



A PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

## MEMORANDUM

TO: Cris Meyer

FROM: Eric M. Fraser and Hayleigh S. Crawford

DATE: December 3, 2021

RE: Applicability of Executive Order 14042 to the City of Phoenix

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### ISSUE

You have asked us to analyze whether the City of Phoenix is a federal contractor with a “covered contract” within the meaning of Executive Order 14042, which requires federal contractors to ensure that their employees are vaccinated against Covid-19.

### SUMMARY

Based upon our review of Executive Order 14042 and the federal guidance issued to date, the City of Phoenix is a federal contractor and has one or more covered contracts within the meaning of Executive Order 14042. Consequently, upon extension, renewal, or exercising an option on these existing covered contracts, or upon entering a new covered contract, the City must ensure that its employees are vaccinated against Covid-19. If the City does not do so, the federal government has indicated that it will decline to extend, renew, or enter into contracts.

We conducted an independent legal review of the Order, the related Guidance, and certain contractual documents provided to us. Based on our review, the City of Phoenix has one or more contracts that meet the definition of covered “contract or contract-like instrument” for purposes of Executive Order 14042, as further defined in the Task Force Guidance and related administrative materials, and do not appear to qualify for any exceptions. Consequently, upon renewal, extension, or modification of any of these covered agreements, Executive Order 14042 will require the agency to include a contractual term obligating the City to implement a Covid-19 vaccination policy.

Executive Order 14042 and the related administrative actions have been challenged in court by multiple jurisdictions and one court has enjoined the program in three states. Although no injunction affecting Phoenix has been issued, future developments in the pending lawsuits could prevent the federal government from implementing this program as to the City of Phoenix.