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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 9, 12, 22, and 52

[FAR Case 2013-001; Docket 2013-0001; Sequence 1]

RIN: 9000-AM55

**Federal Acquisition Regulation; Ending Trafficking in
Persons**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to strengthen protections against trafficking in persons in Federal contracts. These changes are intended to implement E.O. 13627 and Title XVII of the National Defense Authorization Act for Fiscal Year 2013.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before **[Insert 60 days after publication in the FEDERAL REGISTER]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2013-001 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching "FAR Case 2013-001". Select the link "Submit a Comment" that corresponds with "FAR Case 2013-001". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2013-001" on your attached document.
- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street, N.W., 2nd Floor, Washington, DC 20405-0001.

Instructions: Please submit comments only and cite FAR Case 2013-001, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrusek, Procurement Analyst, at 202-501-0136, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAR Case 2013-001.

SUPPLEMENTARY INFORMATION:

I. Background

The United States has long had a zero-tolerance policy regarding Government employees and contractor personnel engaging in prohibited trafficking activities, such as severe forms of trafficking in persons, which are defined in section 103 of the Trafficking Victims Protection Act of 2000 (TVPA) (22 U.S.C 7102) to include the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery, and sex trafficking. As the largest single purchaser of goods and services in the world, the Federal Government bears a responsibility to ensure that taxpayer dollars do not contribute to any form of this criminal behavior.

FAR subpart 22.17 codifies the zero-tolerance policy. It provides for the use of a clause that requires contractors and subcontractors to notify Government employees of trafficking violations and puts parties on notice that the Government may impose remedies, including termination, for failure to comply with the requirements. However, recent studies of trafficking in persons, including findings made by the Commission on Wartime Contracting and agency Inspectors General, as well as testimony provided at congressional hearings, have pointed to a need for additional steps—including regulatory action—

to eliminate trafficking in persons from Government contracts.

II. Discussion and Analysis

A. Proposed FAR amendments

E.O. 13627, entitled "Strengthening Protections Against Trafficking in Persons in Federal Contracts", issued on September 25, 2012 (77 FR 60029, October 2, 2012), and Title XVII, entitled "Ending Trafficking in Government Contracting", of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239, enacted January 2, 2013) create a stronger framework for agency compliance by providing additional requirements for awareness, compliance, and enforcement. DOD, GSA, and NASA are proposing a series of amendments to implement the requirements of the E.O. and TVPA in the FAR. Consistent with the E.O. and the TVPA, some of the changes would apply to all Federal contracts while others would apply to contracts where the portion to be performed outside the United States exceeds \$500,000.

New policies applying to all contracts. This case proposes to amend FAR parts 22 and 52 to provide additional policies applicable to all solicitations and contracts, including those performed in the United States. These policies would prohibit:

- Destroying, concealing, confiscating, or otherwise denying access by an employee to his or her identity or immigration documents (e.g., passports or drivers' licenses);
- Using misleading or fraudulent practices during the recruitment of employees (e.g., failing to disclose basic information or making material misrepresentations regarding the key terms and conditions of employment);
- Charging employees recruitment fees, providing or arranging housing that fails to meet the host country housing and safety standards; or
- Failing to provide in writing an employment contract, recruitment agreement or similar work paper in the employee's native language prior to the employee departing from his or her country of origin.

In addition, the proposed rule would require a contractor to provide return transportation or pay for the cost of return transportation upon the end of employment (for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract), or, for portions of contracts performed inside the United States, failing to provide return transportation or pay for the cost of return transportation upon the end of employment (for an employee

who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract), if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee. The Executive Order and the statute provide limited exceptions to these requirements in specific circumstances.

Contractors would also be required to protect and interview all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to their country of origin. Contractors would be prohibited from preventing or hindering these employees from cooperating fully with government authorities.

Further, the proposed rule would update the regulations addressing the Federal Awardee Performance and Integrity Information System (FAPIIS) at FAR 9.104-6, to require the contracting officer to include in FAPIIS any allegations substantiated in an Inspector General report in which the contractor violated the trafficking in persons prohibitions in E.O. 13267 or the TVPA.

