



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAR Case 2024-004, Docket No. FAR-2024-0004, Sequence No. 1]

RIN 9000-A072

Federal Acquisition Regulation: Combating Trafficking in Persons—Definition and Agency Responsibilities

AGENCY: 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 implement statutory updates to a definition and to agency responsibilities associated with combating trafficking in persons in Federal contracts.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2024-004 to the Federal eRulemaking portal at

<https://www.regulations.gov> by searching for "FAR Case 2024-004". Select the link "Comment Now" that corresponds with "FAR Case 2024-004". Follow the instructions provided on the "Comment Now" screen. Please include your name, company name (if any), and "FAR Case 2024-004" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the point of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite "FAR Case 2024-004" in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jennifer Hawes, Procurement Analyst, at 202-969-7386 or by email at jennifer.hawes@gsa.gov. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the

Regulatory Secretariat Division at 202-501-4755 or
GSARegSec@gsa.gov. Please cite FAR Case 2024-004.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR to implement the following statutory amendments to a definition and to agency responsibilities associated with combating trafficking in persons in Federal contracts:

- Section 108 of the Justice for Victims of Trafficking Act of 2015 (Pub. L. 114-22) amended the definition of "sex trafficking" at 22 U.S.C. 7102 to clarify the range of conduct considered sex trafficking.
- Section 2 of the End Human Trafficking in Government Contracts Act of 2022 (Pub. L. 117-211) amended 22 U.S.C. 7104b(c)(1) to require that, upon receipt of an Inspector General's report substantiating an allegation of violations by a contractor or subcontractor, the agency head refer the matter to the agency suspending and debarring official.

II. Discussion and Analysis

A. Definition.

DoD, GSA, and NASA are proposing amendments to FAR subpart 22.17, Combating Trafficking in Persons, and the clause at FAR 52.222-50, Combating Trafficking in Persons, to align the definition of "sex trafficking" with the

statutory definition of this term at 22 U.S.C. 7102. This proposed rule would clarify the definition of "sex trafficking" at FAR 22.1702 and paragraph (a) of the clause at FAR 52.222-50 to also include "patronizing" or "soliciting" a person for the purpose of a commercial sex act, in accordance with Federal law.

The term "sex trafficking" is used in the definition of "severe forms of trafficking in persons" in the same FAR section and clause; therefore, the proposed revisions to the definition of "sex trafficking" in the section and clause will affect the definition of "severe forms of trafficking in persons." The proposed revisions have the effect of clarifying that patronizing or soliciting a person for the purpose of a commercial sex act, where the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age, is a "severe form of trafficking in persons."

Conforming changes are also proposed to update the date of FAR clause 52.222-50 where it is referenced in the clauses at FAR 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services; FAR 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services); and FAR

52.244-6, Subcontracts for Commercial Products and Commercial Services.

B. Agency Responsibilities.

DoD, GSA, and NASA are also proposing to update agency responsibilities to align with the statutory requirements at 22 U.S.C. 7104b(c) (1). Currently, FAR 22.1704(c) (2) (i) requires that, upon receipt of a report from an agency Inspector General that provides support for allegations of a violation of the trafficking in persons prohibitions, the head of the Executive agency delegate to an authorized agency official, such as the agency suspending or debarring official, the responsibility to conduct an administrative proceeding and make a final determination regarding whether the allegations have been substantiated. DoD, GSA, and NASA are proposing to update FAR 22.1704(c) (2) (i) by adding to the agency head's responsibilities the requirement to refer the matter to their agency suspending and debarring official, as required by 22 U.S.C. 7104b(c) (1).

Conforming amendments are proposed at FAR 22.1704(d) to clarify that the contracting officer procedures in the subordinate paragraphs apply when a final determination is made in accordance with FAR 22.1704(c) (2) (i) (B), instead of FAR 22.1704(c) (2) (ii). This proposed rule would also update FAR 22.1704(d) (2) to clarify that the remedies that may be taken by the contracting officer after such a determination are limited to those listed in paragraphs (e) (1) through

(6) of the clause at FAR 52.222-50; the remedy at paragraph (e) (7) of the clause to suspend or debar a contractor is available to the suspending and debarring official.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This rule amends the clause at FAR 52.222-50 to update the definition of "sex trafficking." However, this rule does not impose any new requirements on contracts or subcontracts valued at or below the SAT or for commercial products and commercial services, including COTS items. The clause continues to apply to contracts and subcontracts valued at or below the SAT and to acquisitions for commercial products and commercial services, including COTS items.

IV. Expected Impact of the Rule

A. Definition.

Paragraph (b) of the clause at FAR 52.222-50, Combating Trafficking in Persons, prohibits a contractor and its employees and agents from engaging in severe forms of trafficking in persons during the period of performance of the contract. "Severe forms of trafficking in persons," as defined in 22 U.S.C. 7102 and paragraph (a) of the FAR clause, includes "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which

the person induced to perform such act has not attained 18 years of age." Paragraph (c) of the FAR clause requires the contractor to notify their employees, subcontractors, and agents of this prohibition and take appropriate actions against employees, subcontractors, and agents who violate this prohibition. Paragraph (d) of the FAR clause requires the contractor to inform the contracting officer and Inspector General immediately of any credible information they receive that alleges an employee, subcontractor, subcontractor employee, or agent has violated the prohibition. Contractors are required to flow the substance of the clause down to their subcontractors, to ensure subcontractors at all tiers are subject to the same prohibition and compliance requirements (see FAR 52.222-50(i)(1)).

