

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The State of Georgia, et al.,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as
President of the United States, et al.,

Defendants.

Civil Action No. 1:21-cv-163-RSB-BKE

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR AMENDED MOTION FOR
PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

INTRODUCTION	3
ARGUMENT	5
I. Plaintiffs have Article III standing.....	5
II. Plaintiffs are likely to succeed on the merits.	8
A. The Contractor Mandate exceeds the President’s authority under the Procurement Act.....	8
B. The Contractor Mandate is unlawful for failure to follow notice-and-comment requirements.....	15
C. If the Procurement Act authorizes the Contractor Mandate, the Procurement Act and Mandate are unconstitutional.....	18
III. Plaintiffs will suffer substantial and irreparable harm absent injunctive relief.	19
IV. The balance of equities and public interest favors granting injunctive relief.	21
CONCLUSION.....	23

INTRODUCTION

With the stroke of a pen, the President placed federal contractors throughout the United States—including Plaintiffs—in an impossible situation. Unless Plaintiffs successfully strongarm their employees and subcontractors into getting vaccinated in a few short weeks (or fire unvaccinated employees en masse), Plaintiffs will lose out on millions of dollars in federal contracting funds that are essential to Plaintiffs’ institutions. This Mandate is unprecedented, unlawful, unconstitutional, and deeply harmful to Plaintiffs. It has also now been enjoined in other parts of the country. *Kentucky, et al. v. Biden, et al.*, No. 21-cv-55 (E.D. Ky., Nov. 30, 2021) (ECF No. 50).

In response, Defendants offer little more than obfuscation. They first assert that Plaintiffs lack standing, which makes no sense at all. Plaintiffs are all federal contractors who have multiple current contractual modifications directly subject to the Mandate and who cannot reasonably risk losing the hundreds of millions of dollars from other federal contracts in the face of the Mandate. Even if Plaintiffs could not point to specific contracts, the government has made clear that it intends to impose this Mandate on *all* future contracts, meaning that repeat federal contractors necessarily must comply or lose millions in revenue.

On the merits, Defendants simply assert the unfettered power to alter federal contracting in any way, at any time, that they see fit. But Congress has not written “a [statutory] blank check for the President to fill in at his will. The procurement power must be exercised consistently with the structure and purposes of the statute that delegates that power.” *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1330 (D.C. Cir. 1996). Defendants nevertheless ask this Court to interpret language in the Procurement Act to grant the executive nearly unlimited authority over questions of deep political and economic significance—that has statutory interpretation precisely *backwards*. Courts must interpret statutes *not* to grant extraordinary authority to executive agencies *without* a clear statement from Congress. *Ala. Ass’n of Realtors v. HHS*, 141 S. Ct. 2485, 2489 (2021); *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 316

(2014); *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 146 (2000).

Defendants wholly ignore the major questions doctrine and the clear statement rule, which both demand that the Procurement Act be read in a “common sense” fashion to avoid tenuous “delgat[ions]” of “policy decisions[s]” of “economic and political magnitude.” *Id.* at 133. If the Procurement Act allows a vaccine mandate, it would also allow the federal government the power to demand that contractor employees be celibate (to reduce transmission of disease) or engage in intensive diets (to be healthier and thus more efficient) or any of a million other policies. *See Kentucky*, No. 21-cv-55, at 13 (“Under the same logic employed by the Defendants regarding the vaccine mandate, what would stop [the Procurement Act] from being used to permit federal agencies to refuse to contract with contractors and subcontractors who employ individuals over a certain BMI for the sake of economy and efficiency during the pandemic?”). Congress did not hide such an elephant in such a mousehole. *Gonzales v. Oregon*, 546 U.S. 243, 267 (2006).

Even if Defendants could try to impose a mandate of such breathtaking scope, they would still have to connect it to economic efficiency, and they have failed to do so. Defendants declare it “self-evident” that the Mandate is efficient because it will slow COVID-19 and keep workers healthier. But there is no evidence of that—and certainly no evidence that vaccinating everyone remotely *connected* to federal contractor employees will slow down transmission. On the other hand, there is plenty of evidence that the Mandate will cripple economic efficiency. Federal contractors will be forced to fire employees en masse in a tight labor market. What is actually “self-evident” here is that the Mandate is a pretextual attempt to mandate vaccines by any means necessary. *See BST Holdings, L.L.C. v. Occupational Safety & Health Admin., United States Dep’t of Lab.*, 17 F.4th 604 (5th Cir. 2021).

And assuming the Mandate might have otherwise been valid—and it would not—it fails to satisfy notice-and-comment procedures. Defendants argue that notice and comment were not required, but they provide no persuasive reason why. Defendants argue that the Executive Order and

OMB determination need not be subject to notice and comment, but entirely ignore Plaintiffs actual argument—that 41 U.S.C. § 1707 required the Task Force Guidance and FAR Deviation Clause to undergo public comment. Defendants even make the risible argument that the Mandate need not undergo notice and comment because it is “temporary, even if no certain endpoint has yet been identified.” Response Br. 22. Apparently, the government has a different definition of “temporary” than everyone else.

Finally, Defendants’ arguments about irreparable harm and the public interest are more of the erroneous same. There can be no doubt that the Mandate, which hangs like the sword of Damocles over all major federal contractors, would cause irreparable harm if allowed to go into effect. Plaintiffs would have to fire employees and engage in costly compliance or lose billions in federal contracts. The public interest clearly supports maintaining the status quo. At *best*, the only valid interest Defendants can point to is a negligible boost to federal operating efficiency. That is not comparable to the chaos that would ensue if the Mandate goes into effect. The Court should follow the other courts that have enjoined this and similar mandates and enjoin Defendants’ lawless attempt to make health policy through federal contracting subterfuge.

ARGUMENT

I. Plaintiffs have Article III standing.

Defendants claim that the Plaintiffs do not have standing because they have not identified contracts that “include a COVID-19 safety clause.” Response Br. at 11. But that is not true nor required for standing. To establish Article III standing a plaintiff must show that it: “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo v. Robins*, 136 S. Ct. 1540, 1547 (2016). In demonstrating injury-in-fact, a plaintiff need only allege a “credible threat” of injury. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 160 (2014); *Ga. Latino Alliance for Human Rights v. Governor of Ga.*,

691 F.3d 1250, 1257–58 (11th Cir. 2012). A credible threat can exist where an individual is “strongly encouraged” to undergo or abstain from certain conduct. *See Meland v. Weber*, 2 F.4th 838, 846 (9th Cir. 2021); *Galassini v. Town of Fountain Hills*, 2013 WL 5445483, at *11 (D. Ariz. Sept. 30, 2013). Here, Plaintiffs have Article III standing for multiple independent reasons.

“When a claim involves a challenge to a future contracting opportunity, the pertinent question is whether Plaintiffs ha[ve] made an adequate showing that sometime in the relatively near future [they] will bid on another Government contract.” *Kentucky v. Biden*, 3:21-cv-00055, at 7 (November 30, 2021) (quoting *Adarand Contractors, Inc. v. Pena*, 515 U.S. 200, 211 (1995)). Plaintiffs constantly contract with the federal government. *See* Am. Compl. at ¶ 110 (alleging that Georgia’s university system alone has hundreds of federal contracts at any given time). Each Plaintiff intends to continue bidding on federal contracts. For example, Georgia Institute of Technology (“Georgia Tech”) is a finalist in response to a solicitation issued by the National Aeronautics and Space Administration (“NASA”). Supplemental Declaration of Michael Shannon (“GA Tech Supp. Dec.”), Exhibit 1, at ¶ 3. To be considered for the NASA contract, Georgia Tech was required to agree to FAR Deviation Clause 52.223-99. *Id.* at ¶ 7 and Ex. A. And, once the January 18, 2022, deadline for vaccination passes, each of the Plaintiffs must either fully comply with the mandate or be ineligible to bid for new federal contracts. 86 Fed. Reg. 63,420. That threatened injury establishes standing.

Defendants’ insistence that the Plaintiffs must first sign contracts before they can challenge them is “disingenuous,” to say the least. *Kentucky*, 3:21-cv-00055, at 7. The OMB’s latest determination is a few weeks old, and EO 14,042’s deadline for agencies to include the clause in new contracts is not much older. *See id.*; Response Br. at 11. Indeed, Defendants’ current arguments fit a pattern. They have repeatedly represented to state agencies that the Mandate means one thing, and then changed course when presented with a legal challenge. Defendants have told at least one Plaintiff that they were “required” to sign a contract modification that included the new COVID clause, and then

reversed course a week later, after this suit was filed. Supplemental Declaration of Catherine Molchan Donald (“ADPH Supp. Dec.”), Exhibit 2, at ¶¶ 16–18.

Plaintiffs also face a credible threat that there are as-of-yet unmodified existing contracts that will soon be required to be modified to include the Contractor Mandate. The Mandate “strongly encourage[s]” agencies with existing contracts to amend or otherwise modify their contracts. Agencies are using this “strongly encouraged” language to force modification, thereby creating a credible, imminent threat to Plaintiffs. EO 14,042, attached as Exhibit A to Declaration of Charles Peeler (“Peeler Dec.”); Task Force Guidance, Peeler Dec. Exs. B and C; *see* Declaration of Richard Stewart Pate (“ADAI Dec.”) at ¶ 16 (citing communication from USDA stating that failure to agree to Contractor Mandate would result in no future leases). In the cover email for a National Institute of Health (“NIH”) modification, an NIH representative acknowledged that the mandate was “encouraged” for existing contracts, but also admitted: “[a]t NIH, Contracting Officers are required to modify these existing contracts.” Supplemental Declaration by Jill Tincher (“UGA Supp. Dec.”), Exhibit 3, at Exhibit F. Defendants’ suggestion that these federal agencies initiated these modifications independently of the President’s Executive Order is unsupported, at best.

Even setting aside the future contracts that are certain to include the Mandate, Plaintiffs *are* parties to several contracts that include the challenged clause. UGA Supp. Dec. at Exs. A–G. For example, the University of Georgia (“UGA”) received an Amendment of Solicitation/Modification of Contract from the CDC (“CDC Amendment”) that specifically states its purpose “is to incorporate clause 52.223-99 [i.e., the FAR Deviation Clause] . . . in all contracts listed on the attached Excel spreadsheet.” CDC Amendment, UGA Supp. Dec. Ex. C at 2. The CDC Amendment applies to over \$2.9 million dollars’ worth of contracts and demands that “Contractors will sign and return the modification via email to the Contracting Officer of record by November 9, 2021.” UGA Supp. Dec. Ex. B at 5 (emphasis added); UGA Supp. Dec. Ex. A; *see also* Declaration of James Aydelotte (“BVRHS

Dec.”), Pl. Br. at Ex. 5 at ¶ 12. The same is true for a subcontractor modification between UGA and Icahn School of Medicine at Mount Sinai (“ISMMS”) which awards nearly \$6 million to UGA. ISMMS Amendment, UGA Supp. Dec. Ex. A, F. There, the NIH and its contracting entity, ISMMS, implemented the Mandate, prompting ISMMS to issue an amendment to UGA as its subcontracting entity. *Id.*; UGA Supp. Dec. at ¶ 11; *see also* NIH Amendment, UGA Supp. Dec. Ex. G. Plaintiff State of Idaho’s Department of Fish and Game maintains a federal agency contract with the United States Bureau of Reclamation. Declaration of Gary Byrne (“IDFG Dec.”), Exhibit 4, at ¶¶ 2–3. In an email implementing the Contractor Mandate, the Bureau told the department “[w]e are required to execute the attached modification to include a mandated COVID clause.” *Id.*; *Id.* at Ex. A.

Finally, Plaintiff States have Article III standing because the Mandate directly violates their sovereignty. *See Missouri v. Biden*, No. 4:21-cv-01329, 2021 WL 5564501 (E.D. Mo. Nov. 29, 2021) (holding that a similar federal vaccine mandate imposes sovereign harm on the States when it preempts State laws that prohibit employers from mandating vaccination). Multiple Plaintiff States have issued binding orders that forbid state employers from conditioning employment on vaccination status. *See* Governor Kemp, Executive Order, Prohibiting the Implementation of Vaccine Passport Programs or Other Proof of COVID-19 Vaccination at 3, May 25, 2021, <https://bit.ly/3I8cShJ>; Governor Ivey, Executive Order No. 724, Combating Overreaching COVID-19 Vaccination Mandates at 2, Oct. 25, 2021, <https://bit.ly/32DYrSh>. The Mandate prevents the Plaintiffs from enforcing these orders, which itself creates standing. *See Abbot v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018).

II. Plaintiffs are likely to succeed on the merits.

A. The Contractor Mandate exceeds the President’s authority under the Procurement Act.

When the executive claims power of “vast economic and political significance” that also “significantly alter[s] the balance between federal and state power,” courts expect Congress to “speak clearly” in its grant of that power. *Ala. Ass’n of Realtors*, 141 S. Ct. at 2489 (internal citation omitted);

see also Response Br. at 13–14. The Defendants cannot point to text in the Act that even approaches a clear authorization of the Mandate, and so they do not even try.¹ Rather, Defendants insist that the Act’s vague use of “quite broad” text is enough to authorize the Mandate. Response Br. at 13. But that only demonstrates that the Mandate *fails*; to justify the Mandate, Defendants must identify “exceedingly clear language” authorizing such broad authority. *Ala. Ass’n of Realtors*, 141 S. Ct. at 2489 (internal citation omitted); *see also* *BST Holdings, L.L.C.*, 17 F.4th 604, at *8; *id.* at *9 (Duncan, J., concurring); *Missouri*, 2021 WL 5564501. Defendants argue that they need not find any textual support for their overreach because Defendants are “a player in the commercial marketplace.” Response Br. at 18–19. But even when the Executive Branch is exercising its power to enter into contracts, it must comply with the statutory limits on that power, and hence rules of statutory construction like the major questions doctrine and federalism clear statement rule. Under those doctrines, where—as here—the Government cannot point to “exceedingly clear language,” *Ala. Ass’n of Realtors*, 141 S. Ct. at 2489 (internal citation omitted), authorizing its actions, the Government has no authority to enact the edict at issue. Here, Defendants do not have the statutory authority they claim, and even if they did, they misused it.

1. Defendants do not even claim that they can point to “exceedingly clear” statutory language that authorizes the President to impose deeply consequential, federalism-disrupting public health policies via the Procurement Act. At most, they point to 40 U.S.C. § 121, which authorizes the President to issue “policies and directives” that are “not inconsistent” with the text of the Procurement Act. Response Br. at 13. That language does not satisfy the major questions doctrine and federalism

¹ Indeed, Defendants’ merits response appears to be largely copied-and-pasted from their responses in other cases challenging the Mandate, *see Missouri v. Biden*, No. 4:21-cv-1300, ECF No. 20 at 10–13 (E.D. Mo. Nov. 18, 2021); *Florida v. Nelson*, No. 8:21-cv-2524, ECF No. 21 at 14–17 (M.D. Fla. Nov. 17, 2021), which explains why Defendants do not engage with the arguments Plaintiffs made in *this* case.

clear statement rule, and even Defendants do not claim that it does. Indeed, Congress specifically limited that power to actions that help promote “an economical and efficient system” for federal contracting. 40 U.S.C. § 101. Defendants’ assertion that Congress intended through this provision to vest the President with power to mandate sweeping public health policies beggars belief. If Congress wanted a contractor mandate, it could have included one in the multiple major laws, thousands of pages in length, enacted in response to COVID-19 over the last two years. *See, e.g.*, The Families First Coronavirus Response Act, PL 116-127, March 18, 2020, 134 Stat. 178; The Coronavirus Aid, Relief, and Economic Security Act, PL 116–136, Mar. 27, 2020, 134 Stat. 281. It did not.

That is not the only textual problem with Defendants’ claim to virtually unlimited presidential power under the Procurement Act. Section 121 authorizes the President to issue federal contracting “policies and directives,” *id.* § 121(a), but reserves to the GSA Administrator the power to “prescribe regulations.” *Id.* at § 121(c)(1). Defendants do not seem to dispute that EO 14,042 is a regulation. Rather, their argument equates a *directive* with a *regulation*. Response Br. at 14. But “[w]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.” *DePierre v. United States*, 564 U.S. 70, 83 (2011). Thus, a regulation and a directive cannot be the same thing under the Procurement Act, otherwise part of § 121 would be superfluous. Rather, § 121 anticipates that the President may direct changes to federal contracting regulations, but the regulation itself must come from the GSA or a federal agency. *See Chamber of Com. of U.S. v. Napolitano*, 648 F. Supp. 2d 726, 730 (D. Md. 2009) (describing an executive order in which President Bush directed the GSA administrator and NASA to “amend the FAR”).

Defendants have no coherent response to these textual points. *See* Response Br. at 14. Instead, they contradict themselves. Despite insisting that EO 14,042 established a “government wide contracting policy” and not a regulation, Response Br. at 14, they argue that the FAR guidance is “nonbinding guidance, and not ‘a procurement policy, regulation, procedure, or form,’” *id.* at 23. That

is because, they contend, the FAR guidance is “non-binding” and “the legal consequences here emanate from the Executive EO.” *Id.* at 26. This Court should reject this shell game. Either the FAR guidance is binding (and was issued in violation of 41 U.S.C. § 1707), or the President has exceeded his statutory power under § 121(a) by issuing a binding regulation on third parties.

