exceed the SAT</i></b>;</li> </ul> </li> </ul>	<p><a href="#">DoD Deviation</a></p>

	<ul style="list-style-type: none"> <li>○ Contracts, task orders, and delivery orders, awarded on or after November 14, 2021, from solicitations issued before October 15, 2021, <b>that exceed the SAT</b>;</li> <li>○ All extensions or renewals, issued on or after October 15, 2021, of contracts, task orders, and delivery orders <b>that exceed the SAT</b>;</li> <li>○ All options exercised on or after October 15, 2021, on contracts, task orders, and delivery orders <b>that exceed the SAT</b>; or</li> <li>○ Existing indefinite-delivery, indefinite-quantity contracts that are anticipated to have orders <b>that exceed the SAT</b> and that have an ordering period that extends beyond October 15, 2021.</li> <li>● DoD COs <b>may</b> insert the Deviation clause in: <ul style="list-style-type: none"> <li>○ Solicitations issued prior to October 15, 2021;</li> <li>○ Contracts, task orders, or delivery orders awarded before November 14, 2021, resulting from solicitations issued before October 15, 2021;</li> <li>○ Solicitations, contracts, task orders, and delivery orders that are valued at or below the SAT and are for services (including construction) performed in whole or in part within the United States and its outlying areas; or</li> <li>○ Solicitations, contracts, task orders, and delivery orders <b>for the manufacturing of products</b>.</li> </ul> </li> <li>● When modifying existing contracts, task orders, or delivery orders in accordance with this deviation, DoD COs <b>shall use a bilateral modification</b> to incorporate the deviation clause.</li> <li>● The DoD's Deviation is <b>not</b> applicable to contracts or subcontracts with Indian Tribes under the Indian Self-Determination and Education Assistance Act.</li> </ul>	
<p>Dept. of Defense (DoD) – Implementation of E.O. 14042 in OTAs</p>	<ul style="list-style-type: none"> <li>● The DoD issued a second memorandum regarding implementation of E.O. 14042 addressed specifically to Other Transaction Agreements (“OTAs”), thus clarifying that the DoD considers R&amp;D contracts to be <b>services contracts</b> for purposes of applying the Task Force Guidance.</li> <li>● DoD agreements officers <b>shall</b> insert DFARS 252.223-7999, through <b>bilateral modification</b>, in the following OTAs and modifications thereof <b>that are for services (including research, development, and/or prototyping) performed in whole or in part within the United States or its outlying areas</b>: (1) solicitations issued on or after October 15, 2021, and agreements awarded pursuant to those solicitations, that are expected to exceed \$250,000; (2) agreements awarded on or after November 14, 2021, from solicitations issued before October 15, 2021, that exceed \$250,000; (3) all extensions or renewals exceeding \$250,000 issued on or after October 15, 2021; (4) awards 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; or (5) all options exercised, on or after October 15, 2021, on agreements that exceed \$250,000.</li> </ul>	<p><a href="#">DoD Deviation - OTAs</a></p>

	<ul style="list-style-type: none"> <li>• DoD agreements officers <b><i>may</i></b> insert the clause in: <ul style="list-style-type: none"> <li>○ Solicitations issued prior to October 15, 2021;</li> <li>○ Agreements awarded before November 14, 2021, resulting from solicitations issued before October 15, 2021;</li> <li>○ Extensions or renewals, or awards of new work within the existing ceiling and period of performance of the agreement, that are valued at or below \$250,000; and</li> <li>○ Agreements <b><i>for the manufacturing of products.</i></b></li> </ul> </li> </ul>	
