

# Subpart 22.17 - Combating Trafficking in Persons

**Parent topic:** [Part 22 - Application of Labor Laws to Government Acquisitions](#)

## 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.

## 22.1701 Applicability.

(a) This subpart applies to all *acquisitions*.

(b) The requirement at [22.1703\(c\)](#) for a certification and compliance plan applies only to any portion of a contract or *subcontract* that-

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

(2) Has an estimated value that exceeds \$700,000.

## 22.1702 Definitions.

As used in this subpart-

*Agent* means any individual, including a director, an officer, an *employee*, or an independent contractor, authorized to act on behalf of the organization.

*Coercion* means-

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

*Commercial sex act* means any sex act on account of which anything of value is given to or received by any person.

*Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

*Employee* means an *employee* of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

*Forced labor* means knowingly providing or obtaining the labor or services of a person-

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

*Involuntary servitude* includes a condition of servitude induced by means of-

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

*Recruitment fees* means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

- (1) *Recruitment fees* include, but are not limited to, the following fees (when they are associated with the recruiting process) for-
  - (i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing *employees* or potential *employees*;
  - (ii) Advertising;
  - (iii) Obtaining permanent or temporary labor certification, including any associated fees;
  - (iv) Processing applications and petitions;
  - (v) Acquiring visas, including any associated fees;
  - (vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;
  - (vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;
  - (viii) An employer's recruiters, *agents* or attorneys, or other notary or legal fees;
  - (ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to *employees* or potential *employees*;
  - (x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;

(xi) Transportation and subsistence costs-

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and *insurance*; and

(xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to-

(A) *Agents*;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/*affiliates* of the employer;

(F) Any *agent* or *employee* of such entities; and

(G) *Subcontractors* at all tiers.

*Severe forms of trafficking in persons* means-

(1) *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; or

(2) 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.

*Sex trafficking* means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a *commercial sex act*.

*Subcontract* means any contract entered into by a *subcontractor* to furnish *supplies* or services for performance of a prime contract or a *subcontract*.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes *supplies* or services to or for a prime contractor or another *subcontractor*.

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

## **22.1703 Policy.**

The *United States* Government has adopted a policy prohibiting trafficking in persons, including the trafficking-related activities below. Additional information about trafficking in persons *may* 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> . See 47.405(b) for contract reporting requirements concerning training to prevent human trafficking for domestic carrier air transportation; 47.405(b) is not applicable to contracts awarded by the Department of Defense or contracts for *commercial products*. Government *solicitations* and contracts *shall*—

(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, regardless of issuing authority;

(5)

(i) Using misleading or fraudulent practices during the recruitment of *employees* or offering of employment, such as failing to disclose, in a format and language understood by the *employee* or potential *employee*, 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 and associated costs (if employer or *agent* provided or arranged), any significant costs to be charged to the *employee* or potential *employee*, and, if applicable, the hazardous nature of the work;

(ii) Using recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charging *employees* or potential *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*; or

(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; or

(B) Exempted by an authorized official of the *contracting* agency, designated by the *agency head* in accordance with agency procedures, from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (a)(7)(i) of this section are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor *shall* provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor *shall* also *offer* return transportation to a witness at a time that supports the witness' need to testify. This paragraph does not apply when the exemptions at paragraph (a)(7)(ii) of this section apply.

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

(9) If required by law or contract, failing to provide an employment contract, recruitment agreement, or other required work document *in writing*. Such written document *shall* be in a language the *employee* understands. If the *employee must* relocate to perform the work, the work document *shall* be provided to the *employee* at least five days prior to the *employee* relocating. The *employee's* work document *shall* include, but is not limited to, details about work description, wages, prohibition on charging *recruitment fees*, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons. The *contracting officer shall* consider the risk that the contract or *subcontract* will involve services or *supplies* susceptible to trafficking in persons, and the number of non-U.S. citizens expected to be employed, when deciding whether to require work documents in the contract;

(b) Require contractors and *subcontractors* to notify *employees* of the prohibited activities described in paragraph (a) of this section and the actions that *may* be taken against them for violations;

(c) With regard to certification and a compliance plan-

(1)

(i) Require the apparent successful *offeror* to provide, before contract award, a certification (see [52.222-56](#)) that the *offeror* has a compliance plan if any portion of the contract or *subcontract-*

(A) Is for *supplies*, other than COTS items (see [2.101](#)), to be acquired outside the *United States*, or services to be performed outside the *United States*; and

(B) The estimated value exceeds \$700,000.