New policy applying to contracts where the portion to be performed outside the United States exceeds \$500,000. Section 2(a)(2) of E.O. 13627 provides further guidance and tools to protect against TIP where the estimated value of the supplies acquired, or the services required to be

performed, outside the United States exceeds \$500,000. Section 1703 of the statute establishes similar protections at the same threshold, i.e., "if the estimated value of the services to be performed under the... contract... outside the United States exceeds \$500,000...". These protections consist of a contractor certification and a compliance plan. The E.O. makes it clear that the requirement for a compliance plan applies only to the portion of the contract that is performed outside the United States, i.e., "the following requirements pertaining to the portion of the contract or subcontract performed outside the United States" (see section 2(a)(2)). The thresholds and applicability do not apply to a contract or subcontract that is solely for commercially available off-the-shelf items.

If a compliance plan is required, it must be (1) maintained during the performance of the contract and (2) appropriate to the size and complexity of the contract and to the nature and scope of the activities performed, including the risk that the contract will involve services or supplies susceptible to trafficking. The compliance plan must be provided to the contracting officer upon request (it need not be automatically submitted to the Government). Further, the contractor is required to post the relevant contents (see below) of the compliance plan,

no later than the initiation of contract performance, at the workplace and on the contractor's website (if one is maintained).

Contractors would be required to incorporate the following elements into their compliance plans:

- An awareness program to inform contractor employees about—
 - The U.S. Government's zero-tolerance policy with regard to trafficking in persons;
 - The trafficking-related activities in which the contractor is prohibited from engaging; and
 - The actions that will be taken against employees for violations.
- A reporting process for employees to use, without fear of retaliation, to report any activity inconsistent with the zero-tolerance policy.
- A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host country legal requirements or explains any variance.
- A housing plan, if the contractor intends to provide or arrange housing that ensures that the housing meets host country housing and safety standards or explains the variance.

- Procedures to prevent agents and subcontractors at any tier from engaging in trafficking in persons, and to monitor, detect, and terminate any agents, subcontractors, or subcontractor employees that have engaged in such activities.

A contractor would be required to certify that it has implemented the compliance plan to prevent prohibited activities and to monitor, detect, and terminate any subcontractor engaging in prohibited activities. In addition, the contractor would be required to certify that, after having conducted due diligence, to the best of the contractor's knowledge and belief, (1) neither it nor any of its agents, subcontractors, or their agents is engaged in any trafficking in persons activities or, (2) if abuses have been found, the contractor or subcontractor has taken the appropriate remedial and referral actions. The certification would be required from the apparent successful offeror prior to award (see 52.222-XX), and annually from the contractor. The requirements for a compliance plan and certification would also apply to all portions of subcontracts where the estimated value of the supplies acquired, or the services required to be performed, outside the United States exceeds \$500,000 (see section 2(a)(2) of the E.O.).

The compliance plan and certification would not be required for contracts or subcontracts for commercially available off-the-shelf items. The E.O. specifies that the certification, if required, must be completed prior to receiving an award and annually thereafter during the term of the contract or subcontract. Therefore, the proposed rule is drafted so that certification is required only by the apparent successful offeror, not all offerors.

B. Public input.

Prior to the issuance of this proposed rule, the Federal Acquisition Regulatory Council (FAR Council) sponsored a public meeting and invited written comment to express views on the most effective and least burdensome approaches for implementing the E.O. and the TVPA. The FAR Council encouraged comment on issues such as identifying areas of the E.O. and statute in greatest need of guidance, and identifying practices that are most effective in prohibiting trafficking in persons by contractor and subcontractor employees. The Council also sought input to evaluate potential burden, including the most significant drivers of cost in developing and maintaining compliance plans. (Notice-MVC-2013-01 was published in the Federal Register at 78 FR 9918 on February 12, 2013.)

Ten associations, individuals, and law firm representatives made presentations during the public

meeting, which took place on March 5, 2013. There were 15 public comments, submitted by 13 respondents (two respondents submitted multiple comments). These comments may be found in the transmittal of consolidated comments posted at regulations.gov. The comments addressed a wide range of human trafficking-related issues. Commonly raised themes included the following: (1) recruitment (providing employees with detailed recruitment agreements or similar work papers, in the employees' native language, prior to leaving their home country); (2) fees (prohibiting employee recruitment fees); (3) certifications (requiring contractors to provide initial and annual written certifications of compliance; (4) employee interviews (interviewing all employees and witnesses prior to their leaving the country and making them available to Government investigators); (5) transparency (requiring contracting officers to enter all agency determinations into FAPIIS); and (6) training (interactive training).

