

## Labor & Employment Client Alert

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

By: Brian Kreucher & Dan Villaire | September 10, 2021

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On September 9, 2021, President Biden signed [Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors](#). This order applies to Federal Contractors and Subcontractors.

#### Key Dates:

By **September 24, 2021**, the Safer Federal Workforce Task Force (Task Force) shall, as part of its issuance of Task Force Guidance, provide definitions of relevant terms for contractors and subcontractors, explanations of protocols required of contractors and subcontractors to comply with workplace safety guidance, and any exceptions to Task Force Guidance that apply to contractor and subcontractor workplace locations and individuals in those locations working on or in connection with a Federal Government contract or contract-like instrument (as described in section 5(a) of this order).

By **October 8, 2021**, agencies shall take steps to exercise any applicable authority to ensure that contracts and contract-like instruments—as described in section 5(a) of this order—that are not subject to the Federal Acquisition Regulation and that are entered into on or after October 15, 2021, consistent with the effective date of such agency action, include the clause described in section 2(a) of this order.

#### Effective Date:

(a) Except as provided in subsection (b) of this section, this order is effective immediately and shall apply to new contracts; new contract-like instruments; new solicitations for contracts or contract-like instruments; extensions or renewals of existing contracts or contract-like instruments; and exercises of options on existing contracts or contract-like instruments, as described in section 5(a) of this order, where the relevant contract or contract-like instrument will be entered into, the relevant contract or contract-like instrument will be extended or renewed, or the relevant option will be exercised, on or after:

(i) October 15, 2021, consistent with the effective date for the action taken by the Federal Acquisition Regulatory Council pursuant to section 3(a) of this order; or

(ii) for contracts and contract-like instruments that are not subject to the Federal Acquisition Regulation and where an agency action is taken pursuant to section 3(b) of this order, October 15, 2021, consistent with the effective date for such action.



(b) As an exception to subsection (a) of this section, where agencies have issued a solicitation before the effective date for the relevant action taken pursuant to section 3 of this order and entered into a new contract or contract-like instrument resulting from such solicitation within 30 days of such effective date, such agencies are strongly encouraged to ensure that the safety protocols specified in section 2 of this order are applied in the new contract or contract-like instrument. But if that contract or contract-like instrument term is subsequently extended or renewed, or an option is subsequently exercised under that contract or contract-like instrument, the safety protocols specified in section 2 of this order shall apply to that extension, renewal, or option.

(c) For all existing contracts and contract-like instruments, solicitations issued between the date of this order and the effective dates set forth in this section, and contracts and contract-like instruments entered into between the date of this order and the effective dates set forth in this section, agencies are strongly encouraged, to the extent permitted by law, to ensure that the safety protocols required under those contracts and contract-like instruments are consistent with the requirements specified in section 2 of this order.

**Applicability:**

(a) This order shall apply to any new contract; new contract-like instrument; new solicitation for a contract or contract-like instrument; extension or renewal of an existing contract or contract-like instrument; and exercise of an option on an existing contract or contract-like instrument, if:

(i) it is a procurement contract or contract-like instrument for services, construction, or a leasehold interest in real property;

(ii) it is a contract or contract-like instrument for services covered by the Service Contract Act, 41 U.S.C. 6701 et seq.;

(iii) it is a contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 C.F.R. 4.133(b); or

(iv) it is a contract or contract-like instrument 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.

**(b) This order shall not apply to:**

(i) grants;

(ii) contracts, contract-like instruments, or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), as amended;

(iii) contracts or subcontracts whose value is equal to or less than the **simplified acquisition threshold**, as that term is defined in section 2.101 of the Federal Acquisition Regulation; [SEE \*]

(iv) employees who perform work outside the United States or its outlying areas, as those terms are defined in section 2.101 of the Federal Acquisition Regulation; or

(v) subcontracts solely for the provision of products.

\* <https://www.acquisition.gov/far/2.101>. **Simplified acquisition threshold means \$250,000, except for—**

(1) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 et seq.; or to support response to an emergency or major disaster (42 U.S.C. 5122), (41 U.S.C. 1903), the term means:



(i) \$800,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and (ii) \$1.5 million for any contract to be awarded and performed, or purchase to be made, outside the United States; and

(2) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a humanitarian or peacekeeping operation (10 U.S.C. 2302), the term means \$500,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

For more information, please contact Labor and Employment attorneys Brian Kreucher and Dan Villaire.



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