UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

THE STATE OF FLORIDA,

Plaintiff,

v. CASE NO. 8:21-cv-2524-SDM-TGW

BILL NELSON, et al.,

Defendants.
_____/

**ORDER**

Executive Order 14042 directs the Federal Acquisition Regulatory Council to amend the Federal Acquisition Regulation (FAR) to include a clause requiring compliance with guidance issued by the Safer Federal Workforce Task Force and approved by the Director of OMB. Pending the FAR Council's rulemaking to amend the FAR, the executive order, "effective immediately," states that federal agencies "shall, to the extent permitted by law, ensure that contracts and contract-like instruments include" the clause. In accord with the executive order, the FAR Council has issued guidance instructing each agency to include the clause by "class deviations" from the FAR (until the FAR Council amends the FAR to include the clause).

In reply and during the hearing on the motion for a preliminary injunction, Florida contended that 41 U.S.C. § 1707 (requiring notice and comment for, and

delaying the effectiveness of, a "procurement policy, regulation, procedure, or form") applies to each agency's implementing a class deviation to include the clause in each contract.

Not later than **DECEMBER 15, 2021**, Florida may in a supplemental brief not to exceed ten pages address:

(1) Whether the procedural requirements of 41 U.S.C. § 1707 (or another requirement of notice and comment and delayed effectiveness) apply to an agency implementing the class deviations in accord with the executive order's direction and the FAR Council's instruction.

(2) Whether a United States District Court has jurisdiction to resolve a challenge under 41 U.S.C. § 1707 to an agency's implementation of the deviations.

(3) Whether the agencies subject to the executive order have complied with the requirements and exceptions of 41 U.S.C. § 1707.

(4) Whether relief is available and, if so, what kind, against the named defendants if the agencies are subject to, but fail to comply with, the requirements of 41 U.S.C. § 1707.

Not later than **DECEMBER 22, 2021**, the defendants may respond in a brief not exceeding ten pages.

ORDERED in Tampa, Florida, on December 9, 2021.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE