



September 28, 2021

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Dear Members of the Safer Federal Workforce Task Force and FAR Council:

On behalf of the American Council of Engineering Companies – the voice of the nation’s engineering industry -- we wish to convey the concerns and questions our members have related to Executive Order 14042, “Ensuring Adequate COVID Safety Protocols for Federal Contractors.”

ACEC is the business association of the nation’s engineering industry. ACEC members – numbering more than 5,500 firms representing over 600,000 employees throughout the country – provide a wide range of services supporting federal agencies in the built environment, including military installations, public buildings, national parks, levees, dams, and waterways.

**Federal vs. Non-Federal Contractors**

Executive Order 14042 (EO) suggests that federal contractors will be required to verify and document the vaccination status of all employees, without exception. The EO suggests that this requirement may be required for all employees in any workplace location in which federal work is performed.

Most engineering firms perform a mix of federal and non-federal work, often with the federal work representing a fraction of the total work performed. Even among firms who provide

significant federal government services, most firms also serve a considerable volume of private and non-federal clients within the same or adjacent spaces.

It remains unclear whether and how a company can successfully segregate employees by their involvement in federal contract work, as many employees work collaboratively in teams, both within their own firm and also with other companies. In many instances, just a small segment of a firm's employees are client-facing and interacting with the federal government. In others, they work with subconsultants or as subconsultants themselves on a project. With numerous firms making up federal contracting teams on a design and-construction project, the layers of participants including very small, technical members of the trades community can make this EO very difficult to operate under.

The issuance of the FAR clauses resulting from EO 14042 will mostly likely cause some increased cost and schedule growth. Some firms do not derive significant revenue from the federal government and will elect to stop participating on projects when this new requirement is established on on-going work. The prime firms will then be forced to seek other firms to complete the work with the corresponding additional cost and potentially time. We would expect prime firms to submit requests for equitable adjustment for these additional costs and the potential additional time.

### **Impacts on Firms: Recruiting, Retention and Administrative Burdens**

The Executive Order seems to effectively mandate vaccinations for all employees of all firms who perform any amount of federal work, leaving no accommodations for routine testing. The vaccine mandate, without an allowance for regular testing, differs significantly from the current reporting of the proposed Emergency Temporary Order that the Occupational Safety and Health Administration (OSHA) is drafting for employers with 100+ employees. This forces federal contractors to risk significant employee attrition because many current and future employees remain unwilling to accept a vaccination. This puts employers in the position of having to choose either to keep those employees or keep the federal government as a client.

As previously stated, many firms work on teams, both within their company as well as with other firms, serving as either a prime contractor or a subcontractor. The documentation, transmission, and ultimate safekeeping of this personal information is a concern to many businesses, large and small. For very large companies with locations throughout the United States, verifying vaccination status presents challenges unforeseen or not easily resolved, including what form(s) of documentation is acceptable and how long it must be maintained.

Initial guidance has suggested that implementation will begin at or above the simplified acquisition threshold of \$250,000. Engineering services are unique in that they involve multi-year contracts, including smaller task order contracts known as an Indefinite Delivery/Indefinite Quantity (ID/IQ). The guidance is unclear in terms of how it will apply to those ID/IQ contracts – will the rule apply to individual task orders above the simplified acquisition threshold, or is the intent to apply the requirement to the cumulative amount of work under the contract (or multiple contracts)? That clarification is essential, particularly as requirements are flowed down to

subconsultants who may perform limited services for one firm but may have multiple clients performing federal work.

### **Limiting Competition for Government Contracts**

The requirements that the EO prescribes will limit the number of companies who are willing to accept federal government work. It will unnecessarily act as a barrier to entry to the federal marketplace. It will also reduce the volume and diversity of provider options for the federal government, causing more disruption in an increasing uncertain and fragile period of economic recovery. This is already evident from the results of mandated vaccinations in the healthcare sector. Healthcare providers are experiencing significant attrition as a result of vaccine mandates at the state and local levels. The size of the A/E community is already constrained by the high level of education and licensure required for professionals. The potential for retraining and development of new resources is extremely limited when compared to other sectors. At a time when a large national infrastructure program seems imminent, the reduction in engineering professionals available to work on that program is problematic.

As the FAR Council continues preparing to execute this executive order, our members remain concerned over its implementation, how it will impact their firms and their employees working on federal contracts. The challenges to an A/E firm employing personnel that work on projects both federal and non-federal, with teams outside of their firm, and at times, remotely and/or not client-facing are immense and cannot be overstated. We appreciate the opportunity to provide this input and stand ready to work with the FAR Council as it continues its important work to ensure compliance with EO 14042.

Sincerely,

A handwritten signature in cursive script, reading "Linda Bauer Darr".

Linda Bauer Darr  
President and CEO