Despite all this, Defendants insist that the President must have authority to mandate sweeping public health policy under the guise of his federal contracting authority because Presidents have done similar things in the past. Response Br. at 13. This is not remotely correct. No President has claimed Procurement Act authority of this nature. Defendants’ cited cases involve significantly different requirements that were not only more closely tied to federal contracting but also imposed nothing so invasive of personal liberty (and unrelated to economic efficiency) as a vaccine requirement. A requirement that employers post *notices* regarding the right not to join a union is a far cry from a requirement that employees *vaccinate* themselves. *UAW-Lab. Emp. & Training Corp. v. Chao*, 325 F.3d 360, 366 (D.C. Cir. 2003); *see also, e.g., City of Albuquerque v. U.S. Dep’t of Interior*, 379 F.3d 901, 904–05 (10th Cir. 2004) (imposing fees for federal employees’ parking at federal buildings); *AFGE v. Carmen*, 669 F.2d 815, 819–21 (D.C. Cir. 1981) (requirements to conserve gas during an oil crisis). Regardless, “[p]ast practice does not, by itself, create power,” especially when the Defendants cannot point to statutory authorization. *Medellin v. Texas*, 552 U.S. 491, 531 (2008).

None of Defendants’ cited cases purported to settle matters of great nationwide significance in areas core to the States’ sovereign functions. Interpretation must “be guided to a degree by common sense as to the manner in which Congress is likely to delegate a policy decision of ... economic and political magnitude.” *Brown & Williamson*, 529 U.S. at 133. Yet under Defendants’ reading, Congress delegated the President and contracting agencies literally unfettered power to impose social policy through government contracting. Under Defendants’ view, for instance, the federal government could require its contractors to maintain celibate workforces to decrease the risk of transmitting disease. The

government could require its contractors to require employees to engage in intensive exercise and dieting regimes—and verify compliance—because a healthier workforce is a more efficient workforce. That cannot be right. *See Kentucky*, No. 21-cv-55, at 13.

The Supreme Court has gone so far as to interpret the *same* definition in two *different* ways to avoid granting an executive agency broad power that Congress did not clearly delegate. *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 316 (2014). Yet here, Defendants would have this Court bless an unprecedented expansion of executive authority, on the basis of, at best, vague statutory language. Any such reading would be “unreasonable because it would bring about an enormous and transformative expansion in [agency authority] without clear congressional authorization.” *Id.* at 324.

2. Regardless, Defendants cannot satisfy the “reasonably close nexus” test. Response Br. at 15–18. Defendants ask this Court to accept their assurance that the nexus here is “self-evident,” but they must connect the dots between the staggeringly overbroad mandate and specific threats to federal contracting. Instead of attempting to do so, they point only to COVID-19’s impact on the country (and world) as a whole. *See, e.g.*, Response Br. at 4 (“When COVID-19 first emerged in the United States, it ravaged the economy and devastated government contractors.”); *id.* at 5 (listing the number of American COVID-19 infections and deaths, but offering no data about how federal contractors have been impacted); *id.* at 16 (COVID-19 has hobbled the economy for months and continues to disrupt American life); *id.* at 34 (arguing that EO 14,042 advances the public interest by “slowing the spread of COVID-19 among millions of federal contractors and members of the public”). Because the Mandate is tailored to combat COVID-19 generally rather than address COVID-19’s impact on the ability of federal contractors to complete their work, it “is both overinclusive . . . and underinclusive,” *BST Holdings*, 2021 WL 5279381 at *3; *see also Missouri*, 2021 WL 5564501; *Liberty Mutual Insurance Co v. Friedman*, 639 F.2d 164, 171 (4th Cir. 1981) (connection to federal contracting cannot be too attenuated under the “reasonable nexus” standard).

Under the Mandate’s terms, contractors must “affirmatively determine” that their covered contract employees have “no interactions” with “non-covered contractor employees” in “common areas such as lobbies, security clearance areas, elevators, stairwells, meeting rooms, kitchens, dining areas, and parking garages.” Safer Federal Workforce Task Force, FAQs: Federal Contractors (last visited Nov. 29, 2021), <https://www.saferfederalworkforce.gov/faq/contractors/>. If that determination cannot be made, each otherwise non-covered contractor employee falls under the sweeping scope of the Mandate. Plaintiffs’ high-traffic common areas are traversed by thousands of employees with no direct relationship to an agency contract, and thus no particular connection to the “economical and efficient system for . . . contracting.” 40 U.S.C. § 101. For example, Augusta University has just 200 federal contractor employees on their 45 federal agency contracts. *See* Declaration of James Guilbealt (“AU Dec.”), Pl. Br. at Ex. 1 at ¶ 8. Because those 200 employees are spread across 25 buildings throughout Augusta University’s campus, the Mandate extends to approximately 4,068 “covered contractor employees” out of the 6,161 total Augusta University employees. *Id.* at ¶¶ 9–10. As a result of the Mandate’s breadth, the fewer than 4% of Augusta University’s employees that work on federal contracts would result in the forcible vaccination of nearly 70% of employees at Augusta University. *Id.*; *see also* Declaration of Michael P. Shannon (“GA Tech Dec.”), Pl. Br. at Ex. 2 at ¶¶ 9–10. Defendants make no attempt to explain how that might increase the productivity of the (also vaccinated) employees that actually work on federal contracts. And Defendants have never explained why requiring vaccination for employees that work alone, at home, or outdoors will promote efficiency or economy. This level of over-inclusivity shows that the Mandate does not have a “reasonably close nexus” to ensuring an “economical and efficient system for . . . contracting.” 40 U.S.C. § 101.

At the same time, the Mandate is underinclusive. Per Defendants’ admission, it applies only to new contracts or modifications made to existing contracts, Response Br. at 6, 11, 31 n.12, and there

is no reason to believe that new contracts are more likely to lead to COVID-19 spread as it relates to achieving an “economical and efficient system for . . . contracting.” 40 U.S.C. § 101. Defendants also concede that the Mandate does not apply to “grants,” “most contracts for procurement of goods,” or “contracts” that fall below \$250,000. Response Br. at 7.

Finally, Defendants do not respond to the fact that the Mandate will make federal contracting *less* efficient. Response Br. at 17. They ignore the employee terminations, reassignments, and departures that will inevitably follow. Even if the Mandate might reduce the number of work hours lost from COVID-19 illness (and Defendants insist we must just take their word for that), it will almost certainly result in more work hours being lost from employees that can no longer work on the project. *See* Liz Hamel et al., Kaiser Family Found., *KFF COVID-19 Vaccine Monitor: October 2021* (Oct. 28, 2021), <https://bit.ly/3D7yNlp> (finding that approximately 70% of unvaccinated workers said they would leave their job before complying with an employer-issued vaccine mandate”); Karl Evers-Hillstrom, *9 in 10 Employers Say They Fear They’ll Lose Unvaccinated Workers Over Mandate: Survey*, The Hill (Oct. 18, 2021), <https://bit.ly/3xF7vlg>. OMB itself cited, but ignored, this data. *See* 86 Fed. Reg. at 63,422 n.14. The impact will be exacerbated because many of these employees have specialized training and experience that cannot be easily replaced. GDPH Dec. ¶ 10. And the costs of complying with the Mandate and recruiting, replacing, and retraining lost workers will disrupt work on federal contracts too. GA Tech Dec., ¶¶ 11–16; UGA-1 Dec., §§ 4–8; GDPH Dec., ¶¶ 8–10.

All of this makes plain that Defendants’ true objective is vaccinating as many people as possible, regardless of whether their vaccination status will impact work on a federal contract. The Mandate is the height of political pretext, not directed to economic efficiency in the slightest. There is no nexus, no emergency, and no reason to allow the Mandate to go into effect.

B. The Contractor Mandate is unlawful for failure to follow notice-and-comment requirements.

The Plaintiffs argue that the Task Force Guidance and the FAR Deviation Clause are invalid because the Defendants did not submit them to notice and comment. Pl. Br. at 18. Rather than answer that argument, Defendants argue that the Revised November OMB determination satisfies the notice and comment requirements of 41 U.S.C. § 1707. Response Br. at 21–22. That is beside the point.

The Contractor Mandate depends on the Task Force Guidance and FAR Deviation Clause because the Deviation Clause is the contractual provision federal contractors must sign, and the Deviation Clause itself mandates that contractors comply with the online Task Force Guidance (and FAQs), however it might be amended in the future. *See* Response Br. at 7–9. These two policies are the mechanism for imposing the Mandate’s requirements on contractors. 41 U.S.C. § 1707(a)(1). Both the FAR Deviation Clause and the Task Force Guidance relate to “expenditure of appropriated funds” and impose significant cost and administrative impact on federal contractors. 41 U.S.C. § 1707(a). Pl. Br. at 18–20. Thus, they are “procurement polic[ies and] regulation[s],” and they must go through notice and comment procedures. *See id.*²

Defendants erroneously suggest that the FAR Deviation Clause is “not ‘a procurement policy, regulation, procedure, or form,’” because it is “at most, nonbinding guidance.” Response Br. at 23. But EO 14,042 directed the FAR Council to “take initial steps to implement appropriate policy direction to acquisition offices” by “October 8, 2021,” and then ordered that “agencies shall take steps” to “ensure” that contracts “entered into on or after October 15, 2021” “include the clause described [above].” Peeler Dec. at Ex. A. As already explained, federal agencies understand that to be mandatory; every new contract, contract renewal, and contract modification that Plaintiffs have

² Defendants suggest that § 1707 does not apply to the EO and OMB determination because they are an exercise of presidential power. Response Br. at 21. That is irrelevant as to the Task Force Guidance and the FAR Deviation Clause.

received includes the FAR Deviation Clause that the President directed FAR to produce. Agencies have no choice. Defendants’ argument that agencies are independently deciding “to include a verbatim clause in contracts” is disingenuous, at best. Response Br. at 23.

And because the FAR Deviation Clause is a “significant revision” as defined by the FAR, it is subject to additional procedures under the FAR, which require that it undergo notice-and-comment rulemaking. 48 C.F.R. §§1.501-1; 1.501-2(b), (c). Defendants entirely ignore this separate notice-and-comment requirement. This un rebutted argument offers a separate and independent reason why the FAR Deviation Clause is unlawful.

Defendants also largely ignore the Task Force Guidance in their response. They do not try to argue that the Task Force Guidance is something other than a “procurement policy [or] regulation.” Response Br. at 23. Indeed, they implicitly admit it is, because they concede that the Guidance can be effective only after an OMB determination confirms that it advances economy and efficiency. *Id.* The Guidance is indisputably binding—the FAR Deviation Clause commits contractors to complying “with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract” that the Task Force issues on its website. Pl. Br. at 9. Indeed, Defendants’ assertion that the FAQs are not substantive guidance and thus need not be subject to otherwise-applicable procedural requirements is untrue. Response Br. at 8 n.3. The FAR Deviation Clause requires contractors to comply with FAQs, just like the rest of the Guidance. Pl. Br. at 9.

Because it is a binding procurement policy or regulation, it had to go through notice and comment. 41 U.S.C. § 1707. None of the Guidance was published in the Federal Register. And although the OMB’s revised determination references the Guidance, it neither publishes the guidance nor opens it up to notice and comment. 86 Fed. Reg. 63,421. At most, it acknowledges the Guidance’s existence. And the OMB Determination cannot incorporate the Guidance by reference, because it did

not comply with the requirements of 1 C.F.R. part 51, which sets out the approval process for incorporating documents by reference in the Federal Register.

Instead of responding to the Plaintiffs' other arguments that the Task Force Guidance and the FAR Deviation Clause should have undergone notice and comment, Pl. Br. at 19–22, the Defendants insist that the Revised OMB Determination cures all notice and comment defects with all parts of the Contract Mandate. Response Br. at 21–23. That is wrong, first because the Task Force Guidance and the FAR Deviation Clause are subject to distinct notice-and-comment obligations and so must *themselves* be put through notice and comment. But it is also wrong because the OMB Determination does not satisfy the notice-and-comment requirements of Section 1707 either.

Defendants invoked an emergency exemption from normal notice and comment that applies *only* to a regulation that is “effective on a temporary basis” where “urgent and compelling circumstances make compliance with the requirements impracticable”. 41 U.S.C. § 1707(d); *see also Jiffy v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004) (holding that an exemption from an analogous notice and comment under the APA should be “narrowly construed and only reluctantly countenanced”). Defendants' argument that the Contractor Mandate is temporary is farcical: they insist it must be temporary because the OMB Determination says so, “even if no certain endpoint has yet been identified.” Response Br. at 22. That cannot possibly be what “temporary” means.

Defendants' assertion of “urgent and compelling circumstances” fares no better. Once again, Defendants rely on the COVID pandemic as a whole, without pointing to any urgent circumstances related to federal contracts. Response Br. at 22. If putting the Mandate through notice and comment would not cause an “urgent and compelling” disruption to work on federal contracts, then the Defendants must satisfy the public comment requirements. Indeed, Defendants have not tried to satisfy that burden at any time in their briefing, in the EO, or in the OMB determination. Plus, Defendants waited nearly a year after vaccines were widely available to issue the Mandate. They offer

no reason why this Mandate is necessary now, on an expedited schedule, and without public notice and comment. When invoking emergency exceptions to rulemaking in the analogous APA context, agencies cannot “simply wait” and then “raise up the ‘good cause’ banner and promulgate rules without following APA procedures.” *Tri-Cnty Telephone Ass’n, Inc., v. Fed. Comm’n Comm’n*, 999 F.3d 714, 720 (D.C. Cir. 2021).

If circumstances were so dire, Defendants would not have moved the compliance deadline from December 7 to January 18. Defendants cannot explain why circumstances are so dire that notice-and-comment procedures must be ignored, yet compliance can be delayed until January. The most they say is that delaying the compliance deadline warrants ignoring notice-and-comment procedures because otherwise “the change in deadlines ... [would not have] practical effect.” Response Br. at 23. That makes no sense. If the revised deadline can become effective only after notice and comment, then the first deadline, which did not go through notice and comment either, was also a nullity. An agency cannot create an “urgent and compelling” circumstance by *itself* issuing an unlawful policy and then declaring that it must be urgently replaced.

C. If the Procurement Act authorizes the Contractor Mandate, the Procurement Act and Mandate are unconstitutional.

If this Court concludes that the Procurement Act’s terms authorize the Contractor Mandate, then the Act is unconstitutional. To start, the Constitution does not give Congress the power to enact a public health scheme like the Mandate. *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 535 (2012). Defendants attempt to justify the Mandate as a valid exercise of federal power under the Spending Clause, Response Br. at 26–27, 30–32, but Defendants are not simply spending federal funds. They are attaching restrictive conditions to that spending. Congress must rely on the Necessary and Proper Clause for those purposes. *NFIB*, 567 U.S. at 559–60. Here, the Mandate is not “proper” because it encroaches on state sovereignty by intruding on the State’s realm of public health regulation and holding billions of dollars hostage on an extremely accelerated and unnecessarily urgent basis. *Id.* at

559, 577–78; *see* Pl. Br. at 26. It is the very definition of financial “gun to the head.” *NFIB*, 567 U.S. at 581.

And even if Congress *could* have enacted such a scheme, it cannot have done so here, because the Procurement Act, if interpreted as Defendants hope, lacks an intelligible principle. *See* Pl. Br. at 22–24. The Procurement Act delegates to the President using the statutory terms “econom[y] and efficien[cy].” 40 U.S.C. §§ 101, 121(a). If this Court finds that this delegation is broad enough to authorize the President to impose a contractor vaccine mandate, then the Act lacks any meaningful boundaries. *See Mistretta*, 488 U.S. at 372–73; Pl. Br. at 24. Defendants can point only to inapposite cases involving statutes that are not present here. Response Br. at 27–29. If the Procurement Act allows the President to achieve *any* objective as long as he incants the phrase “economic efficiency,” it is a complete delegation of legislative authority with no meaningful constraints whatsoever.

III. Plaintiffs will suffer substantial and irreparable harm absent injunctive relief.

At best, if Plaintiffs comply with the Contractor Mandate, they will expend considerable time and financial resources monitoring compliance. GA Tech Dec., Pl. Br. at Ex. 2 at ¶ 11. And if Plaintiffs do not comply, they will lose valuable federal contracts that provide tens of millions of dollars of revenue and attract skilled employees. Pl. Br. at 12–13. Thus, absent an injunction, Plaintiffs will be forced to shoulder enormous financial burdens that legal remedies cannot redress. *See Odebrecht Constr., Inc. v. Sec’y, Fla. Dep’t of Transp.*, 715 F.3d 1268, 1289 (11th Cir. 2013) (“[N]umerous courts have held that the inability to recover monetary damages . . . renders the harm suffered irreparable.”).

Similarly, whether Plaintiffs comply or not, Plaintiffs will also lose employees, including those with specialized skillsets. If Plaintiffs do not comply, they will face enormous difficulty replacing employees without federal contracts to attract replacements. Pl. Br. at 28; Declaration of Kathleen E. Toomey (“GDPH Dec.”), Pl. Br. at Ex. 4 at ¶ 10, Declaration of Margaret A. Amstutz, PhD (“UGA-2 Dec.”), Pl. Br. at Ex. 13 at ¶ 10, Declaration of Jason Guilbeault (“AU Dec.”), Pl. Br. at Ex. 1 at ¶

18; GA Tech Dec. at ¶ 15. And if Plaintiffs *do* comply, they will lose employees who decline to be vaccinated—again, extremely difficult to replace when the Nation faces an extreme labor shortage. Pl. Br. at 17; *Georgia v. United States*, 398 F. Supp. 3d 1330, 1344 (S.D. Ga. 2019) (holding that “the loss of [a] contract,” and “the loss of employees” constitutes “irreparable harm”); *Douglas Dynamics, LLC v. Buyers Prods. Co.*, 717 F.3d 1336, 1344 (Fed. Cir. 2013) (recognizing that irreparable injury may include “losses that are often difficult to quantify, including . . . in reputation and brand distinction”).

Defendants argue that Plaintiffs cannot demonstrate irreparable harm for reasons nearly identical to those asserted in their challenge to Plaintiffs’ Article III standing, *see* Response Br. at 10–12, 30–34, and their arguments fail for the same reason. Plaintiffs have already received contract modifications, including amendments from the CDC, NIH, and NAID. *See* UGA Supp. Dec. at Exhibits A–G. Those Amendments incorporate the Contractor Mandate and require that Contractors “sign and return the modification.” CDC Amendment, UGA Supp. Dec. Ex. B at 4; *see also* BVRHS Dec. at ¶ 12; IDFG Dec. at ¶ 2. Regardless, Plaintiffs need not point to individual contracts to demonstrate harm because the applicable standard requires only “a credible threat that the injury would be repeated imminently,” not that Plaintiffs identify a particular contract that has already caused them harm. *See Elend v. Basham*, 471 F.3d 1199, 1208 (11th Cir. 2006). When the government threatens Plaintiffs with the loss of valuable contracts in the future if they do not comply *now*, there is imminent harm. *See Meland*, 2 F.4th at 846. Indeed, the government continues to *change its views* as to who is covered and who is not (seemingly for the purposes of litigation), ADPH Supp. Dec. at ¶¶ 16–18, official guidance continues to change, and the government continues to hide behind a merry-go-round of procedural obstacles meant to frustrate judicial review. The uncertainty alone will lead to an untenable loss of contracts, irretrievable compliance costs, and loss of employees. *Id.*; *cf. North Dakota v. Heydinger*, 825 F.3d 912, 916 (8th Cir. 2016) (“Delaying judicial resolution would force these plaintiffs ‘to gamble millions of dollars on an uncertain legal foundation.’”).

Defendants also argue that “losing a contract [and the billions of dollars that come with said contract] would not be irreparable harm.” Response Br. at 32. Nonsense. When there is no way for Plaintiffs to recover compliance costs, those damages are irreparable. *Odebrecht Constr., Inc.*, 715 F.3d at 1289 (“[N]umerous courts have held that the inability to recover monetary damages . . . renders the harm suffered irreparable.”). Contrary to Defendants’ claims, Plaintiffs cannot just violate the Mandate and then settle the issue after the fact in the United States Court of Federal Claims. *See* Response Br. at 32–33. Plaintiffs have begun, and certainly intend to make, every attempt to comply with the Mandate, if it is enforced. AU Dec. at ¶¶ 12–15; GA Tech Dec. at ¶¶ 11–13; GDPH at ¶ 10; UGA-2 Dec. at ¶¶ 5–7; UI Dec. at ¶ 16. The stakes for the Plaintiffs are too high to risk noncompliance and could cost them billions of dollars, skilled employees, and the ability to carry out their mission objectives. *See* Pl. Br. at 28; GDPH Dec. at ¶ 10; UGA-2 Dec. at ¶ 10; AU Dec. at ¶ 18; GA Tech Dec. at ¶ 15. But as Plaintiffs attempt to comply with the Mandate, they will have to change their workplaces, fire unvaccinated employees, and cause, at the very least, a loss of reputation among employees. *See e.g., Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004) (recognizing that the loss of good will is an irreparable harm). Defendants cannot seriously claim that Plaintiffs would be able to undo that damage.

IV. The balance of equities and public interest favors granting injunctive relief.

The equities and public interest lean heavily against Defendants, who identify no serious argument to the contrary. As explained above, the Mandate would crush employers, including Plaintiffs. At best, employers will have to engage in extremely expensive reporting requirements and fire unvaccinated employees—or choose to forgo billions in federal contracts (and then almost certainly lose employees). The harm to Plaintiffs is so obvious it barely needs explanation.

By contrast, preserving the status quo would do little, if anything, to harm the government, and Defendants cannot explain otherwise. They first argue that enjoining the Mandate would “harm

the public interest in slowing the spread of COVID-19.” Response Br. at 19. This argument is revealing and wrong. It reveals what the government’s *actual* interest here is—health policy. The Mandate was one of a series of actions Defendants took to enforce a radical new health policy on the nation, under the obvious pretext of federal contracting. It is no accident that the government imposed multiple different mandates nearly simultaneously (using OSHA, CMS, and federal contracting agencies) to reach as many people as it could. None of this has anything to do with federal contracting—it is a “work-around,” plain and simple. *BST Holdings*, 17 F.4th 604. In any event, health concerns are no justification at all, as the government cannot point to *health policy* to explain why it needs a Mandate that must be supported by *economic efficiency* concerns. Finally, the argument is plainly unsupported. The government has no evidence whatsoever that the Mandate will meaningfully combat COVID-19, especially given how underinclusive and overinclusive the Mandate is. Putting thousands out of work will exacerbate economic inefficiency, not slow the spread of COVID-19.

Defendants next argue that enjoining the Mandate would harm the public interest by “hampering the efficiency of the contractors on which the federal government relies,” but that is brazenly wrong. Response Br. at 35. Many of those very contractors are suing the federal government across the country because they are acutely aware that this Mandate is the furthest thing from efficient, and instead is an attempt to force vaccinations on the portion of the public that has declined them. Defendants again refuse even to acknowledge that the primary result of the Mandate will be to *cripple* economic efficiency by forcing out unvaccinated employees and damaging contractors’ ability to supply the federal government with service.

Preserving the status quo here is the simplest, easiest decision.³ There is simply no urgency on Defendants’ part. At worst, even assuming that the Mandate actually would improve efficiency, the

³ Defendants argue that a preliminary injunction would not preserve the status quo since an injunction would (1) prevent “further implementation of EO 14,042,” and (2) interfere “with the federal government’s ability to determine the terms on which it will enter into contracts.” Response Br. at

government would suffer minimal efficiency losses for a few months. That is nothing in comparison to the harm to employers and employees if the Mandate is allowed to go into effect.

At the time of President Biden’s September 9th announcement, the COVID-19 pandemic had been ongoing for over eighteen months. COVID-19 vaccines had been approved for public use for almost nine months. FDA, FDA Takes Key Action in Fight Against Covid-19 by Issuing Emergency Use Authorization for First Covid-19 Vaccine (Dec. 11, 2020), <https://bit.ly/3nVcIS>. As late as seven weeks before the announcement, the White House publicly indicated it had no authority or intention to impose a vaccine mandate. *See* Office of Public Engagement, Transcript, Press Briefing by Press Secretary Jen Psaki (July 23, 2021), <https://bit.ly/303pHZt> (last visited Nov 24, 2021). It is *far* too late for Defendants to cry “emergency” now, especially when the supposed “emergency” is invoked to obtain debatable benefits to government contracting efficiency. The public interest is better served “by maintaining our constitutional structure and maintaining liberty of individuals to make intensely personal decisions according to their own convictions.” *BST Holdings*, 17 F.4th 604 at *8.

CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court preliminarily enjoin Defendants from implementing and enforcing the Contractor Mandate.

Respectfully submitted this 30th day of November, 2021.

STATE OF GEORGIA
Georgia Attorney General
Christopher M. Carr

/s/ Drew F. Waldbeser
Stephen Petrany
Solicitor General
Drew F. Waldbeser (Admitted Pro Hac Vice)
Deputy Solicitor General
Ross W. Bergethon

/s/ Harold D. Melton
Harold D. Melton (Ga Bar No. 501570)
Charles E. Peeler (Ga Bar No. 570399)
Misha Tseytlin (Admitted Pro Hac Vice)
Special Assistant Attorneys General for Plaintiffs the State of Georgia, Governor Brian P. Kemp in his official capacity, Commissioner Gary W. Black in his official capacity; and the Board of Regents of the University System of Georgia

35–36. This argument is risible. The status quo is not “whatever the government wants;” it is the factual reality on the ground. The Mandate has not taken effect, and no one is subject to it (yet). The only status quo to maintain is a Mandate-less world.

Deputy Solicitor General
Office of the Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334
Tel.: (404) 458-3378
Fax: (404) 656-2199
dwaldbeser@law.ga.gov

Counsel for State of Georgia Plaintiffs

Troutman Pepper Hamilton Sanders LLP
Bank of America Plaza, Suite 3000
600 Peachtree Street N.E.
Atlanta, Georgia 30308-2216
Tel.: (404) 885-3000
Fax: (404) 962-6515
Harold.Melton@Troutman.com

Counsel for State of Georgia Plaintiffs

/s/ Paul H. Dunbar III
Paul H. Dunbar III (233300)
Capers Dunbar Sanders & Bellotti, LLP
2604 Commons Boulevard
Augusta, Georgia 30909
Phone: (706) 722-7542
pauldunbar@bellsouth.net

Local Counsel for Plaintiff-States and Agencies

STATE OF ALABAMA
Office of the Attorney General Steve Marshall

/s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr. (Admitted Pro Hac Vice)

Solicitor General
Thomas A. Wilson (Admitted Pro Hac Vice)
Deputy Solicitor General
Office of the Attorney General
501 Washington Ave.
Montgomery, AL 36130
Tel.: (334) 353-2196
Fax: (334) 353-8400
Edmund.LaCour@AlabamaAG.gov
Thomas.Wilson@AlabamaAG.gov

Counsel for Plaintiffs State of Alabama and Alabama Agencies

STATE OF IDAHO
Office of the Attorney General
Lawrence G. Wasden

/s/ W. Scott Zanzig
W. Scott Zanzig (Admitted Pro Hac Vice)
Deputy Attorney General

/s/ William G. Parker, Jr.
William G. Parker, Jr. ((Admitted Pro Hac Vice)

General Counsel
Office of the Governor
Alabama State Capitol
600 Dexter Avenue, Room N-203
Montgomery, Alabama 36130
Tel.: (334) 242-7120
Fax: (334) 242-2335
Will.Parker@governor.alabama.gov

Counsel for Governor Kay Ivey

STATE OF KANSAS
Office of Attorney General Derek
Schmidt

/s/ Brant M. Laue
Brant M. Laue (Pro Hac Vice forthcoming)
Solicitor General

954 W Jefferson, 2nd Floor
P. O. Box 83720
Boise, ID 83720-0010
Tel.: (208) 334-2400
Fax: (208) 854-8073
scott.zanzig@ag.idaho.gov

Counsel for the State of Idaho

STATE OF SOUTH CAROLINA
Office of South Carolina Attorney General Alan Wilson

/s/ J. Emory Smith, Jr.
J. Emory Smith, Jr. (Admitted Pro Hac Vice)
Deputy Solicitor General

Thomas T. Hydrick (Pro Hac Vice
forthcoming)
Assistant Deputy Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Tel.: (803) 734-3680
Fax: (803) 734-3677
esmith@scag.gov

Counsel for the State of South Carolina

STATE OF WEST VIRGINIA
Office of Attorney General Patrick Morrisey

/s/ Lindsay See
Lindsay See (Pro Hac Vice forthcoming)
Solicitor General
Office of the Attorney General
State Capitol Complex
Bldg. 1, Room E-26
Charleston, West Virginia 25305
Tel.: (304) 558-2021
Lindsay.S.See@wvago.gov

Counsel for the State of West Virginia

20 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612
Tel: (785) 296-2215
Fax: (785) 296-6296
brant.laue@ag.ks.gov

Counsel for the State of Kansas

STATE OF SOUTH CAROLINA
Office of Governor Henry McMaster

/s/ Thomas A. Limehouse, Jr.
Thomas A. Limehouse, Jr. (Admitted Pro Hac
Vice)
Chief Legal Counsel
Wm. Grayson Lambert (Admitted Pro Hac
Vice)
Senior Legal Counsel
Michael G. Shedd (Admitted Pro Hac Vice)
Deputy Legal Counsel
Office of the Governor
South Carolina State House
1100 Gervais Street
Columbia, South Carolina 29201
(803) 734-2100
tlimehouse@governor.sc.gov

*Counsel for Henry McMaster, in his official capacity as
Governor of the State of South Carolina*

STATE OF UTAH
Office of the Attorney General Sean Reyes

/s/ Melissa A. Holyoak
Melissa A. Holyoak (Admitted Pro Hac Vice)
Solicitor General
Office of the Attorney General
350 N. State Street, Suite 230
P.O. Box 142320
Salt Lake City, UT 84114-2320
Tel.: 385.271.2484
melissaholyoak@agutah.gov

Counsel for the State of Utah

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2021, I caused to be electronically filed a true and correct copy of the foregoing with the Clerk of the Court using the CM/ECF system which will automatically send email notification of such filing to all counsel of record

This 30th day of November, 2021.

/s/ Harold D. Melton

Harold D. Melton (Ga Bar No. 501570)
Troutman Pepper Hamilton Sanders LLP
Bank of America Plaza, Suite 3000
600 Peachtree Street N.E.
Atlanta, Georgia 30308-2216
Harold.Melton@Troutman.com
(404) 885-3000
(404) 885-3900

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The State of Georgia, et al.,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as
President of the United States, et al.,

Defendants.

Civil Action No.
1:21-cv-00163-RSB-BKE

SUPPLEMENTAL DECLARATION OF MICHAEL P. SHANNON

1. My name is Michael P. Shannon, and I am competent in all respects to testify to the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true.

2. I am the Vice President & Deputy Chief Business Officer for the Georgia Institute of Technology (“Georgia Tech”). In this capacity, I am familiar with the business operations of Georgia Tech, including but not limited to those matters at issue in this litigation and described more fully herein.

3. Georgia Tech is a finalist in response to solicitation number 80ARC020R0011 issued by the National Aeronautics and Space Administration (“NASA”).

4. The solicitation is in excess of \$250,000.

5. In October 2021, the solicitation was amended to include Federal

Acquisition Regulation (FAR) clause 52.223-99, which requires covered employees of federal contractors and subcontractors to be vaccinated in accordance with Executive Order 14042 (“the EO”) and the guidance issued by the Safer Federal Workforce Task Force (“the guidance”).

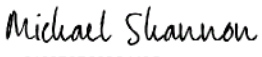
6. Georgia Tech was required to agree to FAR clause 52.223-99 to maintain its eligibility for the contract award pursuant to the NASA solicitation.

7. A true and correct copy of an email from the NASA contracting officer to Georgia Tech that included the amendment/modification requiring Georgia Tech to agree to FAR clause 52.223-99 is attached hereto as Exhibit A.

8. A true and correct copy of the amendment/modification included in the email referenced in the preceding paragraph is attached hereto as Exhibit B.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 30th day of November, 2021.

DocuSigned by:

3105B3B288C443C...

Michael P. Shannon

EXHIBIT A

From: Shelley, Gary A. (ARC-JAI) <gary.a.shelley@nasa.gov>
Sent: Friday, October 8, 2021 12:32 PM
To: D'Urbano, Christopher <Christopher.Durbano@osp.gatech.edu>
Cc: Westmoreland, Vanessa R. (ARC-JAI) <vanessa.r.westmoreland@nasa.gov>
Subject: Amendment 4 to RFP Solicitation #80ARC020R0011, RVLTD

Good Morning Mr. D'Urbano,

In order to implement the requirements of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, signed by the President on September 9, 2021; a Procurement Class Deviation (PCD) was initiated to include a clause. Clause 52.223-99, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors has been added to the RFP through Amendment 4. The amendment to the solicitation has also been posted on the "Contracting Opportunities" page of SAM.gov.

Also, a revised model contract has been attached for your signature which includes the addition of 52.223-99. Please return both the signed SF30 for Amendment 4 and a signed copy of the revised model contract no later than 3:00 PM PDT on October 14, 2021. If you have any questions or concerns, please feel free to contact me or Ms. Vanessa Westmoreland who is cc'd on this email. Thank you.

Best Regards,

Gary A. Shelley

Contracting Officer/ Contract Specialist
Aero, Exploration Tech, & IT Branch, Code JAI
NASA Ames Research Center
Moffett Field, CA 94035-0001

Phone: (650) 604-0065

Website: <https://www.nasa.gov/office/procurement>



EXHIBIT B

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE	OF	PAGES
	1		3

2. AMENDMENT/MODIFICATION NUMBER 04	3. EFFECTIVE DATE 10/08/2021	4. REQUISITION/PURCHASE REQUISITION NUMBER	5. PROJECT NUMBER (If applicable)
6. ISSUED BY NASA Ames Research Center, Acquisition Division Attn: Gary Shelley M/S 241-1 Moffett Field, CA 94035-0001	CODE	7. ADMINISTERED BY (If other than Item 6) NASA Ames Research Center, Acquisition Division Attn: Gary Shelley M/S 241-1 Moffett Field, CA 94035-0001	CODE
8. NAME AND ADDRESS OF CONTRACTOR (Number, street, county, State and ZIP Code)		(X)	9A. AMENDMENT OF SOLICITATION NUMBER 80ARC020R0011
		(X)	9B. DATED (SEE ITEM 11) 07/07/2020
			10A. MODIFICATION OF CONTRACT/ORDER NUMBER
			10B. DATED (SEE ITEM 13)
CODE	FACILITY CODE		

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☒ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended. ☒ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NUMBER AS DESCRIBED IN ITEM 14.**

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NUMBER IN ITEM 10A.
<input type="checkbox"/>	
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input type="checkbox"/>	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this amendment is to update the RFP to include clause 52.223-99, Ensuring Adequate Covid-19 Safety Protocols for Federal Contractors (DEVIATION 21-03). Change pages are included with this amendment.

Offerors are reminded that all RFP amendments must be acknowledged through a signature in Block 15 of the SF 30 for the Amendment.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Gary Shelley, Contracting Officer
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED
(Signature of person authorized to sign)	16B. UNITED STATES OF AMERICA GARY SHELLEY Digitally signed by GARY SHELLEY Date: 2021.10.08 08:14:53 -07'00'
	16C. DATE SIGNED 10/8/2021

Previous edition unusable

STANDARD FORM 30 (REV. 11/2016)
Prescribed by GSA FAR (48 CFR) 53.243

52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020)

(a) *Definitions.* As used in this clause—

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.

(b) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020)

(a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60.741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

52.223-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION 21-03)

(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 contract, 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 the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101, performed in whole or in part within the United States or its outlying areas.

(End of clause)

52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (JUN 2020)

(a) The Contractor, in connection with this contract, shall —

- (1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard — Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR part 9904.
- (2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.
- (3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

State of Georgia, *et al.*,

Plaintiffs,

v.

Civ. Action No. 1:21-cv-00163-JRH-BKE

Joseph R. Biden, *et al.*,

Defendants.

**DECLARATION OF
CATHERINE MOLCHAN DONALD**

I, CATHERINE MOLCHAN DONALD hereby declare:

Background and Experience

1. I make this declaration based on my personal and professional knowledge and experience, information available to me in my position in public service, and publicly available information.
2. I am the Chief Financial Officer for the State of Alabama Department of Public Health (“ADPH”, or the “Department”).
3. As the Chief Financial Officer of ADPH, I am responsible for overseeing the budgets and financial operations of ADPH. As an ADPH executive, I have been involved with the Department’s response efforts to the COVID-19 pandemic. Among other things, one of my primary duties is to assess the ways the Department’s actions will impact its financial health.

The Alabama Department of Public Health

4. ADPH is an agency of the State of Alabama and receives funding from the State.
5. ADPH is the state agency primarily responsible for serving Alabamians’ public health needs.
6. ADPH is a federal contractor with over 2,600 employees.
7. I have reviewed Executive Order 14042, the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors,

and the FAR Council's Class Deviation Clause 52.223-99. I refer to these documents together below as the "Contractor Mandate." I understand that the Contractor Mandate originally required federal contractors to, in turn, require their covered employees to be "fully vaccinated" by December 8, 2021, and that on November 4, 2021 the federal government extended the compliance deadline to January 18, 2022.

8. ADPH has federal contracts that would be considered covered contracts under the Contractor Mandate.
9. State law prohibits ADPH from soliciting its employees' vaccination status. *See* Ala. Act. 2021-493 § 1(a). However, about half of all Alabamians have not received the COVID-19 vaccine, and it is reasonable to assume that roughly the same proportion of ADPH employees have not received the vaccine either.
10. ADPH has worksites—a minimum of two with approximately 892 employees—that would be considered covered workplaces under the Contractor Mandate.
11. ADPH stands to lose funds if it does not comply with the Contractor Mandate.

ADPH's Federal Contracts

12. ADPH is currently engaged in federal contracts relating to the provision of important health and safety data to the federal government, including those in which its Center for Health Statistics provides Alabama birth and death data to the National Center for Health Statistics, part of the federal Centers for Disease Control and Prevention (CDC). Additionally, ADPH has led the State's response to the COVID-19 pandemic.

The Impact of the Contractor Mandate on ADPH

13. We estimate that roughly 40% of our covered unvaccinated employees will resign if we are forced to enforce the federal government's Contractor Mandate.
14. Losing employees due to the Contractor Mandate jeopardizes the ability of ADPH—and, accordingly, of the State—to perform its contracts and provide important health services to citizens. Particularly vulnerable are the Department's programs related to sanitation inspections of food manufacturing establishments for the Food and Drug Administration (FDA) and supporting the safe transportation of transuranic radioactive waste from United States Department of Energy facilities in the eastern U.S. through the 10 corridor counties in Alabama along Interstates 20, 59, and 459.
15. The federal government did not alert ADPH that it was considered a "federal contractor" until October 22, 2021. I have attached as **Exhibit A** to this declaration a true and correct copy of an email I received from the CDC on October 22, 2021, demanding compliance with the Contractor Mandate.

16. On November 8, 2021, the CDC emailed “all VSCP [Vital Statistics Cooperative Program] jurisdictions,” which includes ADPH, regarding “the original mass modification sent on October 22, 2021.” I have attached as **Exhibit B** to this declaration a true and correct copy of this email. In the email, CDC extended by one week—from November 9 to November 16—the deadline to comply with the “original mass modification,” and further noted that “[a]ll of the new VSCP contracts for 2022 will also include this language.” The CDC’s November 8 email thus reaffirmed ADPH’s coverage under the Contractor Mandate.
17. On November 15, 2021, CDC again emailed ADPH regarding the Contractor Mandate. I have attached as **Exhibit C** to this declaration a true and correct copy of this email. Despite CDC’s previous emails asserting that the Contractor Mandate covered ADPH, in its November 15 email the CDC stated that the Contractor Mandate would no longer cover ADPH. The CDC cited “[e]xtensive discussions,” but provided no explanation for its decision.
18. The federal government’s shifting deadlines and unexplained decision-making regarding the Contractor Mandate’s application place ADPH in a precarious position. CDC provided neither its rationale for removing ADPH from coverage nor any assurances that it would not reapply the Contractor Mandate to ADPH at a later date. Therefore, we do not know whether the federal government might change its mind again and suddenly require our compliance.
19. As noted above, ADPH’s federal contracts impact the collection and sharing of vital record information. Such data is an important component generally for State and federal health initiatives and specifically for Alabama’s information gathering and processing related to the COVID-19 pandemic. In addition, ADPH has federal contracts impacting transportation of transuranic radioactive waste through Alabama and for sanitation inspections of food manufacturing establishments in Alabama for the FDA.
20. If the federal government again changes its mind and decides to alter the scope of the Contractor Mandate to include ADPH, then ADPH will be placed in an impossible situation. If ADPH does not comply with the Contractor Mandate, then the Department will lose significant funding for these critical programs. But if ADPH complies with the Contractor Mandate, it stands to lose a significant percentage of its workforce.
21. The Contractor Mandate would therefore force ADPH to choose between losing funding and losing workers. In either event, the Contractor Mandate would render the Department less effective and jeopardize the welfare of the Alabamians who benefit from ADPH’s programs.
22. For the same reasons, the Contractor Mandate would also diminish ADPH’s capacity to defend Alabamians against COVID-19.

23. The federal government has provided no guarantee that the Contractor Mandate will remain inapplicable to ADPH, thus placing ADPH in a precarious position wondering whether the CDC will again change its mind and force ADPH to choose between losing funding and losing workers.
24. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

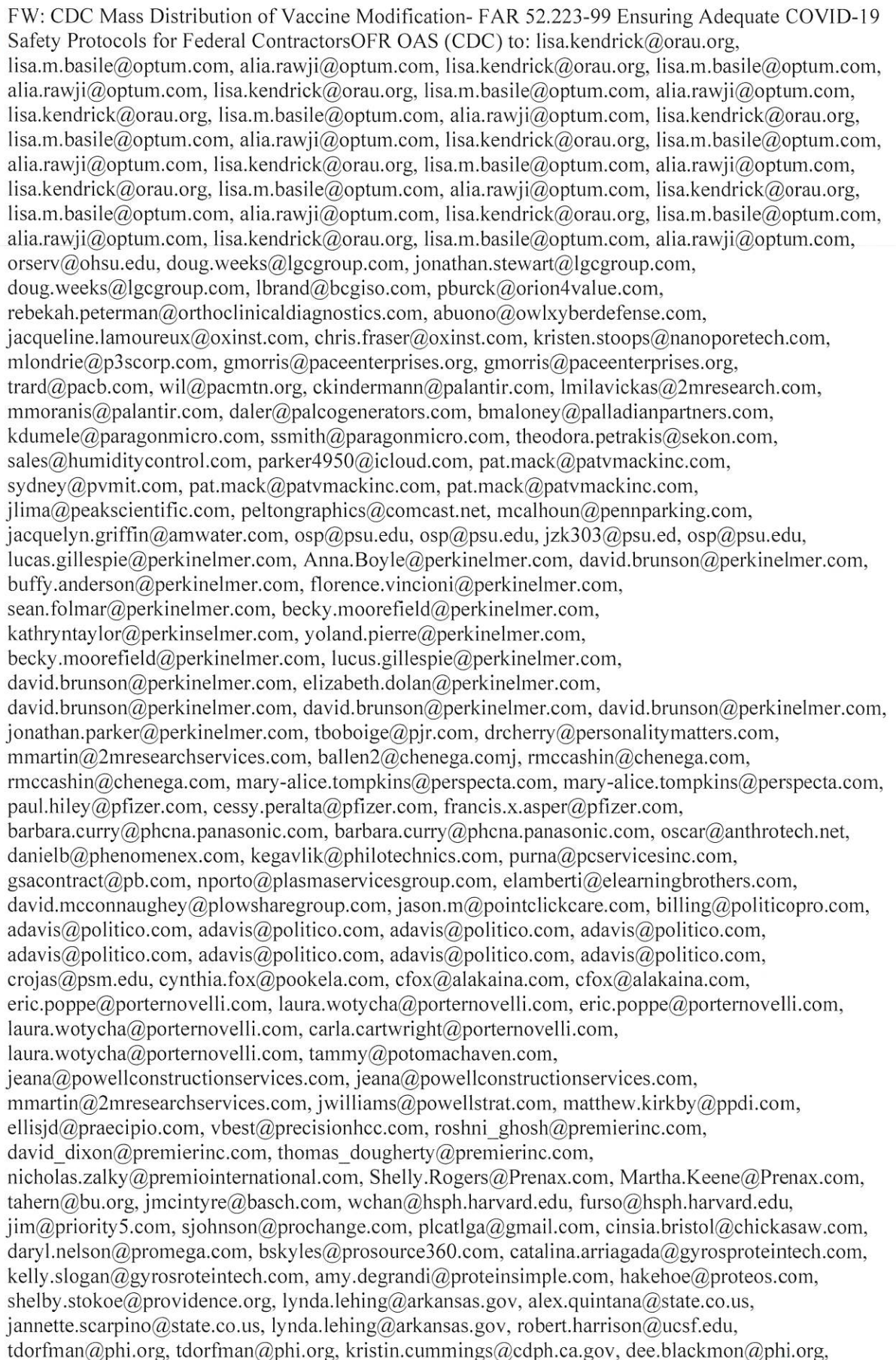
Nov 30, 2021

Date

Catherine E. Donald

Catherine Molchan Donald
Chief Financial Officer
Alabama Department of Public Health

Exhibit A



From: "OFR OAS (CDC)" <cdcfroas@cdc.gov>

"lisa.kendrick@orau.org" <lisa.kendrick@orau.org>, "lisa.m.basile@optum.com"
 <lisa.m.basile@optum.com>, "alia.rawji@optum.com" <alia.rawji@optum.com>,
 "lisa.kendrick@orau.org" <lisa.kendrick@orau.org>, "lisa.m.basile@optum.com"
 <lisa.m.basile@optum.com>, "alia.rawji@optum.com" <alia.rawji@optum.com>, "orserv@ohsu.edu"
 <orserv@ohsu.edu>, "doug.weeks@lgcgroup.com" <doug.weeks@lgcgroup.com>,
 "jonathan.stewart@lgcgroup.com" <jonathan.stewart@lgcgroup.com>, "doug.weeks@lgcgroup.com"
 <doug.weeks@lgcgroup.com>, "lbrand@bcgiso.com" <lbrand@bcgiso.com>,
 "pburck@orion4value.com" <pburck@orion4value.com>,
 "rebekah.peterman@orthoclinicaldiagnostics.com"
 <rebekah.peterman@orthoclinicaldiagnostics.com>, "abuno@owlxyberdefense.com"
 <abuno@owlxyberdefense.com>, "jacqueline.lamoureux@oxinst.com"
 <jacqueline.lamoureux@oxinst.com>, "chris.fraser@oxinst.com" <chris.fraser@oxinst.com>,
 "kristen.stoops@nanoporetech.com" <kristen.stoops@nanoporetech.com>, "mlondrie@p3scorp.com"
 <mlondrie@p3scorp.com>, "gmorris@paceenterprises.org" <gmorris@paceenterprises.org>,
 "gmorris@paceenterprises.org" <gmorris@paceenterprises.org>, "trard@pacb.com"
 <trard@pacb.com>, "wil@pacmtn.org" <wil@pacmtn.org>, "ckindermann@palantir.com"
 <ckindermann@palantir.com>, "lmlavickas@2mresearch.com" <lmlavickas@2mresearch.com>,
 "mmoranis@palantir.com" <mmoranis@palantir.com>, "daler@palcogenerators.com"
 <daler@palcogenerators.com>, "bmaloney@palladianpartners.com"
 <bmaloney@palladianpartners.com>, "kdumele@paragonmicro.com"
 <kdumele@paragonmicro.com>, "ssmith@paragonmicro.com" <ssmith@paragonmicro.com>,
 "theodora.petrakis@sekon.com" <theodora.petrakis@sekon.com>, "sales@humiditycontrol.com"
 <sales@humiditycontrol.com>, "parker4950@icloud.com" <parker4950@icloud.com>,
 "pat.mack@patvmackinc.com" <pat.mack@patvmackinc.com>, "sydney@pvmmit.com"
 <sydney@pvmmit.com>, "pat.mack@patvmackinc.com" <pat.mack@patvmackinc.com>,
 "pat.mack@patvmackinc.com" <pat.mack@patvmackinc.com>, "jlima@peakscientific.com"
 <jlima@peakscientific.com>, "peltongraphics@comcast.net" <peltongraphics@comcast.net>,
 "mcalhoun@pennparking.com" <mcalhoun@pennparking.com>, "jacquelyn.griffin@amwater.com"
 <jacquelyn.griffin@amwater.com>, "osp@psu.edu" <osp@psu.edu>, "osp@psu.edu" <osp@psu.edu>,
 "jzk303@psu.edu" <jzk303@psu.edu>, "osp@psu.edu" <osp@psu.edu>,
 "lucas.gillespie@perkinelmer.com" <lucas.gillespie@perkinelmer.com>,
 "Anna.Boyle@perkinelmer.com" <Anna.Boyle@perkinelmer.com>,
 "david.brunson@perkinelmer.com" <david.brunson@perkinelmer.com>,
 "buffy.anderson@perkinelmer.com" <buffy.anderson@perkinelmer.com>,
 "florence.vincioni@perkinelmer.com" <florence.vincioni@perkinelmer.com>,
 "sean.folmar@perkinelmer.com" <sean.folmar@perkinelmer.com>,
 "becky.moorefield@perkinelmer.com" <becky.moorefield@perkinelmer.com>,
 "kathryntaylor@perkinselmer.com" <kathryntaylor@perkinselmer.com>,
 "yoland.pierre@perkinelmer.com" <yoland.pierre@perkinelmer.com>,
 "becky.moorefield@perkinelmer.com" <becky.moorefield@perkinelmer.com>,
 "lucas.gillespie@perkinelmer.com" <lucas.gillespie@perkinelmer.com>,
 "david.brunson@perkinelmer.com" <david.brunson@perkinelmer.com>,
 "elizabeth.dolan@perkinelmer.com" <elizabeth.dolan@perkinelmer.com>,
 "david.brunson@perkinelmer.com" <david.brunson@perkinelmer.com>,
 "david.brunson@perkinelmer.com" <david.brunson@perkinelmer.com>,
 "david.brunson@perkinelmer.com" <david.brunson@perkinelmer.com>,
 "jonathan.parker@perkinelmer.com" <jonathan.parker@perkinelmer.com>, "tboboige@pjr.com"
 <tboboige@pjr.com>, "drcherry@personalitymatters.com" <drcherry@personalitymatters.com>,
 "mmartin@2mresearchservices.com" <mmartin@2mresearchservices.com>, "ballen2@chenega.comj"
 <ballen2@chenega.comj>, "rmccashin@chenega.com" <rmccashin@chenega.com>,
 "rmccashin@chenega.com" <rmccashin@chenega.com>, "mary-alice.tompkins@perspecta.com"
 <mary-alice.tompkins@perspecta.com>, "mary-alice.tompkins@perspecta.com" <mary-
 alice.tompkins@perspecta.com>, "paul.hiley@pfizer.com" <paul.hiley@pfizer.com>,
 "cessy.peralta@pfizer.com" <cessy.peralta@pfizer.com>, "francis.x.asper@pfizer.com"
 <francis.x.asper@pfizer.com>, "barbara.curry@phcna.panasonic.com"

