

CIVILIAN SECURITY, DEMOCRACY, AND HUMAN RIGHTS



STRENGTHENING PROTECTIONS AGAINST TRAFFICKING IN PERSONS IN PUBLIC PROCUREMENT

Government purchases of goods and services represent a significant share of the global economy and thus present an important opportunity for governments to promote responsible business practices, reinforce their expectations of the private sector, and drive the transformation of global markets.

Public procurement can be, and often is, used to promote a variety of policies from enhancing sustainability to advancing non-discrimination practices to supporting small and minority-owned businesses. Likewise, governments can use procurement as a tool to strengthen and support anti-trafficking efforts.

Governments can take steps to assess their current procurement framework, incorporate input from labor rights and human trafficking experts, and implement policies that protect workers on government contracts from exploitation. Such policies should both clearly prohibit human trafficking by government contractors and subcontractors and prohibit a subset of activities known to lead to human trafficking.

FEDERAL ACQUISITION REGULATION, “ENDING TRAFFICKING IN PERSONS”

The United States has long had a policy prohibiting government employees and contractor personnel from engaging in trafficking in persons. The efficacy of this policy was strengthened in 2015 when the Federal Acquisition Regulation (FAR) rule, entitled “Ending Trafficking in Persons,” implemented trafficking-related prohibitions for federal contractors and subcontractors.

The FAR requires contractors and subcontractors to notify government procurement personnel whenever they receive credible information of human trafficking or violations of the prohibited practices associated with trafficking, and puts parties on notice that federal agencies may impose remedies, including termination, for failure to comply with the requirements.

The regulations apply to all contracts and prohibit contractors and subcontractors from engaging in prohibited practices including:

- » Engaging in severe forms of trafficking in persons.
- » Procuring commercial sex acts during the performance of the contract.
- » Using forced labor in the performance of the contract.
- » Destroying, concealing, confiscating, or otherwise denying access by an employee to his or her identity or immigration documents.
- » Using misleading or fraudulent recruitment practices.
- » Using recruiters that do not comply with local labor laws.
- » Charging employees recruitment fees.
- » Failing to provide return transportation for employees upon the end of the contract.
- » Providing or arranging housing that fails to meet the host country housing and safety standards.
- » If required by law or contract, failing to provide an employment contract in writing.



In addition, the FAR rule requires compliance plans for all contracts that exceed \$500,000 and are performed overseas (not including contracts for commercially available off-the-shelf items). Each year, each contractor is required to certify that it has implemented a plan to prevent any of the prohibited activities and to monitor, detect, and terminate any subcontract where a subcontractor is found to be engaging in prohibited activities. Such compliance plans must include the following elements:

- » An awareness program to inform contractor employees about the policy prohibiting trafficking-related activities.
- » A process for employees to report, without fear of retaliation, activity inconsistent with the FAR.
- » A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to employees, and ensures that wages meet applicable host-country legal requirements or explains any variance.
- » A housing plan, if the contractor provides or arranges housing, that ensures that housing meets host-country housing and safety standards.
- » Procedures to prevent agents and subcontracts at any tier and at any dollar value from engaging in trafficking in persons and to monitor, detect, and terminate any agents or subcontractors that have engaged in such activities.

Noncompliance with this regulation can result in a contractor's suspension or debarment.

FEDERAL ACQUISITION REGULATION, "PROHIBITION OF ACQUISITION OF PRODUCTS PRODUCED BY FORCED OR INDENTURED CHILD LABOR"

The FAR also requires that U.S. government contracting personnel check the Department of Labor's "List of Goods Produced by Forced or Indentured Child Labor" when issuing a solicitation for supplies. If the product appears on the list, the contractor is required to certify that it will not supply any end product from countries (subject to certain exceptions) that appear on the list; or to certify that it has made a good faith effort to determine whether forced or indentured labor was used to mine, produce, or manufacture any end product to be furnished under the contract.

If U.S. government contracting personnel have reason to believe that forced or indentured child labor was used to produce an end product, they are required to contact the agency Inspector General, the Attorney General, or the Secretary of the Treasury.

Noncompliance with this regulation can lead to termination of the contract, suspension of the contractor, or debarment for up to three years.

For tools and resources to identify and prevent human trafficking in global supply chains and to review a sample compliance plan in line with the FAR rule, "Ending Trafficking in Persons," please visit www.ResponsibleSourcingTool.org.

For tools and resources on developing robust social compliance systems to address forced labor and other labor abuses in global supply chains, please visit www.dol.gov/ilab/complychain.