Almost all of these general themes are covered in the proposed rule, and a number of associated issues are addressed in some manner. For instance, on the issue of recruitment, the proposed rule prohibits contractors from using misleading or fraudulent recruitment practices. Contractors must also disclose details about pay. The proposed rule reflects the strong view expressed by a

number of respondents regarding the importance of a prohibition on charging employees recruitment fees. With respect to interviews, the proposed rule requires contractors to cooperate fully and protect and interview all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to their country of origin. (This would be in addition to the requirement, imposed in certain situations, to maintain an awareness program and develop a process for employees to report, without fear of retaliation, activities inconsistent with the policy regarding trafficking in persons.)

For additional details on the ideas submitted to the FAR Council in response to its notice, go to Regulations.gov and search for Docket ID "FAR-2013-0081". The public may wish to consider this input in formulating comments on the proposed rule.

In addition to the matters highlighted above, several comments were received recommending requirements that are either not addressed in the E.O. or the statute, or not addressed to a sufficient level of detail. DOD, GSA, and NASA encourage feedback on potential benefits and any burdens associated with these recommendations, which include the following (respondents are encouraged to use the numbering below when providing comments):

1) Require a detailed recruitment and wage plan that would include:

a) The identity of recruitment companies being used and proof that the company and/or recruiter is licensed under laws of the country of recruitment.

b) A description of the selection process used by the Government contractor or subcontractor to select, evaluate, and engage its recruiting company or recruiter.

c) Signed copies of any recruiting agreements between the contractor or subcontractor and the recruiting company or recruiter.

d) Definition of allowable variances in wage plan requirements.

2) Require that compliance plans include the following:

a) A written contract to recruits;

b) An account of working and living conditions of recruits;

c) A requirement for facilitating regular contact with family and embassies;

d) A provision for providing Defense Base Act (DBA) insurance, when and where required, notifying employees of such coverage, and promptly reporting employee claims that are covered by the DBA or by the Taxpayer War Hazard Act; and

e) A requirement to prominently post notices of trafficking-in-persons prevention requirements in workers' living and work areas.

f) A code of conduct that addresses core labor standards including compensation, hours of work, occupational safety and health, industrial hygiene, emergency preparedness, safety equipment, sanitation and access to food and water.

g) A monitoring mechanism which includes risk assessments, compliance evaluation and independent audits of compliance system effectiveness, and public reports on compliance system effectiveness.

h) A reporting mechanism which includes internal and public reports on compliance system effectiveness.

i) An enforcement mechanism which includes internal remediation of anti-trafficking policy violations, where trafficking in persons is discovered, or where the contractor or subcontractor engages in any other type of non-compliance with the Trafficking in Persons compliance plan or labor code of conduct. Enforcement procedures should be in writing and communicated to employees at the start of employment. Employee performance evaluations should include discussion of code of conduct and employee compliance with the code. Contractors and subcontractors should also take appropriate immediate actions, such as

referral to law enforcement and other appropriate authorities, where there is evidence of child labor, forced labor, debt bondage, or trafficking in persons.

3) Harmonize the requirements of 52.203-13, Contractor Code of Business Ethics and Conduct with the requirements of the E.O. and statute.

4) Require the contractor to train employees on (a) grievance procedures and procedures for filing complaints and (b) providing specific explanations of exploitation, causes and consequences. (Respondents may wish to address the level of detailed requirements that should be included.)

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated

September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, et seq. The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

This proposed rule strengthens the policy on combating trafficking in persons in Federal contracts and updates the related clause. Executive Order (E.O.) 13627, entitled "Strengthening Protections Against Trafficking in Persons in Federal Contracts", dated September 25, 2012, (77 FR 60029, October 2, 2012), and title XVII, entitled "Ending Trafficking in Government Contracting", of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239, enacted January 2, 2013), strengthen the long-standing zero-tolerance policy of the United States regarding Government employees and contractor personnel engaging in any form of trafficking in persons. The statute and E.O. prompted the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) to develop the coverage in this proposed rule in consultation with the Departments of State, Justice, Labor, Homeland Security, and the United States Agency for International Development.