<barbara.curry@phcna.panasonic.com>, "barbara.curry@phcna.panasonic.com"
 <barbara.curry@phcna.panasonic.com>, "oscar@anthrotech.net" <oscar@anthrotech.net>,
 "danielb@phenomenex.com" <danielb@phenomenex.com>, "kegavlik@philotechnics.com"
 <kegavlik@philotechnics.com>, "purna@pcservicesinc.com" <purna@pcservicesinc.com>,
 "gsacontract@pb.com" <gsacontract@pb.com>, "nporto@plasmaservicesgroup.com"
 <nporto@plasmaservicesgroup.com>, "elamberti@elearningbrothers.com"
 <elamberti@elearningbrothers.com>, "david.mcconnaughey@plowsharegroup.com"
 <david.mcconnaughey@plowsharegroup.com>, "jason.m@pointclickcare.com"
 <jason.m@pointclickcare.com>, "billing@politicopro.com" <billing@politicopro.com>,
 "adavis@politico.com" <adavis@politico.com>, "adavis@politico.com" <adavis@politico.com>,
 "adavis@politico.com" <adavis@politico.com>, "adavis@politico.com" <adavis@politico.com>,
 "adavis@politico.com" <adavis@politico.com>, "adavis@politico.com" <adavis@politico.com>,
 "crojas@psm.edu" <crojas@psm.edu>, "cynthia.fox@pookela.com" <cynthia.fox@pookela.com>,
 "cfox@alakaina.com" <cfox@alakaina.com>, "cfox@alakaina.com" <cfox@alakaina.com>,
 "eric.poppe@porternovelli.com" <eric.poppe@porternovelli.com>,
 "laura.wotycha@porternovelli.com" <laura.wotycha@porternovelli.com>,
 "eric.poppe@porternovelli.com" <eric.poppe@porternovelli.com>,
 "laura.wotycha@porternovelli.com" <laura.wotycha@porternovelli.com>,
 "carla.cartwright@porternovelli.com" <carla.cartwright@porternovelli.com>,
 "laura.wotycha@porternovelli.com" <laura.wotycha@porternovelli.com>,
 "tammy@potomachaven.com" <tammy@potomachaven.com>,
 "jeana@powellconstructionservices.com" <jeana@powellconstructionservices.com>,
 "jeana@powellconstructionservices.com" <jeana@powellconstructionservices.com>,
 "mmartin@2mresearchservices.com" <mmartin@2mresearchservices.com>,
 "jwilliams@powellstrat.com" <jwilliams@powellstrat.com>, "matthew.kirkby@ppdi.com"
 <matthew.kirkby@ppdi.com>, "ellisjd@praecipio.com" <ellisjd@praecipio.com>,
 "vbest@precisionhcc.com" <vbest@precisionhcc.com>, "roshni_ghosh@premierinc.com"
 <roshni_ghosh@premierinc.com>, "david_dixon@premierinc.com" <david_dixon@premierinc.com>,
 "thomas_dougherty@premierinc.com" <thomas_dougherty@premierinc.com>,
 "nicholas.zalky@premiointernational.com" <nicholas.zalky@premiointernational.com>,
 "Shelly.Rogers@Prenax.com" <Shelly.Rogers@Prenax.com>, "Martha.Keene@Prenax.com"
 <Martha.Keene@Prenax.com>, "tahern@bu.org" <tahern@bu.org>, "jmcintyre@basch.com"
 <jmcintyre@basch.com>, "wchan@hsph.harvard.edu" <wchan@hsph.harvard.edu>,
 "furso@hsph.harvard.edu" <furso@hsph.harvard.edu>, "jim@priority5.com" <jim@priority5.com>,
 "sjohnson@prochange.com" <sjohnson@prochange.com>, "plcatlga@gmail.com"
 <plcatlga@gmail.com>, "cinsia.bristol@chickasaw.com" <cinsia.bristol@chickasaw.com>,
 "daryl.nelson@promega.com" <daryl.nelson@promega.com>, "bskyles@prosource360.com"
 <bskyles@prosource360.com>, "catalina.arriagada@gyrosroteintech.com"
 <catalina.arriagada@gyrosroteintech.com>, "kelly.slogan@gyrosroteintech.com"
 <kelly.slogan@gyrosroteintech.com>, "amy.degrandi@proteinsimple.com"
 <amy.degrandi@proteinsimple.com>, "hakehoe@proteos.com" <hakehoe@proteos.com>,
 "shelby.stokoe@providence.org" <shelby.stokoe@providence.org>, "lynda.lehing@arkansas.gov"
 <lynda.lehing@arkansas.gov>, "alex.quintana@state.co.us" <alex.quintana@state.co.us>,
 "jannette.scarpino@state.co.us" <jannette.scarpino@state.co.us>, "lynda.lehing@arkansas.gov"
 <lynda.lehing@arkansas.gov>, "robert.harrison@ucsf.edu" <robert.harrison@ucsf.edu>,
 "tdorfman@phi.org" <tdorfman@phi.org>, "tdorfman@phi.org" <tdorfman@phi.org>,
 "kristin.cummings@cdph.ca.gov" <kristin.cummings@cdph.ca.gov>, "dee.blackmon@phi.org"
 <dee.blackmon@phi.org>, "ikubrom@phi.org" <ikubrom@phi.org>, "sami@communicatehealth.com"
 <sami@communicatehealth.com>, "mhuyinh@health.nyc.gov" <mhuyinh@health.nyc.gov>,
 "mhuyinh@health.nyc.gov" <mhuyinh@health.nyc.gov>, "lynda.lehing@arkansas.gov"
 <lynda.lehing@arkansas.gov>, "Molchan, Catherine <AL> (CDC adph.state.al.us)"
 <cathy.molchan@adph.state.al.us>, "nicole.rushing@adph.state.al.us"
 <nicole.rushing@adph.state.al.us>, "sami@communicatehealth.com"
 <sami@communicatehealth.com>, "ellen.badley@cdph.ca.gov" <ellen.badley@cdph.ca.gov>,

"renee.laoyan@cdph.ca.gov" <renee.laoyan@cdph.ca.gov>, "ellen.badley@cdph.ca.gov"
 <ellen.badley@cdph.ca.gov>, "sami@communicatehealth.com" <sami@communicatehealth.com>,
 "elizabeth.frugale@ct.gov" <elizabeth.frugale@ct.gov>, "elizabeth.frugale@ct.gov"
 <elizabeth.frugale@ct.gov>, "marco@brooksenvironmentalsol.com"
 <marco@brooksenvironmentalsol.com>, "tahern@bu.org" <tahern@bu.org>,
 "donna.moore@dph.ga.gov" <donna.moore@dph.ga.gov>, "Harrison, Christopher (CDC dph.ga.gov)"
 <christopher.harrison@dph.ga.gov>, "lynda.lehing@arkansas.gov" <lynda.lehing@arkansas.gov>,
 "joseph.aiello@illinois.gov" <joseph.aiello@illinois.gov>, "megan.clark-jimenez@illinois.gov"
 <megan.clark-jimenez@illinois.gov>, "sami@communicatehealth.com"
 <sami@communicatehealth.com>, "melissa.bird@idph.iowa.gov" <melissa.bird@idph.iowa.gov>,
 "melissa.bird@idph.iowa.gov" <melissa.bird@idph.iowa.gov>, "anna.rogersartis@chenega.com"
 <anna.rogersartis@chenega.com>, "sami@communicatehealth.com"
 <sami@communicatehealth.com>, "Barrett, Karin <MA> (CDC state.ma.us)"
 <karin.barrett@state.ma.us>, "karrin.barrett@state.ma.us" <karrin.barrett@state.ma.us>,
 "gmarquez@prsciencetrust.org" <gmarquez@prsciencetrust.org>, "matthew@pulsarinformatics.com"
 <matthew@pulsarinformatics.com>, "joshua.boston@qiagen.com" <joshua.boston@qiagen.com>,
 "charlene.mendezabal@qiagen.com" <charlene.mendezabal@qiagen.com>,
 "charlene.mendezabal@qiagen.com" <charlene.mendezabal@qiagen.com>,
 "daniel.termine@qiagen.com" <daniel.termine@qiagen.com>, "kim.garcia@qiagen.com"
 <kim.garcia@qiagen.com>, "Charlene.Mendezabal@qiagen.com"
 <Charlene.Mendezabal@qiagen.com>, "servicecontracts@qiagen.com"
 <servicecontracts@qiagen.com>, "kim.garcia@qiagen.com" <kim.garcia@qiagen.com>,
 "kim.garcia@qiagen.com" <kim.garcia@qiagen.com>, "suzannah.mayo@qiagen.com"
 <suzannah.mayo@qiagen.com>, "ted.king@qiagen.com" <ted.king@qiagen.com>,
 "kim.garcia@qiagen.com" <kim.garcia@qiagen.com>, "s.graham@neopost.com"
 <s.graham@neopost.com>, "ar@qualtrax.com" <ar@qualtrax.com>, "srenkes@qualtrax.com"
 <srenkes@qualtrax.com>, "michael.w.anderton@questdiagnostics.com"
 <michael.w.anderton@questdiagnostics.com>, "michael.w.anderton@questdiagnostics.com"
 <michael.w.anderton@questdiagnostics.com>, "dianna.m.tate@questdiagnostics.com"
 <dianna.m.tate@questdiagnostics.com>, "michele.l.lancina@questdiagnostics.com"
 <michele.l.lancina@questdiagnostics.com>, "jacob@quietprofessionalsllc.com"
 <jacob@quietprofessionalsllc.com>, "rloube@sensisagency.com" <rloube@sensisagency.com>,
 "cquinones@sensisagency.com" <cquinones@sensisagency.com>, "rloube@sensisagency.com"
 <rloube@sensisagency.com>, "rloube@sensisagency.com" <rloube@sensisagency.com>,
 "cquinones@sensisagency.com" <cquinones@sensisagency.com>, "rloube@sensisagency.com"
 <rloube@sensisagency.com>, "cquinones@sensisagency.com" <cquinones@sensisagency.com>,
 "kim.ajy@r2tinc.com" <kim.ajy@r2tinc.com>, "haribanda@quadyster.com"
 <haribanda@quadyster.com>, "danabreid@gmail.com" <danabreid@gmail.com>,
 "denise.rainey@rainmakerssolutions.com" <denise.rainey@rainmakerssolutions.com>,
 "denise.rainey@rainmakerssolutions.com" <denise.rainey@rainmakerssolutions.com>,
 "denise.rainey@rainmakerssolutions.com" <denise.rainey@rainmakerssolutions.com>,
 "Denise.Rainey@RainmakersSolutions.com" <Denise.Rainey@RainmakersSolutions.com>,
 "jordan.ripley@sba.gov" <jordan.ripley@sba.gov>, "denise.rainey@rainmakerssolutions.com"
 <denise.rainey@rainmakerssolutions.com>, "pclark@randcorp.com" <pclark@randcorp.com>,
 "jcho@rand.org" <jcho@rand.org>, "Linda Duffy," <lduffy@rand.org>, "Linda Duffy,"
 <lduffy@rand.org>, "coughlan@rand.org" <coughlan@rand.org>, "pclark@rand.org"
 <pclark@rand.org>, "contractsteam@rand.org" <contractsteam@rand.org>, "gchee@rand.org"
 <gchee@rand.org>, "contractsteam@rand.org" <contractsteam@rand.org>, "flieder@rand.org"
 <flieder@rand.org>, "hoy@rand.org" <hoy@rand.org>, "baptiste@rand.org" <baptiste@rand.org>,
 "gchee@rand.org" <gchee@rand.org>, "jay.nopola@respec.com" <jay.nopola@respec.com>,
 "danielle@theredcarrot.com" <danielle@theredcarrot.com>, "mohammad.alim@red-gate.com"
 <mohammad.alim@red-gate.com>, "bridget.faux@redriver.com" <bridget.faux@redriver.com>,
 "bridget.faux@redriver.com" <bridget.faux@redriver.com>, "bridget.faux@redriver.com"
 <bridget.faux@redriver.com>, "bridget.faux@redriver.com" <bridget.faux@redriver.com>,
 "bridget.faux@redriver.com" <bridget.faux@redriver.com>, "bridget.faux@redriver.com"

<bridget.faux@redriver.com>, "doug.adams@redriver.com" <doug.adams@redriver.com>, "doug.adams@redriver.com" <doug.adams@redriver.com>, "any.pung@redoxengine.com" <any.pung@redoxengine.com>, "contracts@reesscientific.com" <contracts@reesscientific.com>, "ljohnson@reesscientific.com" <ljohnson@reesscientific.com>, "catherine.lagarde@ucsf.edu" <catherine.lagarde@ucsf.edu>, "Charles.chiu@ucsf.edu" <Charles.chiu@ucsf.edu>, "Shelby.Mayoral@ucsf.edu" <Shelby.Mayoral@ucsf.edu>, "rebekah.varela@ucsf.edu" <rebekah.varela@ucsf.edu>, "maggie.cho@ucsf.edu" <maggie.cho@ucsf.edu>, "cynthia.escobedo@ucsf.edu" <cynthia.escobedo@ucsf.edu>, "peggy.rodgy@cuanschutz.edu" <peggy.rodgy@cuanschutz.edu>, "dtalley@umich.edu" <dtalley@umich.edu>, "clv@umich.edu" <clv@umich.edu>, "etmartin@umich.edu" <etmartin@umich.edu>, "dtalley@umich.edu" <dtalley@umich.edu>, "etmartin@umich.edu" <etmartin@umich.edu>, "dewitt@umich.edu" <dewitt@umich.edu>, "john5885@umn.edu" <john5885@umn.edu>, "john5885@umn.edu" <john5885@umn.edu>, "lisa_ashcraft@abtassoc.com" <lisa_ashcraft@abtassoc.com>, "lisa_ashcraft@abtassoc.com" <lisa_ashcraft@abtassoc.com>

History:

This message has been forwarded.

2 Attachments



Modification Contract Listing Email.xlsx



MOD 22-00001 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors CLEAN - edit v1.pdf

Do not reply to this email as this mailbox is not monitored.

Please read the email in its entirety along with the attached modification and contract listing

CDC Contractor,

As you are aware, Executive Order (E.O.) 14042 was signed by the President on September 9, 2021. The E.O. requires agencies to include a clause requiring contractors and subcontractors at any tier to comply with all guidance for contractor or subcontractor workplace locations as published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.

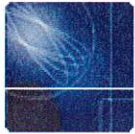
In direct correlation to the issuance of Executive Order (E.O.) 14042, see the attached bilateral modification to incorporate clause 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, in all contracts or contract-like instruments, for commercial and non-commercial requirements for services, research and development, and construction services. In addition to the modification, please see the attached contract listing spreadsheet to locate your contract and the contracting officer of record.

Contractors will sign and return the modification via email to the Contracting Officer of record by November 9, 2021.

Special Instructions: If your company will be submitting one modification for multiple contracts with the CDC, a listing of the contract numbers and contracting officer names must be included with your returned modification on a separate page.

Please direct your questions to your contracting officer of record for your contract and/or contracts listed on the attached spreadsheet.

Exhibit B



To:

Cc:

Bcc:

Subject: Fw: CDC Mass Distribution of Vaccine Modification- FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors

Catherine (Cathy) Molchan Donald, MBA
CFO and Director of General Operations
Alabama Department of Public Health
Suite 1550
334-206-5200
(C) 334-414-2276
catherine.donald@adph.state.al.us
www.alabamapublichealth.gov

----- Forwarded by Catherine Donald/GenOps/ADPH on 11/30/2021 03:14 PM -----

From: Nicole Rushing/CHS/ADPH
To: Brian Hale/LEGAL/ADPH@ADPH
Cc: Catherine Donald/GenOps/ADPH@ADPH
Date: 11/08/2021 04:17 PM
Subject: Fw: CDC Mass Distribution of Vaccine Modification- FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors

From: "Redman, Dawn (CDC/OCOO/OFR/OAS)" <pwj5@cdc.gov>
To: undisclosed-recipients;
Cc: "Jarman, Chrissy K. (CDC/DDPHSS/NCHS/DVS)" <ckj1@cdc.gov>
Date: 11/08/2021 12:11 PM
Subject: CDC Mass Distribution of Vaccine Modification- FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors

Good Morning,

My apologies if you have already received this notice, this is being send to all VSCP jurisdictions on record to correct any erroneous messages or omissions of the original mass modification sent on October 22, 2021. Please note we will accept a signed copy of your modification by November 16 instead of November 9th as indicated below. [All of the new VSCP contracts for 2022 will also include this language.](#)

Dawn A. Redman, MS, MBA

Contracting Officer

Team Lead Supporting NCHS

Office of Acquisition Services (OAS)

Office of Financial Resources (OFR)

Office of the Chief Operating Officer (OCOO)

Centers for Disease Control and Prevention (CDC)

DRedman@cdc.gov | 404-498-3069 office | 770-488-2671 fax



Please read the email in its entirety along with the attached modification and contract listing

CDC Contractor,

As you are aware, Executive Order (E.O.) 14042 was signed by the President on September 9, 2021. The E.O. requires agencies to include a clause requiring contractors and subcontractors at any tier to comply with all guidance for contractor or subcontractor workplace locations as published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.

In direct correlation to the issuance of Executive Order (E.O.) 14042, see the attached bilateral modification to incorporate clause 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, in all contracts or contract-like instruments, for commercial and non-commercial requirements for services, research and development, and construction services. In addition to the modification, please see the attached contract listing spreadsheet to locate your contract and the contracting officer of record.

Contractors will sign and return the modification via email to the Contracting Officer of record by November 9, 2021.

Special Instructions: If your company will be submitting one modification for multiple contracts with the CDC, a listing of the contract numbers and contracting officer names must be included with your returned modification on a separate page.

Please direct your questions to Dawn Redman if you need any additional assistance.

OAS Policy

Office of Acquisition Services (OAS)
Office of Financial Resources (OFR)
Office of the Chief Operating Officer (OCOO)
Centers for Disease Control and Prevention (CDC)



MOD 22-00001 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors CLEAN - edit v1.pdf

Exhibit C



Fw: Upcoming VSCP contracts and FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors

Nicole Rushing to: Catherine Donald
Cc: Brian Hale

11/15/2021 10:12 AM

FYI...

Nicole Henderson Rushing, MPH
State Registrar and Director
Alabama Center for Health Statistics
P. O. Box 5625
Montgomery, AL 36103-5625
Office: (334) 206-5426
Fax: (334) 206-2659
Email: nicole.rushing@adph.state.al.us
www.alabamapublichealth.gov/vitalrecords/

----- Forwarded by Nicole Rushing/CHS/ADPH on 11/15/2021 10:11 AM -----

From: "Redman, Dawn (CDC/OCOO/OFR/OAS)" <pwj5@cdc.gov>
To: undisclosed-recipients;;
Cc: "Jarman, Chrissy K. (CDC/DDPHSS/NCHS/DVS)" <ckj1@cdc.gov>, "Mitchell, Cynthia Y. (CDC/OCOO/OFR/OAS)" <akq9@cdc.gov>, "Folsom, Nathaniel (CDC/OCOO/OFR/OAS)" <qxxg2@cdc.gov>, "Black, Florence P. (CDC/OCOO/OFR/OAS) (CTR)" <fb4@cdc.gov>
Date: 11/15/2021 08:45 AM
Subject: Upcoming VSCP contracts and FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors

Good Morning,

Extensive discussions regarding the Safer Federal Workforce protocols set forth in the Task Force Guidance for Federal Contractors and Subcontractors and how they apply to the jurisdictions for the contracts supporting the VSCP. We have determined that the upcoming contracts for the receipt of vital statistic data should begin arriving in December and will NOT include the clause 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors. If you have any additional questions on the upcoming contract vehicles, please feel free to contact me directly.

