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FAR Council Issues Contractor Vaccination Contract Clause and Guidance

Government Contractor Compliance & Regulatory Update Blog on **October 4, 2021**

As previously reported, the Biden Administration issued Executive Order 14042 ("the Order") last month. The Order requires, in part, that the Federal Acquisition Regulatory Council ("the FAR Council") amend the Federal Acquisition Regulation ("FAR") to include a clause specifying that contractors and subcontractors shall "comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force." The Task Force issued its COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors (the "Guidance") on September 24, 2021, setting forth vaccine mandates, as well as masking, social distancing, and other requirements. The Task Force then supplemented its Guidance with published FAQs on September 30, 2021. Our summaries of these developments are available here and here .

The FAR Council has now issued the contract clause that, when included in new contracts and contract-like instruments, will impose the Guidance's requirements on contractors and subcontractors, as well as a memorandum providing guidance to agencies regarding its implementation. The new clause and memorandum to agencies are available here. They provide additional insights on the recent federal mandate.

As we previously reported, despite the fact the Order limits the contracts subject to the Guidance, the Guidance strongly encourages agencies to include the clause in contracts and contract-like instruments beyond those expressly covered by the Order. The FAR Council's memorandum echoes this sentiment, noting it is part of an effort "[t]o maximize the goal of getting more people vaccinated and decrease the spread of COVID-19." To that end, agencies are advised that the clause should be broadly applied, with only two exceptions: (1) "contracts and subcontracts with Indian Tribes under the Indian Self-Determination and Education Assistance Act;" and (2) "solicitations and contracts if performance is outside the United States or its outlying areas."

The FAR Council also provides information regarding the applicability and effective dates of the clause as follows:

- "new contracts awarded on or after November 14 from solicitations issued before October 15 (this includes new orders awarded on or after November 14 from solicitations issued before October 15 under existing indefinite-delivery contracts);
- new solicitations issued on or after October 15 and contracts awarded pursuant to those solicitations (this includes new solicitations issued on or after October 15 for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts);
- extensions or renewals of existing contracts and orders awarded on or after October 15, 2021; and
- options on existing contracts and orders exercised on or after October 15, 2021."

The actual clause published by the FAR Council is also informative. It provides that contractors with contracts containing the clause need to comply not only with the Guidance itself, but also "shall comply with all guidance, ***including guidance conveyed through Frequently Asked Questions***, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at https:/www.saferfederalworkforce.gov/contractors/." (emphasis added).

We will continue to report on new developments regarding the Order and Guidance.

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