The objective of the proposed rule is to strengthen protections against trafficking in persons in Federal contracting by providing the Government workforce with additional tools to enforce existing policy and provide additional clarity to Government contractors and subcontractors on the steps necessary to comply with that policy.

Any entity of any size that violates the U.S. Government's zero-tolerance policy against trafficking in persons will be impacted by this rule. New policies prohibit denying an employee access to his/her identity or immigration documents; using misleading or fraudulent recruitment practices or charging recruitment fees; providing or arranging housing that fails to meet the host country housing and safety standards; and failing to provide return transportation or requiring payment for the cost of return transportation for certain employees. There

are also requirements for a compliance plan and certification; this will impact only entities where the estimated value of supplies acquired or services required to be performed outside the United States exceeds \$500,000. There is no requirement for a compliance plan or certification if the supplies to be furnished outside the United States involve solely commercially available off-the-shelf items. The Councils anticipate that these certification and written compliance plan exceptions will significantly reduce the impact on small entities. Using Fiscal Year 2011 data from the Federal Procurement Data System (FPDS) and Electronic Subcontractor Reporting System (eSRS), the Councils estimate that about 1,622 of the entities impacted will be small entities. This number is the number of small businesses with a prime contract or subcontract of \$500,000 or more that is performed outside the U.S.

The rule requires the following projected reporting and recordkeeping burdens for access to information:

a. Compliance Plan: (1,622 recordkeepers x 24 hours per record = 38,928 hours)

b. Certification: (1,622 respondents x 4 hours per response = 6,488 hours)

For the certification process, the Councils estimate that the respondents will be high-level administrative/legal employees earning an average of approximately \$83.00 an hour (\$60.47 + 36.45% overhead). For the compliance plan, the Councils estimate that the respondents will be high-level administrative/program manager employees earning an average of approximately \$68.00 per hour (\$50.05 + 36.45% overhead).

The Councils did not identify any significant alternatives that would accomplish the objectives of the E.O. and the statute. Steps have been taken in this proposed rule to minimize the impact on small entities by making the compliance plan requirements of this rule tailorable to the appropriate size and complexity of the contract and subcontract and the nature and scope of the activities performed, including number of non-U.S. citizens expected to be employed and the risk that these activities will involve services or supplies susceptible to trafficking.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the

Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2013-001) in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat has submitted a request for approval of a new information collection requirement concerning Ending Trafficking in Persons to the Office of Management and Budget.

A. Annual Reporting Burden:

Public reporting and recordkeeping burden for this collection of information is estimated to average 24 hours to prepare a compliance plan and 4 hours to prepare and submit the annual certification, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The source for the data used is Federal Procurement Data System data for FY

2011. The number below includes all contracts and subcontracts, to both large and small businesses, over \$500,000 required to be performed outside the United States.

The annual recordkeeping burden for the compliance plan is estimated as follows:

Recordkeepers: 11,960.
Records per recordkeeper: 1.
Total annual responses: 11,960
Preparation hours per response: 24
Total recordkeeping burden hours: 287,040

The annual reporting burden for the certification is estimated as follows:

Respondents: 11,960.
Responses per respondent: 1.
Total annual responses: 11,960.
Preparation hours per response: 4.
Total response burden hours: 47,840.

There will be a small, but measurable reporting burden for submission of a contractor's compliance plan, but only when the plan is requested by the contracting officer. We anticipate that requests to submit the compliance plan will be the exception, rather than the rule, and will be requested only in circumstances where the contracting officer has reason to believe that there may be trafficking activities in violation of the Government's zero-tolerance policy. We estimated that submission of the contractor's compliance plan would be required no more than 1 percent of the time. Therefore, the annual reporting burden for

submission of the compliance plan to the Government is estimated as follows:

Respondents: 120.
Responses per respondent: 1.
Total annual responses: 120.
Preparation hours per response: 1.
Total response burden hours: 120.

B. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than **[insert date 60 days after publication in the FEDERAL REGISTER]** to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street, N.W., 2nd Floor, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, N.W., 2nd Floor, Washington, DC 20405. Please cite OMB Control Number 9000-00XX, Ending Trafficking in Persons, in correspondence.

