

Government contract services update

What recent changes mean for you



New FAR human trafficking rules

Regulations strengthening
protections against trafficking
and the impact on contractors

On January 29, 2015, a final rule amending the Federal Acquisition Regulation (FAR) was issued to implement Executive Order 13627, "Strengthening Protections Against Trafficking in Persons in Federal Contracts," and Title XVII of the National Defense Authorization Act for fiscal year 2013, "Ending Trafficking in Government Contracting." The new rule, effective March 2, 2015, applies to contracts performed domestically, as well as those involving international performance.

The rule aims to make the ban on human trafficking more effective. Studies on human trafficking by the Commission on Wartime Contracting and agency inspectors general found that additional steps are needed to prohibit trafficking in government contracting, which supports the implementation of the rule. Government contractors are now prohibited from engaging in certain activities and are required to take additional steps to prevent a violation, including certification and flow-down of the contract clauses to certain subcontractors. For example, contractors are prohibited from trafficking in persons as well as using misleading or fraudulent recruitment practices.

Per FAR 52.222-50(b), the rule prohibits contractors and subcontractors, including their employees and 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 to the employee's identity or immigration documents (e.g., passports, driver's licenses)
5. Using misleading or fraudulent practices when recruiting employees or offering employment, as well as using recruiters that do not comply with local labor laws
6. Charging employee recruitment fees
7. 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 US Government contract or subcontract (for portions of contracts performed outside the United States) or an employee who is not a United States national and who was brought into the country for the purpose of working on a US Government contract or subcontract
8. Providing or arranging housing that fails to meet the host country housing and safety standards
9. Failing to provide an employment contract, recruitment agreement or other required work document in writing

Contractor requirement – notification

The new rule requires that contractors notify their employees of the policy prohibiting trafficking as well as the potential actions that may be taken against employees or agents for violation. Contractors are also required to notify the contracting officer and respective agency inspector general of any credible information from any source alleging that an employee or subcontractor violated the policy, as well as any actions taken against an employee or subcontractor as a result of a violation.

Compliance plan and certifications

Contractors are subject to additional requirements if the contract, or any part of the contract, includes supplies (other than commercially available off-the-shelf items) and services acquired or performed outside the United States with an estimated value exceeding \$500,000. The requirements are:

1. **Compliance plan:** the contractor must maintain an appropriate compliance plan relative to the size and complexity of the contract as well as to the nature and scope of the activities to be performed for the Government.
2. **Certification:** after receiving the award, the contractor must annually certify that it has implemented a compliance plan and, to the best of its knowledge, that none of its employees, subcontractors or agents have engaged in prohibited activities (or, if violations have occurred, that appropriate actions were taken).

Contractors are required to flow down the requirements of this new rule to subcontractors or agents if the subcontract exceeds the threshold described above.

Contractor implications

If contractors violate the requirements of this rule, the government may subject them to penalties that include (but are not limited to):

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. Suspending contract payments until the contractor has taken appropriate remedial action
4. Retracting the award fee, consistent with the award fee plan, for the performance period in which the Government determined contractor noncompliance
5. Declining to exercise available options under the contract
6. Terminating the contract for default or cause, in accordance with the termination clause of this contract
7. Suspending or debaring the contractor

Additionally, contracting officers who have substantiated allegations of contractor violations to the rule are required to post the allegation to the Federal Awardee Performance and Integrity Information System.

Please click [here](#) for the FAR rule.¹

¹ 52.222-50 Combating Trafficking in Persons, FAR Case 2013.

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