<p><b>Dept. of Education (Dept. of Ed.)</b></p>	<ul style="list-style-type: none"> <li>• The Dept. of Education’s Deviation <b><i>requires</i></b> its COs to include the clause in the following solicitations, contracts, delivery/task orders, and modifications: <ul style="list-style-type: none"> <li>○ New contracts (and contract-like instruments) 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);</li> <li>○ 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, for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts);</li> <li>○ Extensions or renewals of existing contracts and orders awarded on or after October 15, 2021;</li> <li>○ Options on existing contracts and orders exercised on or after October 15, 2021, if the option will be exercised no later than December 8, 2021 (if the option would not be exercised by December 8, 2021, COs shall execute modifications to include the clause no later than December 8); and</li> <li>○ All active contracts not already covered by the categories above (subject to the two exceptions below).</li> </ul> </li> <li>• The Dept. of Education’s Deviation <b><i>applies to contracts (1) under the SAT, and (2) for the manufacturing of products.</i></b></li> <li>• The Dept. of Education’s Deviation is <b><i>not</i></b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act, or (2) solicitations or contracts if performance is outside of the United States.</li> </ul>	<p><a href="#">Dept. of Ed. Deviation</a></p>
<p><b>Dept. of Energy (DOE)</b></p>	<ul style="list-style-type: none"> <li>• The DOE’s Deviation simply references (and attaches) the CAAC’s Letter 2021-03 (Sept. 30, 2021) regarding the E.O. 14042 FAR Class Deviation. As such, it appears that the DOE will make a wholesale adoption of the CAAC’s guidance: <ul style="list-style-type: none"> <li>○ DOE COs must include the clause in all (1) new contracts awarded on or after November 14 under solicitations issued before October 15 (this includes new orders awarded on or after November 14,</li> </ul> </li> </ul>	<p><a href="#">DOE Deviation</a></p>

	<p>2021, from solicitations issued before October 15, 2021, under existing indefinite-delivery contracts); (2) new solicitations issued on or after October 15 (this includes new solicitations issued on or after October 15, 2021, for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts); (3) extensions or renewals of existing contracts on or after October 15; and (4) options on existing contracts exercised on or after October 15.</p> <ul style="list-style-type: none"> <li>○ DOE <b>encourages</b>, but does <b>not require</b>, its COs to insert the clause in (1) contracts awarded before November 14 (under solicitations issued before October 15) and (2) contracts under the SAT or for the manufacturing of products.</li> <li>○ The DOE’s Deviation is <b>not</b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act, or (2) in solicitations or contracts if performance is outside of the United States.</li> </ul>	
<p>Dept. of Health and Human Services (HHS)</p>	<ul style="list-style-type: none"> <li>● “Effective immediately, and no later than October 15, 2021, HHS contracting officers shall insert . . . clause 52.223-99 . . . in <b>all</b> contracts or contract-like instruments, for commercial and noncommercial requirements for <b>services, research and development, and construction services</b>[,]” which includes, but is not limited to, solicitations, contracts, task orders, delivery orders, modifications, Blanket Purchase Agreements (BPAs), Broad Agency Announcements (BAA), and Other Transaction Authority (OTA).”</li> <li>● HHS requires its contracting officers to use a <b>bilateral modification</b> to incorporate the Deviation in existing contracts and contract-like instruments.</li> <li>● HHS contracting officers <b>shall</b> include the clause in: <ul style="list-style-type: none"> <li>○ New contracts and contract-like instruments <b>above the MPT</b> awarded on or after November 14, 2021, from solicitations issued before October 15, 2021;</li> <li>○ New solicitations issued on or after October 15, 2021, and contracts and contract-like instruments <b>above the MPT</b> awarded pursuant to those solicitations;</li> <li>○ Extensions or renewals of existing contracts, contract-like instruments and orders <b>above the MPT</b> awarded on or after October 15, 2021;</li> <li>○ Options on existing contracts and contract-like instruments <b>above the MPT</b> and orders exercised on or after October 15, 2021; and</li> <li>○ <b>Existing solicitations, contracts, and contract-like instruments above the MPT and at or below the simplified acquisition threshold.</b></li> </ul> </li> <li>● HHS contracting officers are <b>“highly encouraged”</b> to include the clause in contracts and contract-like instruments <b>above the SAT</b> that have been or will be awarded prior to November 14, 2021, on solicitations issued before October 15, 2021.</li> </ul>	<p><a href="#">HHS Deviation</a></p>