List of Subjects in 48 CFR Parts 1, 2, 9, 12, 22, and 52

Government procurement.

Dated: September 19, 2013.

William Clark,
Acting Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 2, 9, 12, 22, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 9, 12, 22, and 52 continues to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106, in the table following the introductory text, by adding in numerical sequence, FAR segments "22.17" and "52.222-50" and their corresponding OMB Control No. "9000-00XX" and "9000-00XX", respectively.

PART 2—DEFINITIONS OF WORDS AND TERMS

3. Amend section 2.101 in paragraph (b)(2), in the definition "United States" by redesignating paragraphs (7) through (11) as paragraphs (8) through (12), respectively; and adding a new paragraph (7) to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

United States * * *

(7) For use in subpart 22.17, see the definition at 22.1702.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

4. Amend section 9.104-6 by adding paragraph (e) to read as follows:

9.104-6 Federal Awardee Performance and Integrity Information System.

* * * * *

(e) The head of an executive agency shall ensure that the contracting officer is provided a copy of the agency Inspector General report of an investigation of a violation of the trafficking in persons prohibitions in E.O. 13627 or the Trafficking Victims Protection Act of 2000, as amended, (22 U.S.C. chapter 78). The contracting officer is responsible for including in FAPIIS any allegation substantiated by the Inspector General in its report and providing the contractor an opportunity to respond to any such report in accordance with applicable statutes and regulations. Information posted in FAPIIS regarding such reports will be publicly available.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

5. Amend section 12.301 by adding paragraph (d) (4) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) * * *

(4) Insert the provision at 52.222-XX, Certification Regarding Trafficking in Persons Compliance Plan, in solicitations as prescribed at 22.1705(b). This certification is not in the Online Representations and Certifications Application (ORCA) Database.

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

6. Revise section 22.1700 to read as follows:

22.1700 Scope of subpart.

This subpart prescribes policy for implementing 22 U.S.C. chapter 78 and Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, dated September 25, 2012.

7. Revise section 22.1701 to read as follows:

22.1701 Applicability.

This subpart applies to all acquisitions, except that the requirement at 22.1703(d) for a certification and compliance plan for contracts and subcontracts other than commercially available off-the-shelf items, applies only where the estimated value of the supplies to be acquired, or services required to be performed, outside the United States exceeds \$500,000.

8. Amend section 22.1702 by adding, in alphabetical order, the definition "United States" to read as follows:

22.1702 Definitions.

* * * * *

United States means the 50 States, the District of Columbia, and outlying areas.

9. Amend section 22.1703 by—

- a. Removing from the introductory text "in Persons' at" and adding "in Persons at" in its place;
- b. Revising paragraph (a); and
- c. Adding paragraphs (d) and (e).

The revised and added text reads as follows:

22.1703 Policy.

* * * * *

(a) Prohibit contractors, contractor employees, subcontractors, subcontractor employees, and their agents from—

- (1) Engaging in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procuring commercial sex acts during the period of performance of the contract;
- (3) Using forced labor in the performance of the contract;
- (4) Destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses;

(5) Using misleading or fraudulent recruitment practices, such as failing to disclose basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing (if employer provided or arranged), any significant costs to be charged to the employee, and, if applicable, the hazardous nature of the work;

(6) Charging employees recruitment fees;

(7)(i)(A) Failing to provide return transportation or pay for the cost of return transportation upon the end of employment, for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract, for portions of contracts and subcontracts performed outside the United States;

(B) Failing to provide return transportation or pay for the cost of return transportation upon the end of employment, for an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written

agreement with the employee for portions of contracts and subcontracts performed inside the United States; except that—

(ii) The requirements of paragraph (a)(7)(i) of this section do not apply to an employee who is—

(A) Legally permitted to remain in the country of employment and who chooses to do so;

(B) Exempted by the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation; or

(C) A victim of trafficking and is seeking victim services or legal redress in the country of employment, or who is a witness in a trafficking-related enforcement action;

(8) Providing or arranging housing that fails to meet the host country housing and safety standards; or

(9) If it is required, failing to provide an employment contract, recruitment agreement, or similar work document in writing in the employee's native language and prior to the employee departing from his or her country of origin. The employee's contract, agreement or work document should include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations, leave, roundtrip transportation arrangements, grievance process,

and the content of applicable laws and regulations that prohibit trafficking in persons.