Dawn A. Redman, MS, MBA

Contracting Officer

Team Lead Supporting NCHS

Office of Acquisition Services (OAS)

Office of Financial Resources (OFR)

Office of the Chief Operating Officer (OCOO)

Centers for Disease Control and Prevention (CDC)

DRedman@cdc.gov | 404-498-3069 office | 770-488-2671 fax



EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

The State of Georgia, et al.,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as
President of the United States, et al.,

Defendants.

Civil Action No.

1:21-cv-00163-RSB-BKE

SUPPLEMENTAL DECLARATION OF JILL TINCHER

1. My name is Jill Tinchler, I am more than eighteen years of age and I am legally competent to make this declaration.

2. I am the Executor Director of Sponsored Projects Administration for the University of Georgia ("UGA") and am knowledgeable of the facts set forth herein.

3. UGA has several federal agency contracts with the Centers for Disease Control and Prevention (CDC), National Institutes of Health (NIH), and US Department of the Interior – US Fish and Wildlife Service (USFWS).

4. UGA also maintains subcontracts with Icahn School of Medicine at Mount Sinai, who holds a federal agency contract with the NIH, and the University of Maryland, who holds a federal agency contract with the Food and Drug Administration (FDA).

5. As of November 24, 2021, UGA has received FAR contract modifications/amendments from the CDC, NIH, USFWS, and Icahn School of

Medicine at Mount Sinai. A chart containing information pertinent to each of these modifications is attached hereto as **Exhibit A**. As reflected in the chart, the anticipated award amount for each contract exceeds \$250,000.

6. In receiving each FAR contract/subcontract modification/amendment referenced herein, UGA was instructed to implement the modification.

7. Attached as **Exhibit B** is a true and accurate copy of a forwarded email originally sent to UGA personnel from the CDC. The email is titled, *FW: CDC Mass Distribution of Vaccine Modification- FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors*. The email states “**Contractors will sign and return the modification via email to the Contracting Officer of record by November 9, 2021,**” making it clear that UGA must comply with the modification. Ex. B (emphasis in original).

8. Attached as **Exhibit C** is a true and accurate copy of the CDC’s Amendment of Solicitation/Modification of Contract, Mass Modification 22-00001.

9. Attached as **Exhibit D** is a true and accurate copy of a forwarded email originally sent to UGA personnel from NIH. The email is titled, *ACTION NEEDED by October 15, 2021- FAR DEVIATION Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors*. The email states “The prescription for use of the clause indicates that ‘Contracting Officers are highly encouraged to include the clause in contracts and contract-like instruments above the simplified acquisition threshold that have been or will be awarded prior to November 14, 2021, on solicitations issued before October 15, 2021’. **At NIH, Contracting Officers are required to modify**

these existing contracts.” Ex. D (emphasis added).

10. Attached as **Exhibit E** is a true and accurate copy of the NIH’s Amendment of Solicitation/Modification of Contract, Amendment/Modification No. P00012.

11. Attached as **Exhibit F** is a true and accurate copy of a forwarded email originally sent to UGA personnel from Icahn School of Medicine at Mount Sinai, who holds a federal agency contract with NIH. The email is titled, *CEIRS Project, Subaward Amendment No. 12 between ISMMS & University of Georgia Research Foundation; Contract#HHSN272201400008C*. The email states “Icahn School of Medicine at Mount Sinai (ISMMS) received a modification to the Federal Contract from the NIH adding FAR Clause 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors. **Therefore, we are issuing an amendment to flow down the clause as required.**” Ex. F (emphasis added).

12. Attached as **Exhibit G** is a true and accurate copy of the NIH’s Amendment of Solicitation/Modification of Contract, Amendment/Modification No. Twelve (12).


13. To date, UGA has been required to sign ten FAR contract modifications and amendments on contracts/subcontracts that exceed \$250,000.

14. Many of the contracts/subcontracts to which these modifications apply are subject to FAR Clauses 52.242-15 (Stop Work Order); 52.249-5 (Termination for Convenience of the Government (Educational & Other Nonprofit Institutions); and 52.249.6 (Termination) which allow the contracting federal agency to stop work and

terminate contracts/subcontracts for many reasons, to include failure to agree to a bilateral modification. A true and accurate copy of FAR Clauses 52.242-15, 52.249-5, 52.249.6 is attached as **Exhibit H**.

15. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 30th day of November, 2021.



Jill Tincher
Executive Director, Sponsored Projects
Administration, University of Georgia

EXHIBIT A

University of Georgia
Projects with FAR Modifications and Amendments as of 11/24/2021

Sponsor	Campus Location	Awarded to Date Project Amount	Anticipated Total Project Amount	Project Start Date	Project End Date	Award ID	UGA Signed and Returned Modification	Sponsor Fully Executed and Returned
National Institutes	Athens	\$34,540,668.00	\$130,177,556	9/10/2019	9/9/2026	AWD00011157	10/22/2021	10/25/2021
National Institutes	Athens	\$1,000,000.00	\$91,775,618	4/1/2021	3/31/2028	AWD00013488	10/22/2021	10/22/2021
National Institutes of Health	Athens	\$3,349,907.00	\$40,000,000	7/14/2017	7/13/2024	AWD00012581, AWD00011655, AWD00008283	10/22/2021	11/23/2021
Mount Sinai - National Institutes of Health	Athens	\$5,875,296.00	\$5,875,296	4/1/2018	5/30/2022	AWD00008607	10/22/2021	11/4/2021
National Institutes	Athens	\$1,675,712.00	\$1,675,712	9/1/2017	8/31/2022	AWD00007539	10/22/2021	PENDING
Centers for Disease	Athens	\$699,118.00	\$699,118	9/1/2020	8/31/2022	AWD00012507	11/15/2021	11/15/2021
Centers for Disease Control	Athens	\$732,271.00	\$732,271	8/1/2021	7/31/2023	AWD00013799	11/15/2021	11/15/2021
Centers for Disease Control	Athens	\$1,116,539.00	\$1,116,539	8/1/2021	1/31/2023	AWD00012964	11/15/2021	11/15/2021
Centers for Disease Control	Athens	\$949,898.00	\$949,898	6/1/2021	5/31/2023	AWD00013543	11/15/2021	11/15/2021
US Department of the Interior - US Fish and Wildlife	Athens	\$69,000	\$345,000	9/1/2021	8/31/2022	AWD00013891	11/15/2021	11/12/2021

EXHIBIT B

From: OFR OAS (CDC) <cdcofroas@cdc.gov>

Sent: Friday, October 22, 2021 12:34 PM

To: jwertheim@ucsd.edu <jwertheim@ucsd.edu>; jasminjr@uci.edu <jasminjr@uci.edu>; ckhsen@uci.edu <ckhsen@uci.edu>; jzhu@research.ucla.edu <jzhu@research.ucla.edu>; yessenia.sarmiento@research.ucla.edu <yessenia.sarmiento@research.ucla.edu>; kmaja@ucsc.edu <kmaja@ucsc.edu>; gallowdj@uc.edu <gallowdj@uc.edu>; gallowdj@uc.edu <gallowdj@uc.edu>; jogma@ucmail.uc.edu <jogma@ucmail.uc.edu>; jogma@ucmail.uc.edu <jogma@ucmail.uc.edu>; gallowdj@uc.edu <gallowdj@uc.edu>; rashmi.jha@uc.edu <rashmi.jha@uc.edu>; christine.jones@uc.edu <christine.jones@uc.edu>; sergey.grinshpun@uc.edu <sergey.grinshpun@uc.edu>; Tracy M Root, <troot@uchc.edu>; xipeng@udel.edu <xipeng@udel.edu>; wre@tec.ufl.edu <wre@tec.ufl.edu>; Elizabeth Ann Ottesen <ottesen@uga.edu>; Maryann T Deom <mtd@uga.edu>; Maryann T Deom <mtd@uga.edu>; Melissa D Mottley <mottley@uga.edu>; Melissa D Mottley <mottley@uga.edu>; Christian E Heindel <heindel@uga.edu>; randy.cook@aspenmi.com <randy.cook@aspenmi.com>; randy.cook@aspenmi.com <randy.cook@aspenmi.com>; sfa2@hawaii.edu <sfa2@hawaii.edu>; awards@uic.edu <awards@uic.edu>; feldmans@uic.edu <feldmans@uic.edu>; lforst@uic.edu <lforst@uic.edu>; ospa@email.uky.edu <ospa@email.uky.edu>; ospa@email.uky.edu <ospa@email.uky.edu>; ospa@email.uky.edu <ospa@email.uky.edu>; jlbris01@louisville.edu <jlbris01@louisville.edu>; dpaffrat@umaryland.edu <dpaffrat@umaryland.edu>; lisa_ashcraft@abtassoc.com <lisa_ashcraft@abtassoc.com>; lmlavickas@2mresearch.com <lmlavickas@2mresearch.com>; dpaffrat@umaryland.edu <dpaffrat@umaryland.edu>; jgaitens@som.umaryland.edu <jgaitens@som.umaryland.edu>; dpaffrat@umaryland.edu <dpaffrat@umaryland.edu>; amckeown@umresearch.umd.edu <amckeown@umresearch.umd.edu>; nick@schoolph.umass.edu <nick@schoolph.umass.edu>; chobbs@umc.edu <chobbs@umc.edu>; lmusshafen@umc.edu <lmusshafen@umc.edu>; wbondurant@umc.edu <wbondurant@umc.edu>; cawilliams@atcc.org <cawilliams@atcc.org>; grantsdc@missouri.edu <grantsdc@missouri.edu>; bettsc@mst.edu <bettsc@mst.edu>; research@mst.edu <research@mst.edu>; sherizadeh@mst.edu <sherizadeh@mst.edu>; spadmin@unmc.edu <spadmin@unmc.edu>; hsc-preaward@salud.unm.edu <hsc-preaward@salud.unm.edu>; ihurwitz@salud.unm.edu <ihurwitz@salud.unm.edu>; aravinda_desilva@med.unc.edu <aravinda_desilva@med.unc.edu>; weihuan.zhao@unt.edu <weihuan.zhao@unt.edu>; ed.turney@unt.edu <ed.turney@unt.edu>; bmillsap@ou.edu <bmillsap@ou.edu>; rvandoom@oucru.org <rvandoom@oucru.org>; david.aanensen@bdi.ox.ac.uk <david.aanensen@bdi.ox.ac.uk>; Cary.Kimpton@oup.com <Cary.Kimpton@oup.com>; cary.kimpton@oup.com <cary.kimpton@oup.com>; caz@pitt.edu <caz@pitt.edu>; zimmrk@upmc.edu <zimmrk@upmc.edu>; donna.dzurilla@pitt.edu <donna.dzurilla@pitt.edu>; franca@uri.edu <franca@uri.edu>; rsnorman@mailbox.sc.edu <rsnorman@mailbox.sc.edu>; lisa.pompeii@uth.tmc.edu <lisa.pompeii@uth.tmc.edu>; alrouth@utmb.edu <alrouth@utmb.edu>; cydelad@utmb.edu <cydelad@utmb.edu>; grants.mgt@utsouthwestern.edu <grants.mgt@utsouthwestern.edu>; felipe.calizaya@osp.utah.edu <felipe.calizaya@osp.utah.edu>; felipe.calizaya@osp.utah.edu <felipe.calizaya@osp.utah.edu>; randy.cook@aspenmi.com <randy.cook@aspenmi.com>; toni_sandoval@abtassoc.com <toni_sandoval@abtassoc.com>; lisa_ashcraft@abtassoc.com <lisa_ashcraft@abtassoc.com>;

katelyn.dalley@osp.utah.edu <katelyn.dalley@osp.utah.edu>; kristie.thompson@osp.utah.edu
 <kristie.thompson@osp.utah.edu>; tnaimi@uvic.ca <tnaimi@uvic.ca>; hershly@u.washington.edu
 <hershly@u.washington.edu>; osp@uw.edu <osp@uw.edu>; osp@uw.edu <osp@uw.edu>; natklo@uw.edu
 <natklo@uw.edu>; natklo@uw.edu <natklo@uw.edu>; osp@uw.edu <osp@uw.edu>; tschmaut@uw.edu
 <tschmaut@uw.edu>; mark@mail.slh.wisc.edu <mark@mail.slh.wisc.edu>; mike.argall@slh.wisc.edu
 <mike.argall@slh.wisc.edu>; noel.stanton@slh.wisc.edu <noel.stanton@slh.wisc.edu>; masweet@rsp.wisc.edu
 <masweet@rsp.wisc.edu>; masweet@rsp.wisc.edu <masweet@rsp.wisc.edu>; masweet@rsp.wisc.edu
 <masweet@rsp.wisc.edu>; cawilliams@atcc.org <cawilliams@atcc.org>; randy.cook@aspenmi.com
 <randy.cook@aspenmi.com>; mih@rsp.wisc.edu <mih@rsp.wisc.edu>; masweet@rsp.wisc.edu
 <masweet@rsp.wisc.edu>; masweet@rsp.wisc.edu <masweet@rsp.wisc.edu>; steve.julal@vaasprofessionals.com
 <steve.julal@vaasprofessionals.com>; steve.julal@vaasprofessionals.com <steve.julal@vaasprofessionals.com>;
 steve.julal@vaasprofessionals.com <steve.julal@vaasprofessionals.com>; steve.julal@vaasprofessionals.com
 <steve.julal@vaasprofessionals.com>; steve.julal@vaasprofessionals.com <steve.julal@vaasprofessionals.com>;
 steve.julal@vaasprofessionals.com <steve.julal@vaasprofessionals.com>; steve.julal@vaasprofessionals.com
 <steve.julal@vaasprofessionals.com>; steve.julal@vaasprofessionals.com <steve.julal@vaasprofessionals.com>;
 sponsored.programs@vanderbilt.edu <sponsored.programs@vanderbilt.edu>; sponsored.programs@vanderbilt.edu
 <sponsored.programs@vanderbilt.edu>; sponsored.programs@vanderbilt.edu <sponsored.programs@vanderbilt.edu>;
 randy.cook@aspenmi.com <randy.cook@aspenmi.com>; kathryn.edwards@vanderbilt.edu
 <kathryn.edwards@vanderbilt.edu>; kathryn.edwards@vanderbilt.edu <kathryn.edwards@vanderbilt.edu>;
 jottaviani@variousviews.com <jottaviani@variousviews.com>; kmartinez@vcloudtech.com
 <kmartinez@vcloudtech.com>; nadiakhan@vcloudtech.com <nadiakhan@vcloudtech.com>;
 melanie@veritasmanagementgroup.com <melanie@veritasmanagementgroup.com>;
 veritasmanagementgroup@gmail.com <veritasmanagementgroup@gmail.com>;
 Melanie@vertitasmanagementgroup.com <Melanie@vertitasmanagementgroup.com>;
 melanie@veritasmanagementgroup.com <melanie@veritasmanagementgroup.com>;
 veritasmanagementgroup@gmail.com <veritasmanagementgroup@gmail.com>;
 melanie@veritasmanagementgroup.com <melanie@veritasmanagementgroup.com>;
 veritasmanagementgroup@gmail.com <veritasmanagementgroup@gmail.com>;
 melanie@veritasmanagementgroup.com <melanie@veritasmanagementgroup.com>;
 veritasmanagementgroup@gmail.com <veritasmanagementgroup@gmail.com>; jprice@thevtp.com
 <jprice@thevtp.com>; christian.reist@vicon.com <christian.reist@vicon.com>; Lynn Lyle, <lynn.lyle@vicon.com>;
 lisaaustin@vwi-inc.com <lisaaustin@vwi-inc.com>; schanamolu@vinsysinfo.com <schanamolu@vinsysinfo.com>;
 radmur.carty@doh.vi.gov <radmur.carty@doh.vi.gov>; lynda.lehing@arkansas.gov <lynda.lehing@arkansas.gov>;
 cawilliams@atcc.org <cawilliams@atcc.org>; radmur.carty@doh.vi.gov <radmur.carty@doh.vi.gov>;
 ospdirector@vt.edu <ospdirector@vt.edu>; ospdirector@vt.edu <ospdirector@vt.edu>; ospdirector@vt.edu
 <ospdirector@vt.edu>; ospdirector@vt.edu <ospdirector@vt.edu>; deborahm@consultvistra.com
 <deborahm@consultvistra.com>; mbusch@vitalant.org <mbusch@vitalant.org>; crystal@thevoiceofyourcustomer.com
 <crystal@thevoiceofyourcustomer.com>; crystal@thevoiceofyourcustomer.com
 <crystal@thevoiceofyourcustomer.com>; crystal@thevoiceofyourcustomer.com
 <crystal@thevoiceofyourcustomer.com>; crystal@thevoiceofyourcustomer.com
 <crystal@thevoiceofyourcustomer.com>; tparker@vortexsolutionsllc.com <tparker@vortexsolutionsllc.com>;
 adrian.scioli@vwr.com <adrian.scioli@vwr.com>; mmitchell@vsynova.com <mmitchell@vsynova.com>;
 crivera@vysnova.com <crivera@vysnova.com>; dkcox@wsu.edu <dkcox@wsu.edu>; orso@wsu.edu <orso@wsu.edu>;
 lois_james@wsu.edu <lois_james@wsu.edu>; matthew.michener@wsu.edu <matthew.michener@wsu.edu>;
 burnham@wustl.edu <burnham@wustl.edu>; researchgrants@wusm.wustl.edu <researchgrants@wusm.wustl.edu>;
 researchcontracts@wusm.wustl.edu <researchcontracts@wusm.wustl.edu>; researchcontracts@wusm.wustl.edu
 <researchcontracts@wusm.wustl.edu>; researchcontracts@wusm.wustl.edu <researchcontracts@wusm.wustl.edu>;
 researchcontracts@wusm.wustl.edu <researchcontracts@wusm.wustl.edu>; cnoonan@wustl.edu
 <cnoonan@wustl.edu>; randy.cook@aspenmi.com <randy.cook@aspenmi.com>; mmartin@2mresearch.com
 <mmartin@2mresearch.com>; habrockt@wustl.edu <habrockt@wustl.edu>; lhicks@wm.com <lhicks@wm.com>;
 stacey_mcdonnell@waters.com <stacey_mcdonnell@waters.com>; stacey_mcdonnell@waters.com
 <stacey_mcdonnell@waters.com>; bid_desk@waters.com <bid_desk@waters.com>; sara_smith@waters.com

