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Anti-Trafficking Regulations Impose New Obligations on All Federal Contractors

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Amendments to the Federal Acquisition Regulation (FAR) aimed at eliminating substandard labor conditions within government contractors' supply chains went into effect on March 2, 2015. Under the amended regulations, new solicitations will impose requirements on all government contractors and subcontractors as part of an effort to curb human trafficking. Contractors that provide supplies acquired abroad or perform services outside the United States are subject to additional requirements, including implementing compliance plans and completing compliance certification. For all contractors, noncompliance with the new regulations could result in financial penalties, termination for default, or suspension or debarment.

The amendments follow the January 29, 2015 publication of a final rule implementing Executive Order 13627, entitled "Strengthening Protections Against Trafficking in Persons in Federal Contracts," and title XVII of the National Defense Authorization Act of 2013, entitled "Ending Trafficking in Government Contracting." Human trafficking is defined as the use of force, fraud, or coercion for the purpose of obtaining labor. According to the U.S. Department of Labor, nearly 21 million people around the world are the victims of forced labor.

Forced labor can occur in any industry. It is especially prevalent in industries that require low-skilled labor or jobs that are hidden from public view, including agriculture, mining, and domestic service. The dynamics of global production have increased worker vulnerability to forced labor. For instance, buyer pressure on suppliers to keep prices low and to complete orders quickly can lead suppliers to rely on excessively long schedules, in some cases rising to the level of forced overtime.¹ Prompted by the United States' extensive diplomatic, defense, and development activities around the world, the government has sought to reduce the risk that government contractors will engage in activities that promote or allow human trafficking—such as utilizing labor recruiters who charge foreign workers placement and/or other fees.²

Requirements for All Contractors

The amendments alter FAR 22.1700 and FAR 52.222-50 to impose the following employment-related requirements on all contractors and subcontractors:

1 U.S. Dep't of Labor, Bureau of Int'l Labor Affairs, [What are Child Labor and Forced Labor?](#)

2 U.S. Gov't Accountability Office, GAO-15-102, [Human Trafficking: Oversight of Contractors' Use of Foreign Workers in High-Risk Environments Needs to Be Strengthened](#) (Nov. 2014).

1. **Minimum disclosures:** Contractors and subcontractors are prohibited from “[u]sing misleading or fraudulent practices during the recruitment of employees or offering of employment.” Such misleading or fraudulent practices include failing to disclose the key terms and conditions of employment—including wages, benefits, the location of work, living conditions, housing, significant costs, and hazardous working conditions—in a language the employee can understand.
2. **Limitations on recruiters:** Contractors and subcontractors may not use recruiters who do not comply with local labor laws or who charge recruiting fees.
3. **Return transportation:** At the end of employment, contractors and subcontractors generally must provide or reimburse the cost of return transportation for employees who are not nationals of the country where they are working and were brought to that country for the purpose of working on a U.S. government contract or subcontract.
4. **Housing standards:** When contractors and subcontractors provide or arrange for housing for their employees, they must meet the host country’s housing and safety standards.
5. **Written agreements:** Contractors and subcontractors must provide employment contracts, recruitment agreements, and other required work documents in writing in a language the employee understands when law or contract requires them to do so. These documents must include certain information about the employee’s wages, work, and rights.

To ensure adherence to these requirements, the amendments mandate that contractors notify their employees and agents of the government’s anti-trafficking policy and the penalties for noncompliance with that policy, which include removal from the contract, reduction in benefits, and termination of employment. The amendments also require contractors to cooperate fully with any trafficking-related investigations and notify immediately the contracting officer and appropriate agency Inspector General of any “credible information” regarding violations by an employee, subcontractor, subcontractor employee, or subcontractor agent. The regulations define “agent” to include independent contractors.

Compliance Plan and Certification Requirements for Certain Contractors

In addition to the requirements outlined above, contractors and subcontractors that provide supplies acquired abroad or perform services outside the United States must implement a compliance plan and complete a compliance certification prior to receiving a contract award, when the estimated value of that portion of the contract exceeds \$500,000. The compliance and certification requirements apply only to the portion of the contract that meets these criteria. Contracts for commercially available off-the-shelf items are exempt from these additional obligations.

Compliance plans must satisfy the following minimum requirements:

1. **Awareness program:** Contractors and subcontractors must inform their employees about the government’s policy of prohibiting trafficking-related activities, what actions are prohibited, and the penalties for violations.
2. **Reporting process:** Contractors and subcontractors must create a process whereby employees can report, without fear of retaliation, any activities that violate the government’s anti-trafficking policy.
3. **Recruitment and wage plan:** Plans must allow only the use of recruiting companies that have trained employees, prohibit charging recruitment fees to the employee, and ensure that wages meet the host country’s legal requirements. The regulations do not specify what type of training is required.
4. **Housing plan:** If the contractor or subcontractor provides or arranges for employees’ housing, plans must ensure that the housing meets the host country’s housing and safety standards.
5. **Procedures to prevent agents and subcontractors from engaging in trafficking:** Plans must outline procedures for monitoring, detecting, and terminating any agents or subcontractor employees who engage in trafficking activities.

Compliance plans must be “appropriate” to the size and complexity of the contract and the nature and scope of the activities to be performed for the government, including the number of foreign citizens to be employed and the risk that the contract or subcontract will involve supplies or services susceptible to trafficking. Beyond the minimum requirements outlined above, the regulations provide no guidance to aid contractors and subcontractors in determining what qualifies as an “appropriate” compliance plan.

Contractors and subcontractors must post the contents of their compliance plans at the workplace and on their websites by the start of contract performance. Even when contractors and subcontractors are not required to develop compliance plans, doing so may be beneficial because, in the event of a violation, the contracting officer will consider compliance plans or awareness programs as mitigating factors when deciding what remedies are appropriate.

Before a contractor receives a contract award and annually thereafter, the contractor must certify that it has implemented a compliance plan that meets the minimum requirements outlined above. Additionally, after conducting due diligence, contractors must certify that neither the contractor nor its agents, subcontractors, or subcontractors' agents is engaged in trafficking-related activities and that the contractor has taken appropriate remedial and reporting actions if it has discovered any such activities. Contractors, in turn, must obtain such certification from their subcontractors, including from subcontractors that provide supplies for use in the performance of the prime contract—if the subcontractors acquire those supplies abroad, the value of the supplies exceeds \$500,000, and the supplies are not commercially available off-the-shelf items.

Next Steps

The new anti-trafficking regulations apply only to new solicitations as of March 2, 2015, and indefinite-delivery/indefinite-quantity contracts if future orders are anticipated. Contractors and subcontractors should take care to ensure they adhere to the amendments' anti-trafficking safeguards when they recruit, hire, and terminate employees. To comply with the amendments' notification requirements, employers should update their employee handbooks to inform their employees of the government's anti-trafficking policy and the penalties for noncompliance with that policy.

Contractors awarded contracts to provide supplies acquired abroad or perform services abroad that are valued over \$500,000 must develop plans to comply with the anti-trafficking regulations and certify their compliance on an annual basis. Even contractors that are not required to do so should consider implementing a compliance plan or awareness program to take advantage of mitigated penalties in the event that they are found to have violated the regulations.

Contractors should exercise due diligence to uncover violations of the anti-trafficking regulations and should report any misconduct immediately.

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