* * * * *

(d) Except for contracts and subcontracts for commercially available off-the-shelf items-

(1) Require a certification that the contractor has a compliance plan for any portion of the contract or subcontract where the estimated value of the supplies to be acquired, or services required to be performed, outside the United States exceeds \$500,000. The certification must state that the contractor has implemented the plan and has implemented procedures to prevent any prohibited activities and to monitor, detect, and terminate the contract with a subcontractor or agent engaging in prohibited activities. In addition, the certification must state that, after having conducted due diligence, either (i), to the best of the contractor's knowledge and belief, neither it nor its agents, nor any of its subcontractors or their agents, has engaged in any such activities, or (ii), if abuses have been found, the contractor or subcontractor has taken the appropriate remedial and referral actions. The contracting officer must verify that the apparent successful offeror has made this certification before awarding the contract.

(2) Require annual certifications during performance of the contract, when a compliance plan was required at award.

(3) Require the contractor to obtain a certification from each subcontractor, prior to award of a subcontract, that it has a compliance plan for any portion of its subcontract where the estimated value of the supplies to be acquired, or services required to be performed, outside the United States under the subcontract exceeds \$500,000. In addition, the certification must state that, after having conducted due diligence, either (i), to the best of the contractor's knowledge and belief, neither it or its agents, nor any of its subcontractors nor their agents, has engaged in any such activities, or (ii), if abuses have been found, the contractor or subcontractor has taken the appropriate remedial and referral actions;

(4) Require the contractor to obtain annual certifications from subcontractors during performance of the contract, when a compliance plan was required at the time of subcontract award; and

(5) Any compliance plan or procedures implemented in response to paragraph (d) of this section shall be appropriate to the size and complexity of the contract and the nature and scope of its activities, including the number of non-U.S. citizens expected to be employed and the risk

that the contract or subcontract will involve services or supplies susceptible to trafficking.

(e) Require the contractor and subcontractors to cooperate fully in providing reasonable access to their facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible enforcement agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act (22 U.S.C. chapter 78), Executive Order 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor. Contractors shall protect and interview all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to their country of origin, and shall not prevent or hinder the ability of these employees from cooperating fully with government authorities.

10. Revise section 22.1704 to read as follows:

22.1704 Violations, remedies, and notifications.

(a) Violations. The Government may impose the remedies set forth in paragraph (b) of this section if—

(1) The contractor, contractor employee, subcontractor, subcontractor employee, or their agents

engages in severe forms of trafficking in persons during the period of performance of the contract;

(2) The contractor, contractor employee, subcontractor, subcontractor employee, or their agents procures a commercial sex act during the period of performance of the contract;

(3) The contractor, contractor employee, subcontractor, subcontractor employee, or their agents uses forced labor in the performance of the contract; or

(4) The contractor fails to comply with the requirements of the clause at 52.222-50, Combating Trafficking in Persons.

(b) Remedies. After determining in writing that adequate evidence exists to suspect any of the violations at paragraph (a) of this section, the contracting officer may pursue any of the remedies specified in paragraph (e) of the clause at 52.222-50, Combating Trafficking in Persons. The contracting officer may take into consideration whether the contractor had a Trafficking in Persons compliance plan or awareness program at the time of the violation, and whether the contractor was in compliance with the plan, as mitigating factors when determining the appropriate remedies. The contracting officer may consider the failure of a contractor to abate an alleged violation or enforce the requirements of a compliance plan, when directed by a

contracting officer to do so, as an aggravating factor. These remedies are in addition to any other remedies available to the United States Government.

(c) Notifications. Contracting officers shall notify, in accordance with agency procedures, the agency Inspector General, the agency debarring and suspending official, and if appropriate, law enforcement, of credible violations. The Contracting officer shall include in FAPIIS any allegation substantiated by the Inspector General in its report (see 9.104-6).

11. Revise section 22.1705 to read as follows:

22.1705 Solicitation provision and contract clause.

(a)(1) Insert the clause at 52.222-50, Combating Trafficking in Persons, in all solicitations and contracts.