	<ul style="list-style-type: none"> <li>HHS contracting officers are <b>“encouraged, but are not required,”</b> to include the clause in contracts and contract-like instruments that are not covered or directly addressed by the E.O. <b>because the contract or subcontract is for the manufacturing of products.</b></li> <li>The HHS’s Deviation is <b>not</b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act, or (2) solicitations or contracts if performance is outside of the United States.</li> </ul>	
<p><b>Dept. of Homeland Security (DHS)</b></p>	<ul style="list-style-type: none"> <li>The DHS’s Deviation requires its COs to include the clause in all (1) new contracts awarded on or after November 14 under solicitations issued before October 15 (this includes new orders awarded on or after November 14, 2021, from solicitations issued before October 15, 2021, under existing indefinite-delivery contracts); (2) new solicitations issued on or after October 15 (this includes new solicitations issued on or after October 15, 2021, for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts); (3) extensions or renewals of existing contracts on or after October 15; and (4) options on existing contracts exercised on or after October 15.</li> <li>DHS <b>encourages</b>, but does <b>not require</b>, its COs to insert the clause in (1) contracts awarded before November 14 (under solicitations issued before October 15) and (2) contracts under the SAT or for the manufacturing of products.</li> <li>DHS COs must use a <b>bilateral modification</b> to incorporate the clause in existing contracts, task orders, or delivery orders.</li> <li>The DHS’s Deviation is <b>not</b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act, or (2) in solicitations or contracts if performance is outside of the United States.</li> </ul>	<p><a href="#">DHS Deviation</a></p>
<p><b>Dept. of Housing and Urban Development (HUD)</b></p>	<ul style="list-style-type: none"> <li>The HUD’s Deviation requires its COs to include the clause in <b>all</b> solicitations and existing and new contracts <b>above the micro-purchase threshold except</b> for: <ul style="list-style-type: none"> <li>Contracts with Indian Tribes under the Indian Self Determination and Education Act (this does not include Indian or tribally-owned business entities) or</li> <li>Solicitations or contracts if performance is outside of the United States.</li> </ul> </li> <li>Thus, there is <b>no exception</b> for contracts (1) below the SAT (but above the MPT), or (2) for the manufacturing of products.</li> </ul>	<p><a href="#">HUD Deviation</a></p>
<p><b>Dept. of the Interior (DOI)</b></p>	<ul style="list-style-type: none"> <li>The DOI’s Deviation <b>requires</b> its COs to include the clause in the following: <ul style="list-style-type: none"> <li>Contracts or contract-like instruments for services, construction, or a leasehold interest in real property exceeding the SAT or simplified lease acquisition threshold (“SLAT”);</li> </ul> </li> </ul>	<p><a href="#">DOI Deviation</a></p>

- Contracts or contract-like instruments for services covered by the Service Contract Act, 41 U.S.C. § 6701, *et seq.*, exceeding the SAT/SLAT;
  - Contracts or contract-like instruments for concessions, including any concessions contract excluded by Department of Labor regulations at 29 CFR § 4.133(b) exceeding the SAT/SLAT; and
  - Contracts or contract-like instruments entered into with the federal government in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public, exceeding the SAT/SLAT.
- DOI is ***strongly encouraging*** the clause be included in the following:
    - Contracts, subcontracts, or contract-like instruments ***whose value is equal to or less than the SAT/SLAT*** and
    - Contracts or subcontracts ***solely for the manufacturing of products.***
- Implementation
    - *New Solicitations* - COs shall include clause in solicitations for applicable contracts issued on or after October 15, 2021.
    - *Existing Solicitations* – COs shall either amend the solicitation to include the clause or incorporate it into the award of the apparent successful offeror for applicable solicitations that were issued prior to October 15, 2021, and that have not closed, or awards that have not been made by October 15, 2021.