<sara_smith@waters.com>; abeasley365@watersignal.com <abeasley365@watersignal.com>; an7095@wayne.edu
 <an7095@wayne.edu>; an7095@wayne.edu <an7095@wayne.edu>; smurphy@webmd.net <smurphy@webmd.net>;
 kmason@webmd.net <kmason@webmd.net>; kmason@webmd.net <kmason@webmd.net>; smurphy@webmd.net
 <smurphy@webmd.net>; kmason@webmd.net <kmason@webmd.net>; cweems@weemsdesignstudio.com
 <cweems@weemsdesignstudio.com>; cweems@weemsdesignstudio.com <cweems@weemsdesignstudio.com>;
 cweems@weemsdesignstudio.com <cweems@weemsdesignstudio.com>; cweems@weemsdesignstudio.com
 <cweems@weemsdesignstudio.com>; cweems@weemsdesignstudio.com <cweems@weemsdesignstudio.com>;
 cweems@weemsdesignstudio.com <cweems@weemsdesignstudio.com>; grantsandcontracts@med.cornell.edu
 <grantsandcontracts@med.cornell.edu>; radavis@firstenergycorp.com <radavis@firstenergycorp.com>;
 radavis@firstenergycorp.com <radavis@firstenergycorp.com>; fedgovt@thomsonreuters.com
 <fedgovt@thomsonreuters.com>; janet.boyles@mail.wvu.edu <janet.boyles@mail.wvu.edu>;
 harley.hart@mail.wvu.edu <harley.hart@mail.wvu.edu>; Paul.Fetty@mail.wvu.edu <Paul.Fetty@mail.wvu.edu>;
 fei.dai@mail.wvu.edu <fei.dai@mail.wvu.edu>; mary.bonasso@mail.wvu.edu <mary.bonasso@mail.wvu.edu>;
 alan.martin@mail.wvu.edu <alan.martin@mail.wvu.edu>; xinjian.he@mail.wvu.edu <xinjian.he@mail.wvu.edu>;
 wvusponsoredprograms@mail.wvu.edu <wvusponsoredprograms@mail.wvu.edu>; terrysavage@westat.com
 <terrysavage@westat.com>; finrptg@westat.com <finrptg@westat.com>; russellwalker@westat.com
 <russellwalker@westat.com>; loisolinger@westat.com <loisolinger@westat.com>; terrysavage@westat.com
 <terrysavage@westat.com>; finrptg@westat.com <finrptg@westat.com>; kristinalewis@westat.com
 <kristinalewis@westat.com>; finrptg@westat.com <finrptg@westat.com>; terrysavage@westat.com
 <terrysavage@westat.com>; terrysavage@westat.com <terrysavage@westat.com>; terrysavage@westat.com
 <terrysavage@westat.com>; kerryunsworth@westat.com <kerryunsworth@westat.com>; terrysavage@westat.com
 <terrysavage@westat.com>; patriciashifflett@westat.com <patriciashifflett@westat.com>;
 patriciashifflett@westat.com <patriciashifflett@westat.com>; patricia.shifflett@westat.com
 <patricia.shifflett@westat.com>; jacquie.hogan@westat.com <jacquie.hogan@westat.com>; gregbinzer@westat.com
 <gregbinzer@westat.com>; marshadunn@westat.com <marshadunn@westat.com>; finrptg@westat.com
 <finrptg@westat.com>; davidmorganstein@westat.com <davidmorganstein@westat.com>; finrptg@westat.com
 <finrptg@westat.com>; lauriemay@westat.com <lauriemay@westat.com>; kathychimes@westat.com
 <kathychimes@westat.com>; babettegutmann@westat.com <babettegutmann@westat.com>;
 kerrygracemorrissey@westat.com <kerrygracemorrissey@westat.com>; steve@wwcpinc.com <steve@wwcpinc.com>;
 steve@wwcpinc.com <steve@wwcpinc.com>; vimcityllc@gmail.com <vimcityllc@gmail.com>; jkang@widepoint.com
 <jkang@widepoint.com>; osrrice@rice.edu <osrrice@rice.edu>; awilliams@williamsconsultingllc.com
 <awilliams@williamsconsultingllc.com>; awilliams@williamsconsultingllc.com <awilliams@williamsconsultingllc.com>;
 ecopeland@williamsconsultingllc.com <ecopeland@williamsconsultingllc.com>; diedre@windsorgroupllc.net
 <diedre@windsorgroupllc.net>; diedre@windsorgroupllc.net <diedre@windsorgroupllc.net>;
 diedre@windsorgroupllc.net <diedre@windsorgroupllc.net>; diedre@windsorgroupllc.net
 <diedre@windsorgroupllc.net>; diedre@windsorgroupllc.net <diedre@windsorgroupllc.net>;
 diedre@windsorgroupllc.net <diedre@windsorgroupllc.net>; diedre@windsorgroupllc.net
 <diedre@windsorgroupllc.net>; diedre@windsorgroupllc.net <diedre@windsorgroupllc.net>;
 diedre@windsorgroupllc.net <diedre@windsorgroupllc.net>; SYOUNG@WINVALE.COM <SYOUNG@WINVALE.COM>;
 steve@wizehive.com <steve@wizehive.com>; steve@wizehive.com <steve@wizehive.com>; steve@wizehive.com
 <steve@wizehive.com>; jordan.schilling@wolterskluwer.com <jordan.schilling@wolterskluwer.com>;
 woodspread@gmail.com <woodspread@gmail.com>; jruser@wcrinet.org <jruser@wcrinet.org>; wcri@wcrinet.org
 <wcri@wcrinet.org>; randy.cook@aspenmi.com <randy.cook@aspenmi.com>; maikelin.martinez@worldcourier.com
 <maikelin.martinez@worldcourier.com>; phansen@flad.com <phansen@flad.com>; efallon@wyatt.com
 <efallon@wyatt.com>; lynda.lehing@arkansas.gov <lynda.lehing@arkansas.gov>; debbie.vizina@wyo.gov
 <debbie.vizina@wyo.gov>; ccouncilman@xentity.com <ccouncilman@xentity.com>; daniel.shifflett@xerox.com
 <daniel.shifflett@xerox.com>; daniel.shifflett@xerox.com <daniel.shifflett@xerox.com>; jocqua.wright@xerox.com
 <jocqua.wright@xerox.com>; jocqua.wright@xerox.com <jocqua.wright@xerox.com>; smilford@xprescheck.com
 <smilford@xprescheck.com>; mat412@verizon.net <mat412@verizon.net>; hingram@xtremesolutions-inc.com
 <hingram@xtremesolutions-inc.com>; tracy.coston@yale.edu <tracy.coston@yale.edu>; tracy.coston@yale.edu
 <tracy.coston@yale.edu>; adam.wisnewski@yale.edu <adam.wisnewski@yale.edu>; gcat3@yale.edu
 <gcat3@yale.edu>; bruces@yellowbridgellc.com <bruces@yellowbridgellc.com>; ashley.grosse@yougov.com

<ashley.grosse@yougov.com>

Subject: FW: CDC Mass Distribution of Vaccine Modification- FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors

[EXTERNAL SENDER - PROCEED CAUTIOUSLY]

Do not reply to this email as this mailbox is not monitored.

Please read the email in its entirety along with the attached modification and contract listing

CDC Contractor,

As you are aware, Executive Order (E.O.) 14042 was signed by the President on September 9, 2021. The E.O. requires agencies to include a clause requiring contractors and subcontractors at any tier to comply with all guidance for contractor or subcontractor workplace locations as published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.

In direct correlation to the issuance of Executive Order (E.O.) 14042, see the attached bilateral modification to incorporate clause 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, in all contracts or contract-like instruments, for commercial and non-commercial requirements for services, research and development, and construction services. In addition to the modification, please see the attached contract listing [spreadsheet](#) to locate your contract and the contracting officer of record.

Contractors will sign and return the modification via email to the Contracting Officer of record by November 9, 2021.

Special Instructions: If your company will be submitting one modification for multiple contracts with the CDC, a listing of the contract numbers and contracting officer names must be included with your returned modification on a separate page.

Please direct your questions to your contracting officer of record for your contract and/or contracts listed on the attached spreadsheet.

EXHIBIT C

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE		PAGE 1 OF 4 PAGES	
2. AMENDMENT/MODIFICATION NO. Mass Modification 22-00001		3. EFFECTIVE DATE See Block 16C		4. REQUISITION/PURCHASE REQ. NO.	
6. ISSUED BY Centers for Disease Control and Prevention (CDC) Office of Acquisition Services (OAS) 2900 Woodcock Blvd Atlanta, GA 30341-5539		7. ADMINISTERED BY (If other than Item 6)		5. PROJECT NO. (If applicable)	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)		X		9A. AMENDMENT OF SOLICITATION NO.	
				9B. DATED (See Item 11)	
				10A. MODIFICATION OF CONTRACT/ORDER NO.	
CODE 832777143		FACILITY CODE			

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ___ is extended, ___ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning ___ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

N/A

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(√)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
X	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 52.243-1 Changes Fixed Price, Alt I, II, III, V; FAR 52.243-2 Changes-Cost Reimburesment, Alt I, II, III, V; FAR 52.243-3 Changes T&M and Labor Hour; FAR 52.212-4(c) Changes to Contract Terms and Conditions-Commercial Items

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)**See SF 30 Continuation Sheet**

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME OF CONTRACTING OFFICER	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
_____ (Signature of person authorized to sign)		BY _____ (Signature of Contracting Officer)	

SF 30 Continuation Sheet

1. The purpose of this bilateral modification is to incorporate clause 52.223-99, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, in all contracts listed on the attached Excel spreadsheet.

This class deviation is issued under the authority of FAR 1.404 and HHS Acquisition Regulation (HHSAR) 301.401 following consultation with the Chair of the Civilian Agency Acquisition Council (CAAC) in accordance with FAR 1.404(a) and the HHS Senior Procurement Executive in accordance with HHSAR 301.401.

2. This modification is applicable to the following:
 - Contracts and contract-like instruments* above the micro-purchase threshold.
 - Contracts and contract-like instruments that are not covered or directly addressed by the E.O. because the contract or subcontract is for the manufacturing of products.
3. The clause shall not be applied to contracts, and contract-like instruments 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).
4. Contractors shall add the clause to applicable subcontracts 30 days after the effective date of this modification.
5. Contractors are not required to submit verification of employee vaccinations in response to this modification; however, contractor employees must be fully vaccinated no later than December 8, 2021 pursuant to E.O. 14042.
6. Contractors are requested to sign and return the modification to the your Contracting Officer of record by November 9, 2021 by completing the SF30 blocks 8, 10A, 15A, 15B, and 15C.
7. By signing the modification, the contractor affirms it understands and agrees to comply with the mandates in E.O. 14042.

*For the purpose of this modification, the term “contract-like instruments” shall include only those instruments within the responsibility of contracting officers as that term is defined by the E.O.

FAR Deviation Clause
Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors

52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors.
ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION)

(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 contract, 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 the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)

EXHIBIT D

From: OALM Management Center (NIH/OD) <OALMMANAGEMENTCENTER@mail.nih.gov>

Sent: Friday, October 8, 2021 2:09 PM

To: List A-BUYER_CONTRACT <A-BUYER_CONTRACT@LIST.NIH.GOV>

Subject: ACTION NEEDED by October 15, 2021- FAR DEVIATION Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors



OALM COMMUNICATION 22-02

To: NIH Acquisition Community

Effective Date: October 8, 2021

Subject: FAR DEVIATION Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors

Point of Contact: Office of Acquisition Management and Policy (OAMP)

NIH Acquisition Community:

A Class Deviation from the Federal Acquisition Regulation regarding implementation of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, has been issued for HHS.

Executive Order (E.O.) 14042 was signed by the President on September 9, 2021, and published in the Federal Register at 86 FR 50985 on September 14, 2021. The E.O. requires agencies to include a clause requiring contractors and subcontractors at any tier to comply with all guidance for contractor or subcontractor workplace locations as published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.

ACTION:

Effective immediately, and no later than October 15, 2021, HHS contracting officers shall insert the clause 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, in all contracts or contract-like instruments [includes but is not limited to, solicitations, contracts, task orders, delivery orders, purchase orders, modifications, Blanket Purchase Agreements (BPAs), Broad Agency Announcements (BAA), and Other Transaction Authority (OTA)], **via bi-lateral modification**, for commercial and non-commercial requirements for services, research and development, and construction services, above the micro-purchase threshold. Please refer to the attached class deviation prescription for further details on implementation.

The prescription for use of the clause indicates that “Contracting Officers are highly encouraged to include the clause in contracts and contract-like instruments above the simplified acquisition threshold that have been or will be awarded prior to November 14, 2021, on solicitations issued before October 15, 2021”. At NIH, Contracting Officers are

required to modify these existing contracts. The attached clause should be included in Section I.3 of contract awards and included in an appropriate section in the other award mechanisms. In addition, the clause will be added to the Document Generation System and PRISM clause library as soon as possible.

Please see attached Talking Points/Frequently Asked Questions to assist the HHS Acquisition Workforce in answering customer & contractor questions regarding the following Executive Order & Safer Workforce Task Force Guidance. To continue to track updates to Safer Workforce Task Force Guidance, please visit the following link: [For Federal Contractors | Safer Federal Workforce](#).

All questions from the Offices of Acquisitions should be sent to the [DAPE mailbox \(dape@od.nih.gov\)](mailto:dape@od.nih.gov).

Questions from the Delegated Offices of Acquisitions can contact DSAPS at the [Simplified Acquisition Helpline \(simplifiedacquisitionhelp@od.nih.gov\)](#). This material has also been added to the COVID-19 Guidance website on the DSAPS SharePoint site at <https://oalmsps.od.nih.gov/OAMP/DSAPS/ASRB/SAPhD/SitePages/Home.aspx>.

The OALM Management Center

Please do not reply to this email. This mailbox is only for outgoing messages to the NIH community.

EXHIBIT E

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE		PAGE OF PAGES 1 1	
2. AMENDMENT/MODIFICATION NO. P00012		3. EFFECTIVE DATE See Block 16C		4. REQUISITION/PURCHASE REQ. NO.	
6. ISSUED BY National Institutes of Health National Institute of Allergy and Infectious Diseases Bethesda, MD 20892-7612		CODE NIAID-ROCK		5. PROJECT NO. (If applicable) None	
		7. ADMINISTERED BY (If other than Item 6) National Institutes of Health National Institute of Allergy and Infectious Diseases Bethesda, MD 20892-7612		CODE NIAID	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) GEORGIA UNIV RESCH FDN INC:1109242 310 EAST CAMPUS ROAD TUCKER HALL ROOM 409 ATHENS GA 306021589		(x)		9A. AMENDMENT OF SOLICITATION NO.	
				9B. DATED (SEE ITEM 11)	
		x		10A. MODIFICATION OF CONTRACT/ORDER NO. 75N93019C00052	
				10B. DATED (SEE ITEM 13) 09/10/2019	
CODE		FACILITY CODE			

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended. ☐ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

See Schedule

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER (Specify type of modification and authority) Executive Order (E.O.) 14042

E. IMPORTANT: Contractor ☐ is not ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Purpose: ARTICLE I.3. Additional Contract Clauses is hereby modified to include FAR Clause 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors. All other terms and conditions remain unchanged.

ADB Document#: None

Payment:

Approved By, NIAID AITRCB Invoices

Paid By: NIH Commercial Accounts Br

2115 East Jefferson St, MSC 8500

Room 4B-432

Bethesda, MD 20892-8500

Period of Performance: 09/10/2019 to 09/29/2022

Except as provided herein, all terms and conditions of the document referenced in Item 9 A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) EMILY DUBBANEH BANNISTER	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA (Signature of Contracting Officer)	16C. DATE SIGNED

Previous edition unusable

EXHIBIT F

From: Lau, Hoi Ling <hoiling.lau@mountsinai.org>
Sent: Tuesday, October 19, 2021 3:49 PM
To: Catherine A Cuppett <cathya15@uga.edu>; Ugasubs <ugasubs@uga.edu>
Cc: SubContractAgreements <SubContractAgreements@mountsinai.org>; Camping, Ryan <ryan.camping@mssm.edu>; Daniel R Perez <dperez1@uga.edu>; Joan T King <joanking@uga.edu>
Subject: CEIRS Project, Subaward Amendment No. 12 between ISMMS & University of Georgia Research Foundation; Contract#HHSN272201400008C

[EXTERNAL SENDER - PROCEED CAUTIOUSLY]

Contract No: HHSN272201400008C

PI at Institution: Dr. Daniel Perez

Dear Catherine,

Icahn School of Medicine at Mount Sinai (ISMMS) received a modification to the Federal Contract from the NIH adding FAR Clause 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors. Therefore, we are issuing an amendment to flow down the clause as required.