(2) Use the clause with its Alternate I when the contract will be performed outside the United States (as defined at 22.1702) and the contracting officer has been notified of specific U.S. directives or notices regarding combating trafficking in persons (such as general orders or military listings of "off-limits" local establishments) that apply to contractor employees at the contract place of performance.

(b) Insert the provision at 52.222-XX, Certification Regarding Trafficking in Persons Compliance Plan, in solicitations if-

(1) It is possible that at least \$500,000 of the contract may be performed outside the United States; and

(2) The acquisition is not entirely for commercially available off-the-shelf items.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Amend section 52.212-5 by—

a. Revising the date of the clause;

b. Removing paragraph (a) (1);

c. Redesignating paragraphs (a) (2) and (a) (3) as paragraphs (a) (1) and (a) (2), respectively;

d. Redesignating paragraphs (b) (34) through (b) (52) as paragraphs (b) (35) through (b) (53), respectively;

e. Adding a new paragraph (b) (34);

f. Revising paragraph (e) (1) (ix); and

g. Amending Alternate II by—

i. Revising the date and introductory text of Alternate II; and

ii. Revising paragraph (e) (1) (ii) (I).

The revised and added text reads as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DATE)

* * * * *

(b) * * *

____ (34) (i) 52.222-50, Combating Trafficking in Persons **(DATE)** (22 U.S.C. chapter 78 and Executive Order 13627).

____ (ii) Alternate I **(DATE)** of 52.222-50 (22 U.S.C. chapter 78 and Executive Order 13627).

* * * * *

(e) (1) * * *

(ix) 52.222-50, Combating Trafficking in Persons **(DATE)** (22 U.S.C. chapter 78 and Executive Order 13627) (use with its Alternate I, if used in the prime contract).

* * * * *

Alternate II **(DATE)**. As prescribed in 12.301(b)(4)(ii), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

* * * * *

(e) (1) * * *

(ii) * * *

(I) 52.222-50, Combating Trafficking in Persons **(DATE)** (22 U.S.C. chapter 78 and Executive Order 13627) (use with its Alternate I, if used in the prime contract).

* * * * *

13. Amend section 52.213-4 by—

- a. Revising the date of the clause;
- b. Removing paragraph (a)(1)(iv);
- c. Redesignating paragraphs (a)(1)(v) through (a)(1)(vii) as paragraphs (a)(1)(iv) through (a)(1)(vi), respectively;

- d. Revising paragraph (a) (2) (vi);
- e. Redesignating paragraphs (b) (1) (viii) through (b) (1) (xiii) as paragraphs (b) (1) (ix) through (b) (1) (xiv), respectively; and
- f. Adding a new paragraph (b) (1) (viii).

The revised and added text reads as follows:

**52.213-4 Terms and Conditions—Simplified Acquisitions
(Other Than Commercial Items).**

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS
(OTHER THAN COMMERCIAL ITEMS) **(DATE)**

* * * * *

(a) * * *

(2) * * *

(vi) 52.244-6, Subcontracts for Commercial Items
(DATE)

* * * * *

(b) * * *

(1) * * *

(i) * * *

(viii) (A) 52.222-50, Combating Trafficking in
Persons **(DATE)** (22 U.S.C. chapter 78 and Executive Order
13627).

(B) Alternate I (applies if the contracting officer fills in the following information with regard to applicable directives or notices: Document title(s), source for obtaining document(s), contract performance location outside the United States to which the document applies.

* * * * *

14. Amend section 52.222-50 by—
 - a. Revising the date of the clause;
 - b. Adding to paragraph (a), in alphabetical order, the definition "United States";
 - c. Revising paragraphs (b), (d), and (e);
 - d. Removing paragraph (f);
 - e. Redesignating paragraph (g) as paragraph (f);
 - f. Revising the newly designated paragraph (f);
 - g. Adding a new paragraph (g), and paragraphs (h) and (i); and
 - h. Amending Alternate I by—
 - i. Revising the date of the Alternate and the introductory text; and
 - ii. Removing from paragraph (i)(B), in the table, "Applies performance to", and adding "Applies to performance" in its place; and removing in the bracketed text, "U.S." and adding "United States" in its place.

The revised and added text reads as follows:

52.222-50 Combating Trafficking in Persons.