    - *New Contracts* – COs shall include the clause in new applicable contracts awarded on or after October 15, 2021.
    - *Existing Contracts* – COs shall modify applicable existing contracts to add the clause:
      - The modification must be bilateral, even if an option is also being exercised simultaneously. Prior to agreeing to any contract price increase resulting from incorporating this clause into an existing contract, COs must submit the proposed contract modification to the Office of the Solicitor for review, even if the modification would not otherwise be subject to legal review.
      - COs shall complete as many modifications of existing contracts as possible before November 14, 2021, rather than wait to add the clause with the next option or extension for the contract.
    - *Contract-like Instruments* – [see detail in Deviation]

	<ul style="list-style-type: none"> <li>The DOI's Deviation is <b>not</b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act; (2) solicitations or contracts if performance is outside of the United States; (3) micro-purchases; or (4) grants.</li> </ul>	
<p>Dept. of Justice (DOJ)</p>	<ul style="list-style-type: none"> <li>The DOJ's Deviation requires its COs to include the clause in all (1) new contracts awarded on or after November 14 under solicitations issued before October 15 (this includes new orders awarded on or after November 14, 2021, from solicitations issued before October 15, 2021, under existing indefinite-delivery contracts); (2) new solicitations issued on or after October 15 (this includes new solicitations issued on or after October 15, 2021, for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts); (3) extensions or renewals of existing contracts on or after October 15; and (4) options on existing contracts exercised on or after October 15.</li> <li>The DOJ <b>encourages</b>, but does <b>not require</b>, its COs to insert the clause in (1) contracts awarded before November 14 (under solicitations issued before October 15) and (2) contracts under the SAT or for the manufacturing of products.</li> <li>The DOJ's Deviation is <b>not</b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act, or (2) solicitations or contracts if performance is outside of the United States.</li> </ul>	<p><a href="#">DOJ Deviation</a></p>
<p>Dept. of Labor (DOL)</p>	<ul style="list-style-type: none"> <li>The DOL's Deviation <b>requires</b> its COs to include the clause <b>in all solicitations and awards above the micro-purchase threshold (exceeding \$10,000)</b>, as follows: <ul style="list-style-type: none"> <li><i>New solicitations</i> – COs shall include the clause in all new applicable solicitations.</li> <li><i>Existing Solicitations</i> – COs shall either amend the solicitation to include the clause or incorporate it into the award of the apparent successful offer or for applicable solicitations that were issued.</li> <li><i>New Contracts</i> – COs shall include the clause in new applicable contracts.</li> <li><i>Existing Contracts</i> – COs shall modify all applicable existing contracts to add the clause through bilateral modification.</li> <li><i>Exercise of Options and Contract Extensions</i> – COs shall not exercise an option period or extend the period of performance for an applicable existing contract unless the contract has been modified to include the new clause for the option or extended period of performance.</li> </ul> </li> <li>All DOL grant officers responsible for the award and administration of <b>contract-like cooperative agreements or other contract-like instruments shall include the clause in all applicable contract-like instruments for services with a value above \$10,000</b>, as follows: <ul style="list-style-type: none"> <li><i>New Notice of Funding Opportunity</i> – Grant officers shall include the clause in all notices of funding opportunities for contract-like cooperative agreements or other applicable contract-like instruments.</li> </ul> </li> </ul>	<p><a href="#">DOL Deviation</a></p>

	<ul style="list-style-type: none"> <li>○ <i>Existing Notice of Funding Opportunity</i> – Grant officers shall either amend the notice of funding opportunity to include the clause or incorporate it into the award of contract-like cooperative agreements or applicable contract-like instruments for which the notice of funding opportunities was issued.</li> <li>○ <i>New Cooperative Agreements</i> – Grant officers shall include the clause in all contract-like cooperative agreements or applicable contract-like instruments issued.</li> <li>○ <i>Existing Cooperative Agreements</i> – Grant officers shall modify all applicable contract-like cooperative agreements or applicable contract-like instruments to add the clause through bilateral agreement.</li> <li>○ <i>Period of Performance Extensions</i> – Grant officers shall not extend the period of performance for applicable existing awards unless the award has been modified to include the new clause for the optional or extended period of performance.</li> </ul> <ul style="list-style-type: none"> <li>● The DOL’s Deviation is <i>not</i> applicable to: (1) micro-purchases; (2) contracts and subcontracts with Indian Tribes under the Indian Self-Determination and Education Assistance Act; or (3) solicitations and contracts if performance is outside the United States or its outlying areas.</li> </ul>	
<p>Dept. of State (DOS)</p>	<ul style="list-style-type: none"> <li>● The DOS’s Deviation requires its COs to include the clause in <u><i>domestic</i></u> solicitations, contracts, and contract-like instruments (1) for <i>services</i>, construction, or a leasehold interest in real property <b><i>exceeding the SAT</i></b>; (2) <b><i>covered by the Service Contract Act</i></b>; (3) for concessions; or (4) in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public, <b><i>exceeding the SAT</i></b>: <ul style="list-style-type: none"> <li>○ New contracts (and contract-like instruments) 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);</li> <li>○ 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, for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts);</li> <li>○ Extensions or renewals of existing contracts and orders awarded on or after October 15, 2021;</li> <li>○ Options on existing contracts and orders exercised on or after October 15, 2021; and</li> <li>○ Existing DOS single- and multiple-award ID/IQ contracts, requirements contracts, and BPAs.</li> </ul> </li> <li>● The DOS <i>encourages</i>, but does <i>not require</i>, its COs to insert the clause in contracts or subcontracts (1) awarded before November 14 (under solicitations issued before October 15), (2) whose value is less than or equal to the SAT, or (3) solely for the manufacturing of products.</li> </ul>	<p><a href="#">DOS Deviation</a></p>

	<ul style="list-style-type: none"> <li>The DOS's Deviation is <b>not</b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act, (2) solicitations or contracts if performance is outside of the United States, (3) actions at or below the micro-purchase threshold, or (4) sales of surplus real and personal property.</li> </ul>	
<p>Dept. of Transportation (DOT)</p>	<ul style="list-style-type: none"> <li>The DOT's Deviation requires its COs to include the clause in the following solicitations and awards <b>for services and construction</b>: (1) new contracts or contract-like instruments and orders awarded on or after November 14, 2021, that exceed the SAT; (2) new solicitations issued on or after October 15, 2021, and contracts or contract-like instruments or orders awarded pursuant to those solicitations that exceed the SAT; (3) extensions or renewals of existing contracts or contract-like instruments or orders that exceed the SAT awarded on or after October 15, 2021; and (4) options on existing contracts or contract-like instruments and orders that exceed the SAT exercised on or after October 15, 2021.</li> <li>DOT COs are also required to include the clause in the following solicitations and awards for <b>services and construction</b>: <ul style="list-style-type: none"> <li>New contracts (e.g., purchase orders) and orders awarded on or after November 14, 2021, that exceed the MPT;</li> <li>New solicitations issued on or after October 15, 2021, and contracts or orders awarded pursuant to those solicitations that exceed the MPT;</li> <li>Extensions or renewals of existing contracts or orders that exceed the MPT awarded on or after October 15, 2021;</li> <li>Options on existing contracts and orders that exceed the MPT exercised on or after October 15, 2021; and</li> <li>Existing indefinite-delivery, indefinite-quantity (IDIQ) contracts that are anticipated to have orders that exceed the MPT and that have an ordering period that extends beyond October 15, 2021.</li> </ul> </li> <li>DOT COs are <b>strongly encouraged, but not required</b>, to include the clause in: <ul style="list-style-type: none"> <li>New contracts and orders <b>awarded prior to November 14, 2021</b>;</li> <li>Contracts, orders, or subcontracts <b>solely for the manufacturing of products above the MPT</b>; and</li> <li>Existing contracts and orders otherwise having a bilateral modification not tied to an extension, renewal, or option exercise (e.g., change in Statement of Work, change in delivery schedule), on or after October 15, 2021.</li> </ul> </li> <li>The DOT's Deviation is <b>not</b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act, (2) solicitations or contracts if performance is outside of the United States, or (3) purchases at or below the MPT.</li> </ul>	<p><a href="#">DOT Deviation</a></p>

