

EXHIBIT B

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

_____)	
THE STATE OF GEORGIA, et al.)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:21-cv-163-RSB-BKE
)	
JOSEPH R. BIDEN in his official)	
capacity as President of the United)	
States, et al.)	
)	
Defendants.)	
_____)	

DECLARATION OF JEFFREY A. KOSES

I, Jeffrey A. Koses, make the following declaration based on personal knowledge and information made available to me in the course of my official duties:

1. My name is Jeffrey A. Koses and I am an employee of the U.S. General Services Administration (GSA). I serve as the GSA Senior Procurement Executive within the Office of Government-wide Policy. I have served in this position since January 2014.
2. As GSA Senior Procurement Executive, I serve as the GSA representative for the Federal Acquisition Regulatory Council (FAR Council). The FAR Council is established by statute to provide coordination of Federal Government procurement policy, including the issuance of the Federal Acquisition Regulation (FAR). In addition to GSA, the FAR Council is composed of representatives from the Office of Federal Procurement Policy, within the Office of Management and Budget, the Department of Defense, and the National Aeronautics and Space Administration.
3. On September 9, 2021, President Biden issued Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors. Section 2 of the Executive Order directed that a contract clause be incorporated into Federal Government contracts and

subcontracts that would require compliance by contractors, and subcontractors, with guidance issued by the Safer Federal Workforce Task Force. Section 3 of the Executive Order directed the FAR Council to amend the FAR to include the required contract clause. Amendments to the FAR are regulatory actions that can take some time to implement.

4. Section 3 of the Executive Order, by citing FAR Subpart 1.4 and the October 8, 2021, date, further directed the FAR Council to provide for the issuance of a FAR clause, which, through agency level class deviations, agencies could employ to advance the policy of the Executive Order prior to amendment of the FAR. FAR deviations allow agencies to implement a procurement policy, procedure, solicitation provision, contract clause, or other method of procurement, that is inconsistent with existing provisions of the FAR.

5. On September 24, 2021, the Safer Federal Workforce Task Force issued initial guidance providing details on how to implement Executive Order 14042.

6. On September 30, 2021, William Clark, the Chair of the Civilian Agency Acquisition Council, issued a Memorandum for Civilian Agencies providing a copy of the contract clause implementing Executive Order 14042 that could be utilized by agencies to immediately implement the clause pursuant to a FAR deviation. This clause is FAR 52.223-99, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Oct 2021) (Deviation). The clause requires contractors, and subcontractors, who are subject to the clause to comply with all guidance issued by the Safer Federal Workforce Task Force.

7. On September 30, 2021, I issued a memorandum implementing a class deviation to add the contract clause for all GSA contracting activities covered by the Executive Order. This GSA class deviation provided specific instruction for contracting activities of GSA, including for the Public Buildings Service (PBS) and the Federal Acquisition Service (FAS). PBS and FAS are

the two major acquisition organizations within GSA, responsible for awarding and administering tens of thousands of contracts, and contract-like instruments, across the country. PBS addresses the procurement, leasing, and maintenance of real estate for Federal agencies, while FAS acquires an enormous range of products, services, and solutions, ranging from information technology products and services, to automobiles, to office supplies, and makes the contracts for these products and services available for the use of other Federal agencies.

8. Following the issuance of the GSA class deviation, GSA contracting staff began implementing the contract clause in contracts and solicitations as required. The addition of the clause is mandatory for new solicitations above the simplified acquisition threshold (\$250,000). It is also mandatory for existing contracts, above the simplified acquisition threshold, prior to exercise of an option to renew or extend. It is not mandatory for existing contracts before the option period. It is also not mandatory for certain other GSA contracts not specified in Executive Order 14042 such as contracts below the simplified acquisition threshold or contracts solely for products.

9. With respect to existing contracts, adding the clause requires a bilateral modification, in which the contractor specifically agrees to the addition of the clause. Per guidance from the Safer Federal Workforce Taskforce, I strongly encouraged inclusion of the clause in contracts not specifically spelled out in the Executive Order. As part of the memorandum for GSA that I issued, I instructed GSA contracting officers to request that existing contractors agree to a modification to add the clause.

10. Based on data from our dashboards and tracking tools, GSA saw strong and swift acceptance of the proposed modifications adding the 52.223-99 clause from most of its contractors, both for those for whom the clause was mandatory and those for whom the clause

was strongly recommended. Very few GSA contractors asked for an equitable adjustment to their contract price.

11. Specifically, for FAS contracts, GSA has reached bilateral modifications to add the clause to 16,540 contracts. This represents a 95.85% rate of agreement among FAS contractors.

12. For PBS contracts, GSA has reached bilateral modifications to add the clause to 3,935 non-lease contracts. For PBS, GSA also sought to add the clause to leases, and GSA has bilaterally added the clause to 4,495 leases.

13. In total, combining contracts and contract-like instruments in FAS, PBS, as well as GSA's internal acquisition office, GSA has reached bilateral modifications to add the clause in over 25,000 contracts. The vast majority of contractors has accepted this bilateral modification.

14. This indicates, in my opinion, a substantial positive response to the addition of the clause among the contractor community.

15. In addition, I am aware that even contractors who have not agreed to modify existing contracts have not always done so because they oppose the underlying policy. I am aware of some contractors who intend to sign the clause at a later date. For instance, some contractors have advised me that they need to negotiate with their unions prior to accepting the clause.

16. It is true that not all contractors have been agreeable to accepting the clause for existing contracts or even of accepting the clause for new contracts or extensions. My understanding is that this is largely driven by a concern some contractors have with whether their employees will be agreeable to a vaccine mandate. This has largely been an issue in specific industry sectors such as utilities, construction, and rental cars. It is my experience that most industry sectors responded quickly and positively by accepting the proposed modification.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on the 9th day of December, 2021.

/s/ Jeffrey A. Koses

Jeffrey A. Koses

Senior Procurement Executive

U.S. General Services Administration