* * * * *

COMBATING TRAFFICKING IN PERSONS (DATE)

* * * * *

(a) * * *

United States means the 50 States, the District of Columbia, and outlying areas.

(b) Policy. The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors, contractor employees, and their agents shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses;

(5) Use misleading or fraudulent recruitment practices, such as failing to disclose basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing (if employer provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;

(6) Charge employees recruitment fees;

(7)(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment—

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that—

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to—

(A) An employee who is legally permitted to remain in the country of employment and who chooses to do so; or

(B) An employee who is a victim of trafficking and is seeking victim services or legal redress in the country of employment, or an employee who is a witness in a trafficking-related enforcement action;

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required, fail to provide an employment contract, recruitment agreement, or similar work document in writing in the employee's native language and prior to the employee departing from his or her country of origin. The employee's contract, agreement or work document should include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations, leave, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

* * * * *

(d) Notification. The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of—

(1) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates this policy; and

(2) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(e) Remedies. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in—

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

- (2) Requiring the Contractor to terminate a subcontract;
- (3) Suspension of contract payments;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
- (5) Declining to exercise available options under the contract;
- (6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
- (7) Suspension or debarment.

(f) Mitigating and aggravating factors. The Contracting Officer may consider whether the Contractor had a Trafficking in Persons compliance plan or awareness program at the time of the violation and was in compliance with the plan as mitigating factors when determining remedies. The Contracting Officer may consider the failure of the Contractor to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so, as aggravating factors. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(g) Full cooperation. The Contractor shall cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible enforcement agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), Executive Order 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor. Contractors shall protect and interview all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to their country of origin, and shall not prevent or hinder the ability of these employees from cooperating fully with government authorities.

(h) Compliance plan. (1) This paragraph (h) applies to the portion of the contract that—

(i) Is for supplies acquired, other than commercially available off-the-shelf items, or services performed, outside the United States; and

(ii) Has an estimated value that exceeds \$500,000.

(2) The Contractor, shall maintain a compliance plan during the performance of the contract that is appropriate to the size and complexity of the contract and to the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking.

(3) Minimum requirements. The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's zero-tolerance policy, the activities prohibited, and the actions that will be taken against the employee for violations.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the zero-tolerance policy.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards or explains any variance.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b)) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) Posting. (i) The Contractor shall post the relevant contents of the compliance plan, no later than the

initiation of contract performance, at the workplace and on the Contractor's website (if one is maintained).

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) Certification. Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that—

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either—

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) Subcontracts. (1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) apply only to the portion of the subcontract that is required to be performed outside the United States, for which the estimated value exceeds \$500,000 and is for supplies acquired, other than commercially available off-the-shelf items or services performed, outside the United States.

(2) If applicable, the Contractor shall require subcontractors to submit a subcontract compliance plan and certification to the prime Contractor prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5).

(End of clause)

Alternate I (DATE). As prescribed in 22.1705(a)(2), substitute the following paragraph in place of paragraph (c)(1)(i) of the basic clause:

* * * * *

15. Add section 52.222-XX to read as follows:

**52.222-XX Certification Regarding Trafficking in Persons
Compliance Plan.**

As prescribed in 22.1705(b), insert the following provision:

**CERTIFICATION REGARDING TRAFFICKING IN PERSONS COMPLIANCE
PLAN (DATE)**

The apparent successful offeror shall submit, prior to award, for the portion of the contract where the estimated value of the supplies to be acquired, or services required to be performed, outside the United States exceeds \$500,000, a certification that—

(a) It has implemented a compliance plan to prevent any prohibited activities and to monitor, detect, and terminate the contract with a subcontractor engaging in prohibited activities identified at paragraph (b) of the clause at 52.222-50, Combating Trafficking in Persons; and

(b) After having conducted due diligence, either—

(1) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(2) If abuses have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(End of Provision)

16. Amend section 52.244-6 by—

a. Revising the date of the provision and paragraph

(c)(1)(viii) to read as follows:

52.244-6 Subcontracts for Commercial Items.

* * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS (DATE)

* * * * *

(c) (1) * * *

(viii) 52.222-50, Combating Trafficking in
Persons **(DATE)** (22 U.S.C. chapter 78 and Executive Order
13627) (use with its Alternate I, if used in the prime
contract).

* * * * *

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