This proposed rule, if finalized, would not change these existing notification or compliance requirements, except to clarify (pursuant to 22 U.S.C. 7102) that "patronizing" or "soliciting" of a person for the purpose of a commercial sex act, where such act is induced by force, fraud, or coercion or the person induced to perform such act has not attained 18 years of age, is a "severe form of trafficking in persons." When notifying their employees, subcontractors, and agents of the Government's prohibition on engaging in "severe forms of trafficking in persons" during performance of the contract, contractors

and subcontractors will need to ensure their notification reflects the revised definition of "sex trafficking." In addition, the proposed changes to the definition of "sex trafficking" to add "patronizing" and "soliciting" are not expected to have a substantial impact on the interpretation of what constitutes "sex trafficking" since the definition already includes "recruitment...of a person for the purpose of a commercial sex act."

B. Agency Responsibilities.

FAR 22.1704(c)(2)(i) requires the agency head to delegate to an authorized official, such as the agency suspending and debarring official, the responsibility to conduct an administrative proceeding and make a final determination regarding whether the allegations of a violation of trafficking in persons in the agency Inspector General report are substantiated. This proposed rule, if finalized, will not have a significant impact on agencies that already delegate the responsibility to conduct administrative proceedings to their agency suspending and debarring official, as currently suggested at FAR 22.1704(c)(2)(i). Those agencies that do not currently delegate to their suspending and debarring official will need to adjust their internal procedures to also refer the matter to the agency suspending and debarring official. This change will ensure that the agency suspending and debarring official is made aware of the Inspector General

report while the agency is conducting the administrative proceeding. Paragraph (e) of FAR clause 52.222-50 already puts the contractor on notice that suspension or debarment is a potential remedy for violations under the contract, so this change to Government procedures is not anticipated to have a significant impact on contractors; however, it is expected that contractors will take note of the direct referral to the suspending and debarring official and may choose to validate procedures they already have in place to combat trafficking in persons.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess 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 not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule, if finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612, because the updates to the statutory definitions and clarification of agency procedures are not substantive. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to revise the FAR to implement the following statutory amendments to a definition and agency responsibilities associated with combating trafficking in persons in Federal contracts:

- Section 108 of the Justice for Victims of Trafficking Act of 2015 (Pub. L. 114-22) amended the definition of "sex trafficking" at 22 U.S.C. 7102 to clarify the range of conduct considered sex trafficking.
- Section 2 of the End Human Trafficking in Government Contracts Act of 2022 (Pub. L. 117-211) amended 22 U.S.C. 7104b(c)(1) to require that, upon receipt of an Inspector General's report substantiating an allegation of violations by a contractor or subcontractor, the agency head refer the matter to the agency suspending and debarring official.

Requirements for combating trafficking in persons on Government contracts are implemented in FAR subpart 22.17, Combating Trafficking in Persons, and the clause at FAR 52.222-50, Combating Trafficking in Persons. This proposed rule, if finalized, would amend FAR 22.1702 and paragraph (a) of FAR clause 52.222-50 to revise the definition of "sex trafficking." This proposed rule, if finalized, would also revise FAR 22.1704(c)(2) to require that, upon receipt of an agency Inspector General report that provides support for allegations of violations of trafficking in persons prohibitions, the agency head refer the matter to the agency suspending or debarring official. Promulgation of the FAR is authorized by 40 U.S.C. 121(c); 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

The clause at FAR 52.222-50 continues to be prescribed for use in all solicitations and contracts. Therefore, this rule will apply to any small business competing on Government contracts. As of November 2023, there were approximately 362,000 entities registered in the System for Award Management who reported that they are a small business for at least one North American Industry Classification System code.

Paragraph (b) of the clause at FAR 52.222-50 prohibits a contractor and its employees and agents from engaging in severe forms of trafficking in persons during the period of performance of the contract. "Severe form of trafficking in persons," as defined in 22 U.S.C. 7102 and paragraph (a) of the FAR clause, includes "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age." Contractors and their subcontractors are required to notify their employees and agents of the prohibition in paragraph (b) of the FAR clause and to take appropriate actions against employees or agents who violate the prohibition (see FAR 52.222-50(c) and (i)(1)). They are also required to inform the contracting officer and Inspector General immediately of any credible information they receive that alleges an employee, subcontractor, subcontractor employee, or agent has violated the prohibition (see FAR 52.222-50(d) and (i)(1)).