<p>Dept. of the Treasury (Treasury)</p>	<ul style="list-style-type: none"> <li>• The Treasury’s Deviation <b>requires</b> its COs to include the clause into the following solicitations and contracts <b>for services, including construction</b>: (1) 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); (2) 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 and orders awarded pursuant to those solicitations under existing indefinite-delivery contracts, or blanket purchase agreements); (3) extensions or renewals of existing contracts and orders awarded on or after October 15, 2021; (4) options on existing contracts and orders exercised on or after October 15, 2021; and (5) 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 when an extension to the period of performance is required.</li> <li>• COs are <b>strongly encouraged, but are not required</b>, to include the clause in the following: <ul style="list-style-type: none"> <li>○ Contracts that have been or will be awarded prior to November 14, 2021, on solicitations issued before October 15, 2021;</li> <li>○ Contracts that are not covered or directly addressed by E.O. 14042 because the contract or subcontract <b>is equal to or less than the SAT</b>; and</li> <li>○ Contracts or subcontracts <b>solely for the manufacturing of products</b>.</li> </ul> </li> <li>• The Treasury’s Deviation is <b>not</b> applicable to: (1) grants; (2) contracts, contract-like instruments, or agreements with Indian Tribes under the Indian Self Determination and Education Assistance Act; or (3) solicitations and contracts if performance is outside the United States or its outlying areas.</li> <li>• When modifying existing contracts, task orders, delivery orders, or call orders in accordance with this deviation, Treasury COs <b>shall use a bilateral modification</b> to incorporate the clause.</li> </ul>	<p><a href="#">Treasury Deviation</a></p>
<p>Dept. of Veterans Affairs (VA)</p>	<ul style="list-style-type: none"> <li>• The VA’s Deviation requires its COs to include the clause in all (1) new contracts awarded on or after November 14 under solicitations issued before October 15 (this includes new orders awarded on or after November 14, 2021, from solicitations issued before October 15, 2021, under existing indefinite-delivery contracts); (2) new solicitations issued on or after October 15 (this includes new solicitations issued on or after October 15, 2021, for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts); (3) extensions or renewals of existing contracts on or after October 15; and (4) options on existing contracts exercised on or after October 15.</li> <li>• The VA <b>encourages</b>, but does <b>not require</b>, COs to insert the clause in (1) contracts awarded before November 14 (under solicitations issued before October 15) and (2) contracts under the SAT. However, note that the VA’s Deviation <b>does apply to contracts for the manufacturing of products</b>.</li> <li>• The VA’s Deviation is <b>not</b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act or (2) in solicitations or contracts if performance is outside of the United States.</li> </ul>	<p><a href="#">VA Deviation</a></p>

<p><b>Environmental Protection Agency (EPA)</b></p>	<ul style="list-style-type: none"> <li>• The EPA’s Deviation simply references (and attaches) the CAAC’s Letter 2021-03 (Sept. 30, 2021) regarding the E.O. 14042 FAR clause deviation. As such, it appears that the EPA will make a wholesale adoption of the CAAC’s guidance: <ul style="list-style-type: none"> <li>○ EPA COs must include the COVID clause in all (1) new contracts awarded on or after November 14 under solicitations issued before October 15 (this includes new orders awarded on or after November 14, 2021, from solicitations issued before October 15, 2021, under existing indefinite-delivery contracts); (2) new solicitations issued on or after October 15 (this includes new solicitations issued on or after October 15, 2021, for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts); (3) extensions or renewals of existing contracts on or after October 15; and (4) options on existing contracts exercised on or after October 15.</li> <li>○ The EPA <b>encourages</b>, but does <b>not require</b>, its COs to insert the clause in (1) contracts awarded before November 14 (under solicitations issued before October 15) and (2) contracts under the SAT or for the manufacturing of products.</li> </ul> </li> <li>• The EPA’s Deviation is <b>not</b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act, or (2) in solicitations or contracts if performance is outside of the United States.</li> </ul>	<p><a href="#">EPA Deviation</a></p>
