

October 25, 2021

Mr. Jeffrey Zients
White House Coronavirus Response Coordinator &
Counselor to the President of the United States
The White House
1600 Pennsylvania Ave, NW
Washington, DC 20005

Dear Mr. Zients,

On behalf of the undersigned organizations representing thousands of businesses serving the federal government, we are writing to address certain challenges our members face navigating Executive Order 14042, “Ensuring Adequate COVID Safety Protocols for Federal Contractors”, including recommendations to enhance implementation.

We strongly support the goal of the President’s policy and agree that vaccinations are essential to controlling the spread of the virus, saving lives, and restoring a sense of normalcy to society and the economy. At the same time, we are concerned that the timeline and elements of the policy will undercut the ability of the businesses we represent to support the critical needs of our federal agency clients and the taxpayers they serve. These critical services include the maintenance, design and construction of critical infrastructure, supporting federal agencies in the built environment, including military installations, public buildings, national parks, levees, dams, and waterways. Our community is under constant pressure to find and retain qualified employees. Given the nature of workforce and workplace, many employees work in outdoor settings which limits their risk of exposure to or spreading of the virus.

We believe that we can achieve the goals of the President’s policy in a manner that would limit disruptions in the essential work we perform for our federal clients. In this spirit, we would **respectfully request a delay in the implementation of the Executive Order** to allow for the implementation of the following recommendations:

- ***Include the option of testing for non-vaccinated employees.*** Including a testing component would align EO 14042 with the President’s Path out of the Pandemic, where an allowance for testing was included in the President’s directive to the Occupational Health and Safety Administration (OSHA) in drafting their Emergency Temporary Standard. We believe a similar accommodation is essential for federal contractors, otherwise thousands of essential employees would be unable to perform their duties.
- ***Clarify timeframe and guidance for transmission of booster shots.*** As the increased eligibility to receive a booster shot is approved for use, it is believed that companies will be required to continuously ensure employees receive the latest booster shot in order to be “fully vaccinated”. If so, how long after a booster shot is approved for their individual use does the employee have to get it before the employer is noncompliant? This unknown timeframe and lack of guidance places employees into different vaccination categories depending on the initial vaccination that they received, thus making it much more difficult for employers to track compliance.

- ***Include definitions of terms used with the Executive Order.*** Although the order delineates application between product- and service-based contracts, it does not clearly define the two in the guidance provided by the Safer Federal Workforce Taskforce. This is leading to greater confusion, especially regarding the flow down from prime contractors to subcontractors.
- ***Ensure consistent enforcement across agencies.*** The companies we represent have significant concerns related to consistency of enforcement, both within agencies, as well as with individual contracting officers that they partner with. The immediate impact this will have on our workforce, and thus readiness to serve our federal clients cannot be overstated. We have reviewed contract modifications that state “*acceptance of the contract modification is mandatory for all Federal Supply Schedule contractors,*” and that certain agencies will be “*flagging contractors that have not accepted the modification*”. Furthermore, agencies such as the General Services Administration (GSA) are including vaccination requirements in other contracts that are not required to be covered by E.O. 14042, such as applying the mandate to contracts below the Simplified Acquisition Threshold. The chilling effect coupled with the significant uncertainty that this creates for many businesses further erodes the partnership between the private sector and their federal clients.

Once again, we understand and support the Administration’s goals of bringing this pandemic to a close, but it has been made abundantly clear by the thousands of companies we represent that its implementation will be extremely difficult, leading to unintended consequences and considerable disruptions in the services we provide to our federal clients. In the Architecture-Engineering-Construction (AEC) industry alone, we can envision a number of negative impacts, such as breach of contract, defaults, business failures, bankruptcies, and labor shortages. Our member companies are working proactively to ensure their workforce is vaccinated and they are leading by example, but additional time and improvements are needed to the policy to ensure effective outcomes.

Thank you for your consideration of these recommendations, and we look forward to working with you to achieve success on this critical effort.

Signed,

American Council of Engineering Companies
American Road & Transportation Builders Association
American Subcontractors Association
Independent Electrical Contractors
Independent Office Products & Furniture Dealers Alliance
National Association of Surety Bond Producers
National Office Products Alliance
National Society of Professional Surveyors
Office Furniture Dealers Alliance