This proposed rule does not propose any changes to these existing notification or compliance requirements for small businesses, except to clarify (pursuant to 22 U.S.C. 7102) that "patronizing" or "soliciting" of a person for the purpose of a commercial sex act, where such act is induced by force, fraud, or coercion or the person induced to perform such act has not attained 18 years of age, is a "severe form of trafficking in persons." When notifying their employees, subcontractors, and agents of the Government's prohibition on engaging in "severe forms of trafficking in persons" during performance of the contract, contractors and subcontractors will need to ensure their notification reflects the revised definition of "sex trafficking." In addition, the proposed changes to the definition of "sex trafficking" to add "patronizing" and "soliciting" are not expected to have a substantial impact on the interpretation of what constitutes "sex trafficking" since the definition already includes "recruitment...of a person for the purpose of a commercial sex act."

The proposed amendments to require referral to the agency suspending and debaring official do not create any additional reporting or compliance requirements for small businesses. Paragraph (e)(7) of the clause at FAR 52.222-50 already puts contractors and subcontractors on notice that suspension and debarment are potential remedies for substantiated violations.

The proposed rule, if finalized, would not duplicate, overlap, or conflict with other Federal rules.

There are no significant alternatives to the rule. This rule will not have a significant economic impact on small entities.

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

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the 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 2024-004), in correspondence.

VII. Paperwork Reduction Act

This rule affects the information collection requirements in the clause at FAR 52.222-50, currently approved under Office of Management and Budget (OMB) Control Number 9000-0188, Combating Trafficking in Persons, in accordance with the Paperwork Reduction Act (44 U.S.C. 3501-3521). The impact, however, is negligible, because the changes to the definition are not expected to impact the number of respondents, responses, or burden per response.

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

William F. Clark,
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 22 and 52 as set forth below:

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

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT

ACQUISITIONS

22.1702 [Amended]

2. Amend section 22.1702 in the definition of "Sex trafficking" by removing "or obtaining" and adding "obtaining, patronizing, or soliciting" in its place.

3. Amend section 22.1704 by—

a. Revising paragraph (c) (2);

b. Removing from paragraph (d) introductory text "(c) (2) (ii)" and adding "(c) (2) (i) (B)" in its place;

c. Removing from paragraph (d) (2) introductory text "paragraph (e)" and adding "paragraphs (e) (1) through (6)" in its place.

The revision reads as follows:

22.1704 Violations and remedies.

* * * * *

(c) * * *

(2) (i) Upon receipt of a report from the agency Inspector General that provides support for the allegations, the head of the executive agency shall—

(A) Refer the matter to the agency suspending and debarring official; and

(B) In accordance with agency procedures, delegate to an authorized agency official, who may also be the agency suspending or debarring official, the responsibility to—

(1) Expeditiously conduct an administrative proceeding, allowing the contractor the opportunity to respond to the report;

(2) Make a final determination as to whether the allegations are substantiated; and

(3) Notify the contracting officer of the determination.

(ii) Whether or not the official authorized to conduct the administrative proceeding described in paragraph (c) (2) (i) (B) of this section is the suspending and debarring official, the suspending and debarring official has the authority, at any time before or after the final determination as to whether the allegations are substantiated, to use the suspension and debarment procedures in subpart 9.4 to suspend, propose for debarment, or debar the contractor, if appropriate, also considering the factors in paragraph (d) (2) of this section.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.212-5 by—

- a. Revising the date of the clause;
- b. Removing from paragraph (b) (39) (i) “(NOV 2021)” and adding “(DATE)” in its place;
- c. Removing from paragraph (e) (1) (xvi) (A) “(NOV 2021)” and adding “(DATE)” in its place;
- d. In Alternate II:
 - i. Revising the date of the Alternate;
 - ii. Removing from paragraph (e) (1) introductory text “(c),” and adding “(c)” in its place;
 - iii. Removing from paragraph (e) (1) (ii) (O) (1) “(NOV 2021)” and adding “(DATE)” in its place; and
 - iv. Removing from paragraph (e) (1) (ii) (O) (2) “(Mar 2015)” and adding “(MAR 2015)” in its place.

The revisions read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

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

* * * * *

Alternate II (DATE). * * *

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5. Amend section 52.213-4 by-

a. Revising the date of the clause;

b. Removing from paragraph (a) (2) (vii) "(FEB 2024)"

and adding "(DATE)" in its place; and

c. Removing from paragraph (b) (1) (ix) (A) "(NOV 2021)" and adding "(DATE)" in its place.

The revision reads as follows:

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

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL
PRODUCTS AND COMMERCIAL SERVICES) (DATE)

* * * * *

6. Amend section 52.222-50 by-

a. Revising the date of the clause; and

b. In paragraph (a) in the definition of "Sex trafficking" by removing "or obtaining" and adding "obtaining, patronizing, or soliciting" in its place.

The revision reads as follows:

52.222-50 Combating Trafficking in Persons.

* * * * *

COMBATING TRAFFICKING IN PERSONS (DATE)

* * * * *

7. Amend section 52.244-6 by-

a. Revising the date of the clause; and

b. Removing from paragraph (c) (1) (xvii) (A) "(NOV 2021)" and adding "(DATE)" in its place.

The revision reads as follows:

52.244-6 Subcontracts for Commercial Products and Commercial Services.

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SUBCONTRACTS FOR COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

(DATE)

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