<p><b>General Services Administration (GSA)</b></p>	<ul style="list-style-type: none"> <li>• McCarter attorneys have covered the GSA’s Deviation in a prior blog <a href="#">post</a>.</li> </ul>	<p><a href="#">GSA Deviation</a></p>
<p><b>National Aeronautics &amp; Space Administration (NASA)</b></p>	<ul style="list-style-type: none"> <li>• NASA will include its clause, no later than October 15, 2021, in all “commercial and non-commercial acquisitions that include requirements for <b>services, supplies, research and development, construction, and end-items,</b>” specifically: <ul style="list-style-type: none"> <li>○ All new solicitations and resulting contracts, orders, BPAs, and cooperative agreement notices and resulting cooperative agreements <b>above the MPT</b> issued on or after the effective date of the Deviation;</li> <li>○ All existing contracts, orders, BPAs, and cooperative agreements, <b>above the SAT</b> via a <b>bilateral modification</b>; and</li> <li>○ <b>All solicitations above the MPT</b> issued prior to the effective date of the Deviation.</li> </ul> </li> <li>• NASA’s Deviation <b>does apply to contracts for the manufacturing of products</b>.</li> <li>• NASA’s Deviation is <b>not</b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act, or (2) in solicitations or contracts if performance is outside of the United States.</li> </ul>	<p><a href="#">NASA Deviation</a></p>
<p><b>Office of Personnel Management (OPM)</b></p>	<ul style="list-style-type: none"> <li>• The OPM’s Deviation requires its COs to insert the clause in the following solicitations, contracts, task orders, delivery orders, and modifications thereof <b>that are for services (including construction) exceeding the SAT performed in whole or in part within the United States or its outlying areas</b>:</li> </ul>	<p><a href="#">OPM Deviation</a></p>

	<ul style="list-style-type: none"> <li>○ 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);</li> <li>○ 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, for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts);</li> <li>○ Extensions or renewals of existing contracts and orders awarded on or after October 15, 2021;</li> <li>○ Options on existing contracts and orders exercised on or after October 15, 2021; and</li> <li>○ By November 14, 2021, existing indefinite-delivery, indefinite-quantity contracts issued by OPM that are anticipated to have orders that exceed the SAT and that have an ordering period that extends beyond October 15, 2021.</li> </ul> <ul style="list-style-type: none"> <li>● The OPM’s Deviation is <b>not</b> applicable to: (1) contracts and subcontracts with Indian Tribes under the Indian Self-Determination and Education Assistance Act), or (2) solicitations and contracts if performance is outside the United States or its outlying areas.</li> <li>● When modifying existing contracts, task orders, or delivery orders in accordance with this deviation, OPM COs shall use a <b>bilateral modification</b> to incorporate the deviation clause.</li> </ul>	
<p>Securities and Exchange Commission (SEC)</p>	<ul style="list-style-type: none"> <li>● The SEC’s Deviation requires its COs to (1) include the clause in new applicable solicitations issued on or after October 15, 2021, (2) either amend the solicitation to include the clause 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, and (3) include the clause in new applicable contracts, orders, and agreements awarded on or after October 15, 2021.</li> <li>● For <b>existing contracts</b>, COs shall send a bilateral modification request to add the clause for all existing contracts, orders, and agreements no later than December 8, 2021. COs <b>shall not renew, extend the period of performance, or exercise an option on any existing contract, order, or agreement</b> before it has been bilaterally modified to include the clause.</li> <li>● Note that there are <b><u>no general exceptions</u></b> for (1) contracts under the SAT or (2) for the manufacturing of products. <ul style="list-style-type: none"> <li>○ However, SEC COs should e-mail the HCA with any contractor requests for exceptions. <b>The HCA may approve exceptions, via e-mail, for contracts less than the SAT or solely for the manufacturing of products.</b></li> </ul> </li> <li>● The Chief Operating Officer <b>may approve urgent, mission-critical needs for a covered contractor to have covered contractor employees begin work on a covered contract or at a covered workplace before becoming fully vaccinated.</b></li> </ul>	<p><a href="#">SEC Deviation</a></p>