(ii) The certification *must* state that-

(A) The *offeror* 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; and

(B) After having conducted due diligence, either-

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

(2) If abuses relating to any of the prohibited activities identified in [52.222-50\(b\)](#) have been found, the *offeror* or proposed *subcontractor* has taken the appropriate remedial and referral actions;

(2) Require annual certifications (see [52.222-50\(h\)\(5\)](#)) during performance of the contract, when a compliance plan was required at award;

(3)

(i) Require the contractor to obtain a certification from each *subcontractor*, prior to award of a *subcontract*, if any portion of the *subcontract*-

(A) Is for *supplies*, other than COTS items (see [2.101](#)), to be acquired outside the *United States*, or services to be performed outside the *United States*; and

(B) The estimated value exceeds \$700,000.

(ii) The certification *must* state that-

(A) The *subcontractor* has implemented a compliance plan; and

(B) After having conducted due diligence, either-

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

(2) If abuses relating to any of the prohibited activities identified in [52.222-50\(b\)](#) have been found, the *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) Require that any compliance plan or procedures *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 in persons. The minimum elements of the plan are specified at [52.222-50\(h\)](#);

(d) Require the contractor and *subcontractors* to-

(1) Disclose to the *contracting officer* and the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(2) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(3) 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 *Federal 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*; and

(4) Protect all *employees* suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the *employee* was recruited, and *shall* not prevent or hinder the ability of these *employees* from cooperating fully with Government authorities; and

(e) Provide suitable remedies, including termination, to be imposed on contractors that fail to comply with the requirements of paragraphs (a) through (d) of this section.

## **22.1704 Violations and remedies.**

(a) Violations. It is a violation of the Trafficking Victims Protection Act of 2000, as amended, ([22 U.S.C. chapter 78](#)), E.O. 13627, or the policies of this subpart if—

(1) The contractor, contractor *employee*, *subcontractor*, *subcontractor employee*, or *agent* 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 *agent* procures a *commercial sex act* during the period of performance of the contract;

(3) The contractor, contractor *employee*, *subcontractor*, *subcontractor employee*, or *agent* 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) Credible information. Upon receipt of credible information regarding a violation listed in paragraph (a) of this section, the *contracting officer*—

(1) *Shall* promptly notify, in accordance with agency procedures, the agency Inspector General, the agency debarring and suspending official, and if appropriate, law enforcement officials with jurisdiction over the alleged offense; and

(2) *May* direct the contractor to take specific steps to abate the alleged violation or enforce the requirements of its compliance plan.

(c) Receipt of agency Inspector General report.

(1) 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 [22.1703\(a\)](#) and [52.222-50\(b\)](#).

(2)

(i) Upon receipt of a report from the agency Inspector General that provides support for the allegations, the head of the *executive agency*, in accordance with agency procedures, *shall* delegate to an authorized agency official, such as the *agency suspending and debarring official*, the responsibility to-

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

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

(C) Notify the *contracting officer* of the determination.

(ii) Whether or not the official authorized to conduct the administrative proceeding 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 at [22.1704\(d\)\(2\)](#).

(d) Remedies. After a final determination in accordance with paragraph (c)(2)(ii) of this section that the allegations of a trafficking in persons violation are substantiated, the *contracting officer shall*—

(1) Enter the violation in FAPIIS (see [42.1503\(h\)](#)); and

(2) Consider taking any of the remedies specified in paragraph (e) of the clause at [52.222-50](#), Combating Trafficking in Persons. These remedies are in addition to any other remedies available to the *United States* Government. When determining the appropriate remedies, the *contracting officer may* consider the following factors:

(i) Mitigating factors. The contractor had a Trafficking in Persons compliance plan or awareness program at the time of the violation, was in compliance with the plan at the time of the violation, and has taken appropriate remedial actions for the violations, that *may* include reparation to victims for such violations.

(ii) Aggravating factors. The contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by a *contracting officer* to do so.

## **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 52.222-56, Certification Regarding Trafficking in Persons Compliance Plan, in *solicitations* if

(1) It is possible that at least \$700,000 of the value of the contract *may* be performed outside the *United States*; and

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