Attached is the electronic version of Sub award Amendment No. 12 between ISMMS and University of Georgia Research Foundation under the above referenced contract number. Please have your institution's authorized official sign, and return one PDF partially signed copy to us **as soon as possible** at the following email address SubContractAgreements@mountsinai.org.

If you have any questions, please contact us.

Thank you,

Shirley
Icahn School of Medicine at Mount Sinai
Sponsored Projects Finance

EXHIBIT G

AMENDMENT OF SOLICITATION/MODIFICATION OF SUBCONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1/2								
2. AMENDMENT/MODIFICATION NO. Twelve (12)	3. EFFECTIVE DATE 10/12/2021	4. REQUISITION/PURCHASE REQ NO See Continuation Page		5. PROJECT NO. N/A								
6. ISSUED BY: Icahn School of Medicine at Mount Sinai One Gustave L. Levy Place, Box 3500 New York, NY 10029		7. ADMINISTERED BY (<i>If other than Item 5</i>): MIDRCB-B										
8. NAME AND ADDRESS OF SUBCONTRACTOR (No., street, city, county, State and ZIP Code) University of Georgia Research Foundation, Inc. 200 D. W. Brooks Drive, 609 Boyd GSRC Athens, GA 30602 DUNS No. 004315578		9A. AMENDMENT OF SOLICITATION NO.										
		9B. DATED (<i>SEE ITEM 11</i>)										
		X	10A. MODIFICATION OF CONTRACT/ORDER NO HHSN272201400008C / Mod #35									
			10B. DATED (<i>SEE ITEM 13</i>) April 1, 2015									
<input type="checkbox"/> 11. THIS ITEM APPLIES TO AMENDMENTS OF SOLICITATIONS <input type="checkbox"/> <input type="checkbox"/>												
<p>X The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers X is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:</p> <p>(a) By completing Items 8 and 15, and returning <u>1</u> copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.</p>												
12. ACCOUNTING AND APPROPRIATION DATE (<i>if required</i>) SOCC 25.55 Accounting/Appropriation Data: See attached SF-30 Continuation Page												
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.												
	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (<i>Specify authority</i>) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT/ORDER NO. IN ITEM 10A.											
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (<i>such as changes in paying office, appropriation date, etc.</i>) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).											
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Class Deviation (2021-03), Mutual Agreement of the Parties.											
	D. OTHER (<i>Specify type of modification and authority</i>) <input type="checkbox"/>											
E. IMPORTANT: Subcontractor <input type="checkbox"/> is not, X is required to sign this document and return <u>1</u> copy to the issuing office.												
14. PURPOSE: The purpose of this modification is to add FAR Deviation Clause 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors to the contract in order to implement Executive Order 14042.												
		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: right;">Total Estimated Cost</td> </tr> <tr> <td style="text-align: center;">Prior to this Mod</td> <td style="text-align: right;">U.S.\$5,875,296</td> </tr> <tr> <td style="text-align: center;">This Mod</td> <td style="text-align: right;">U.S.\$0</td> </tr> <tr> <td style="text-align: center;">Revised Total</td> <td style="text-align: right;">U.S.\$5,875,296</td> </tr> </table>				Total Estimated Cost	Prior to this Mod	U.S.\$5,875,296	This Mod	U.S.\$0	Revised Total	U.S.\$5,875,296
	Total Estimated Cost											
Prior to this Mod	U.S.\$5,875,296											
This Mod	U.S.\$0											
Revised Total	U.S.\$5,875,296											
completion date: May 20, 2022 (Unchanged)												
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.												
15A. NAME AND TITLE OF SIGNER (<i>Type or print</i>)		16A. NAME AND TITLE OF CONTRACTING OFFICER (<i>Type or print</i>) Amanda Amescua, Director Icahn School of Medicine at Mount Sinai ("ISMMS")										
15B. SUBCONTRACTOR	15C. DATE SIGNED	16B. ISMMS	16C. DATE SIGNED									
_____ (<i>Signature of person authorized to sign</i>)		_____ (<i>Signature of Contracting Office.</i>)										

ARTICLE I.3. ADDITIONAL CONTRACT CLAUSES, paragraph a., is hereby revised to incorporate the below FAR Deviation Clause as follows::

a. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES.

25. FAR Clause 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors. ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION)

(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 contract, 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 the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)

All other terms and conditions of the contract remain unchanged.

EXHIBIT H

VOLUME I-PARTS 1 TO 51

FEDERAL ACQUISITION REGULATION

Issued Fiscal Year 2019 by the:

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed-

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of clause)

52.242-15 Stop-Work Order.

As prescribed in [42.1305\(b\)](#), insert the following clause. The "90-day" period stated in the clause may be reduced to less than 90 days.

STOP-WORK ORDER (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(End of clause)

Alternate I (Apr 1984). If this clause is inserted in a cost-reimbursement contract, substitute in paragraph (a)(2) the words "the Termination clause of this contract" for the words "the Default, or the Termination for Convenience of the Government clause of this contract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated

would, if terminated for the convenience of the Government, limit termination settlement charges to services rendered before the date of termination:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SERVICES) (SHORT FORM) (APR 1984)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Government shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(End of clause)

52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).

As prescribed in [49.502\(d\)](#), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT
(EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (AUG 2016)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government any information and items that, if the contract had been completed, would have been required to be furnished, including-

(i) Materials or equipment produced, in process, or acquired for the work terminated; and

(ii) Completed or partially completed plans, drawings, and information.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, termination inventory other than that retained by the Government under paragraph (b)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly but no later than 1 year from the effective date of termination unless extended in writing by the Contracting Officer upon written

request of the Contractor within this 1-year period. If the Contractor fails to submit the termination settlement proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Contractor and any reasonable loss on outstanding commitments for personal services that the Contractor is unable to cancel; *provided*, that the Contractor exercised reasonable diligence in diverting such commitments to other operations. The contract shall be amended and the Contractor paid the agreed amount.

(f) The cost principles and procedures in [subpart 31.3](#) of the Federal Acquisition Regulation (FAR), Contracts with Educational Institutions (defined as institutions of higher education in the OMB Uniform Guidance in 2 CFR part 200, subpart A, and [20 U.S.C. 1001](#)), as in effect on the date of the contract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Contractor is not an educational institution and is a nonprofit organization (as defined in the OMB Uniform Guidance at 2 CFR part 200), the cost principles and procedures in [subpart 31.7](#) of the FAR, Contracts with Nonprofit Organizations, shall apply; unless the Contractor is a nonprofit institution listed in the OMB Uniform Guidance at 2 CFR part 200, appendix VIII, as exempted from the cost principles in subpart E, in which case the cost principles at FAR [31.2](#) for commercial organizations shall apply to such contractor.

(g) The Government may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Contractor for the terminated portion of this contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(h) The Contractor has the right of appeal as provided under the Disputes clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) of this clause and failed to request a time extension, there is no right of appeal.

(End of clause)

52.249-6 Termination (Cost-Reimbursement).

As prescribed in [49.503\(a\)\(1\)](#), insert the following clause:

TERMINATION (COST-REIMBURSEMENT) (MAY 2004)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if-

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government-

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (c)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart [49.001](#) of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.

(i) The cost principles and procedures in [part 31](#) of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor-

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted-

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under [50 U.S.C. App. 1215\(b\)\(2\)](#). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

(End of clause)

Alternate I (Sept1996). If the contract is for construction, substitute the following paragraph (h)(4) for paragraph (h)(4) of the basic clause:

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

Alternate II (Sept1996). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete paragraph (m)(2) from the basic clause.

Alternate III (Sept1996). If the contract is for construction with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, the following paragraph (h)(4) shall be substituted for paragraph (h)(4) of the basic

EXHIBIT 4

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

The State of Georgia, et al.,

Plaintiffs,

v.

Joseph R. Biden in his official capacity as
President of the United States, et al.,

Defendants.

Civil Action No.

1:21-cv-00163-RSB-BKE

DECLARATION OF GARY BYRNE

1. My name is Gary Byrne. I am the Assistant Chief of Fisheries at the Idaho Department of Fish and Game. I am more than eighteen years of age, legally competent to make this declaration, and am knowledgeable of the information contained herein.

2. Attached as **Exhibit A** is a true and accurate copy of an email I received from the United States Bureau of Reclamation with a subject line of 140R1021P0043-P00001 COVID modification. As more fully reflected in that email, in connection with a federal contract with the Idaho Department of Fish and Game in excess of \$250,000, the United States Bureau of Reclamation states “We are required to execute the attached modification to include a mandated COVID clause.”

3. The email I received as reflected in Exhibit A had an attachment. It is attached as **Exhibit B**. It is a true and accurate copy of an Amendment of Solicitation/Modification of Contract, modification number P00001, from the United States Bureau of Reclamation to the Idaho Department of Fish and Game.

4. **Exhibit C** is a true and accurate copy of a memorandum from Division of Financial Assistance Support and Oversight (FASO) Policy & Compliance Branch Chief of the U.S. Fish and Wildlife Service, Division of Wildlife and Sport Fish Restoration Program titled *New Award Condition for Contract-like Coop Agreements* stating “We will apply the requirements [of EO 14042] to all currently active and future new cooperative agreements.”

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 30th day of November, 2021.

/s/ Gary Byrne
Gary Byrne

EXHIBIT A

From: Walker, Daniel L <dwalker@usbr.gov>
Sent: Monday, November 15, 2021 1:49 PM
To: Byrne, Gary <gary.byrne@idfg.idaho.gov>
Cc: Steele, Matthew A <masteele@usbr.gov>
Subject: 140R1021P0043-P00001 COVID modification

Good afternoon Gary,

We are required to execute the attached modification to include a mandated COVID clause. We understand that there will be little to no interaction with Reclamation personnel, but the purchase order meets the required criteria since the total value exceeds the Simplified Acquisition Threshold or \$250,000.

Pursuant to Executive Order 14042 Ensuring Adequate COVID Safety Protocols for Federal Contractors, modification to purchase order 140R1021P0043 is attached for your signature to incorporate Federal Acquisition Regulation Clause 52.223-99. Please sign and return by November 19, 2021.

Thank you and please let me know if you have any questions.

Best regards,

Daniel Walker
Contract Specialist
Columbia-Pacific Northwest
Bureau of Reclamation
1150 North Curtis Road
Boise, Idaho 83706
Email: dwalker@usbr.gov
Cell: 208-794-5723 (while teleworking)
Hours: 7 am – 3:30 pm MT

Need Help? Go to the PN's Acquisition Support Center
at <https://doimspp.sharepoint.com/sites/OneStopShop>

EXHIBIT B

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE

PAGE OF PAGES

1

3

2. AMENDMENT/MODIFICATION NO.

P00001

3. EFFECTIVE DATE

See Block 16C

4. REQUISITION/PURCHASE REQ. NO.

5. PROJECT NO. (If applicable)

6. ISSUED BY

CODE

R10

7. ADMINISTERED BY (If other than Item 6)

CODE

Bureau of Reclamation
Pacific Northwest Region
Regional Office
Acquisition Management Division
1150 N. Curtis Road, Ste. 100
Boise ID 83706-1234

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)

FISH AND GAME, IDAHO DEPT OF
Attn: Gary Byrne
600 S WALNUT ST
BOISE ID 83712-7729

(x)

9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

x

10A. MODIFICATION OF CONTRACT/ORDER NO.
140R1021P0043

10B. DATED (SEE ITEM 13)

08/18/2021

CODE 0070071860

FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended. ☐ is not extended.
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

See Schedule

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 52.212-4 CONTRACT TERMS AND CONDITIONS - Commercial Items (JAN 2017) (c) Changes
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not ☒ is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Project: Lake Walcott Mitigation 2021-2026 (Rainbow Trout Stocking)

1. Purpose: 140R1021P0043 is hereby modified to reflect the following change in accordance with the authority cited in block 13C. This is a bilateral modification to incorporate the clause 52.223-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION) pursuant to Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors.

2. Action Obligation: The action obligation remains unchanged at \$65,195.66.

Continued ...

Except as provided herein, all terms and conditions of the document referenced in Item 9 A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

Matthew Steele

15B. CONTRACTOR/OFFEROR

15C. DATE SIGNED

16B. UNITED STATES OF AMERICA

16C. DATE SIGNED

(Signature of person authorized to sign)

(Signature of Contracting Officer)

Previous edition unusable

STANDARD FORM 30 (REV. 11/2016)
Prescribed by GSA FAR (48 CFR) 53.243

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED

140R1021P0043/P00001

PAGE OF

2

3

NAME OF OFFEROR OR CONTRACTOR

FISH AND GAME, IDAHO DEPT OF

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>3. Base and All Exercised Options: The base and all exercised options amount remains unchanged at \$65,195.66.</p> <p>4. Total Contract Value: The total contract value remains unchanged at \$339,230.83.</p> <p>5. Change in Contract Performance Period: The contract performance period remains unchanged at 08/23/2021 to 08/22/2026.</p> <p>6. All other terms and conditions remain the same.</p> <p>52.223-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION)</p> <p>(a) Definition. As used in this clause ;</p> <p>United States or its outlying areas means;</p> <p>(1) The fifty States;</p> <p>(2) The District of Columbia;</p> <p>(3) The commonwealths of Puerto Rico and the Northern Mariana Islands;</p> <p>(4) The territories of American Samoa, Guam, and the United States Virgin Islands; and</p> <p>(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.</p> <p>(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).</p> <p>(c) Compliance. The Contractor 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 Continued ...</p>				

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED

140R1021P0043/P00001

PAGE OF

3

3

NAME OF OFFEROR OR CONTRACTOR

FISH AND GAME, IDAHO DEPT OF

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>Force Guidance) at https://www.saferfederalworkforce.gov/contractors/.</p> <p>(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.</p> <p>(End of clause)</p> <p>Period of Performance: 08/23/2021 to 08/22/2026</p>				

EXHIBIT C

New Award Condition for Contract-like Coop Agreements



Kvasnicka, Jean
FASO-Policy & Compliance Branch Chief

Background

On Sep 9, 2021, the Executive Office of the President issued [Executive Order \(E.O.\)14042, "Ensuring Adequate COVID Safety Protocols for Federal Contractors"](#). On October 15, 2021, the Department issued a memorandum "[FAR Deviation – Implementation of Executive Order14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors](#)" implementing the E.O. 14042 requirements for contracts and cooperative agreements that function as "contract-like instruments" exceeding the simplified acquisition threshold (currently \$250,000). This memo also strongly encourages bureaus to implement the E.O. 14042 requirements to those below the simplified acquisition threshold.

Cooperative Agreements Functioning as Contract-Like Instruments

Based on the Wildlife and Sport Fish Restoration, Division of Financial Assistance Support and Oversight (FASO)'s consultations with the Department's Office of Grants Management, Office of Acquisition and Property Management, and Office of the Solicitor, we identified two classes of Service cooperative agreements that meet the definition of "contract-like instruments":

1. National Wildlife Refuge System (NWRS) contract-like cooperative agreements awarded under the authority of the [Fish and Wildlife Act—Community partnership enhancement \(16 U.S.C. §742f\(d\)\)](#) to carry out projects and programs that absent the "notwithstanding [chapter 63 of title 31](#)" language in 16. U.S.C. §742f(d)(2)(A) could not have been issued as financial assistance (i.e., contract would have been the appropriate legal instrument), specifically those cooperative agreements made in connection with Federal property or lands that are for services, construction, and/or relate to offering services for Federal employees, their dependents, or the public. These cooperative agreements are awarded through the [15.654, National Wildlife Refuge System Enhancements](#) program.

2. Youth, veterans, and experienced worker cooperative agreements and any other cooperative agreement under which covered personnel carry out work under the award in a Federal facility or on Federal property. Covered personnel include recipient, subrecipient, and contractor employees and program participants. These cooperative agreements are primarily awarded through the [15.676, Youth Engagement, Education, and Employment](#) and [15.682, Experienced Services](#) programs, *but includes any such award issued by any program.*

Implementation Plan for Identified Classes of Cooperative Agreements

The Service will implement the E.O. 14042 requirements for the two classes of cooperative agreements described above as follows:

1. NWRS contract-like cooperative agreements
 1. *Exceeding \$250,000:* We will apply the requirements to all currently active and future new cooperative agreements.
 2. *\$250,000 or less:* *We will not apply the requirements unless specifically requested by the awarding program and on a case-by-case basis.*
2. Cooperative agreements with covered personnel working in a Federal facility or on Federal property
 1. *Exceeding \$250,000:* We will apply the requirements to all currently active and future new cooperative agreements.
 2. *\$250,000 or less:* We will apply the requirements to all currently active and future new cooperative agreements *except those to state and local government and Indian tribes* as defined in [2 CFR 200.1](#). We will not apply the requirements to awards to those entities unless specifically requested by the awarding program and on a case-by-case basis.

For amendments to currently open awards, the FASO-Operations Branch staff will work with affected programs to identify those subject to the requirement and amend those to add the [required award clause](#). We have added the [required award clause](#) to GrantSolutions as a notice of award component. Please note that we received approval from the Department to modify the FAR clause for contractors to speak to financial assistance recipients. However, with that approval the Department explicitly restricted us from making any other changes to the clause. We expect to complete these amendments by December 10, 2021.

For new awards, the FASO-Operations Branch staff will work with affected programs to ensure all awards subject to the requirement include the [required award clause](#).

Requests to Apply E.O. 14042 Requirements to Other Cooperative Agreements

To request to apply the requirements to other cooperative agreements, please contact Jean Kvasnicka at jean.kvasnicka@fws.gov. Before applying the requirements to any other awards, we must submit the proposal to the Office of the Solicitor for review. The FASO-Policy & Compliance Branch will work with the program to determine if the award(s) meet the definition of "contract-like instrument" and if so, to develop an implementation plan and coordinate the required Solicitor's office review.