	<ul style="list-style-type: none"> <li>○ 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.</li> <li>● The SEC’s Deviation is <b>not</b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act, (2) in solicitations or contracts if performance is outside of the United States, or (3) <b>micro-purchases</b>.</li> </ul>	
<p><b>Small Business Administration (SBA)</b></p>	<ul style="list-style-type: none"> <li>● The SBA’s Deviation requires its COs to include the clause in all (1) new contracts awarded on or after November 14 under solicitations issued before October 15 (this includes new orders awarded on or after November 14, 2021, from solicitations issued before October 15, 2021, under existing indefinite-delivery contracts); (2) new solicitations issued on or after October 15 (this includes new solicitations issued on or after October 15, 2021, for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts); (3) extensions or renewals of existing contracts on or after October 15; (4) options on existing contracts exercised on or after October 15; and (5) <b>existing ID/IQ contracts that are anticipated to have orders that exceed the SAT and that have an ordering period extending beyond October 15, 2021</b>.</li> <li>● The SBA requires its contracting officers to use a <b>bilateral modification</b> to incorporate the Deviation in existing contracts and contract-like instruments.</li> <li>● The SBA <b>encourages</b>, but does <b>not require</b>, its COs to insert the clause in (1) contracts awarded before November 14 (under solicitations issued before October 15) and (2) contracts under the SAT or for the manufacturing of products.</li> <li>● The SBA’s Deviation is <b>not</b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act or (2) in solicitations or contracts if performance is outside of the United States.</li> </ul>	<p><a href="#">SBA Deviation</a></p>
<p><b>Social Security Administration (SSA)</b></p>	<ul style="list-style-type: none"> <li>● The SSA’s Deviation requires its COs to include the clause in all solicitations and contracts for <b>services, including construction and ancillary services (e.g., maintenance, installation, repair, and alteration services) in connection with supplies acquisitions</b>, above the SAT (<b>and to the maximum extent practicable in solicitations and contracts that exceed the micro-purchase threshold but are equal to or less than the SAT</b>), for commercial and non-commercial actions as follows: <ul style="list-style-type: none"> <li>○ New contracts (and contract-like instruments) 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);</li> <li>○ 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, for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts);</li> <li>○ Extensions or renewals of existing contracts and orders awarded on or after October 15, 2021;</li> </ul> </li> </ul>	<p><a href="#">SSA Deviation</a></p>

	<ul style="list-style-type: none"><li>○ Options on existing contracts and orders exercised on or after October 15, 2021;</li><li>○ Existing contracts and orders otherwise having a bilateral modification not tied to an extension, renewal, or option exercise (e.g., change in Statement of Work, change in delivery schedule), on or after October 15, 2021; and</li><li>○ Contracts that will be awarded prior to November 14, 2021, on solicitations issued before October 15, 2021.</li></ul> <ul style="list-style-type: none"><li>● The SSA's Deviation is <b>not</b> applicable to (1) contracts with Indian Tribes under the Indian Self Determination and Education Act, (2) in solicitations or contracts if performance is outside of the United States, or (3) <b>micro-purchases as defined by agency policy</b>.</li><li>● The SSA <b>strongly encourages</b> its COs to use a <b>bilateral modification</b> to incorporate the Deviation clause <b>before</b> extending, renewing, or otherwise exercising an option on existing contracts and contract-like instruments or orders.</li></ul>	
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