

Combating Trafficking in Persons (CTIPs)

What Contractors Need to Know



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Isaias “Cy” Alba IV, Esq.
ialba@pilieromazza.com

Nichole D. Atallah, Esq.
natallah@pilieromazza.com



Objectives

- Explore the requirements of FAR subpart 22.17
- Understand what it means to participate in trafficking in persons
- Define prohibited conduct for contractors, subcontractors, and employees
- Identify requirements for training, recruiting, and housing
- Foster the essential components of a compliance plan
- Develop best practices for subcontract



Definitions

Trafficking Victims Protection Act {TVPA} 2000

- **Labor trafficking:** involves 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:** involves the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act



Why We Care

Existing Laws Prohibit Certain Conduct

- Executive Order 13627
- National Defense Authorization Act (NDAA)
- Trafficking Victims Protection Reauthorization Act (TVPRA)
- Federal Acquisition Regulation (FAR) Subpart 22.17
- Defense Federal Acquisition Regulation Supplement (DFARS) 222.17



Why We Care

In 2011, the United States Air Force initiated a labor trafficking investigation based on allegations against a subcontractor in Iraq. Allegations included:

- Delaying the payment of salaries to contracted drivers for over three months
- Withholding employee passports
- Coercing employees to sign fraudulent employment contracts



Combatting Trafficking in Persons FAR Subpart 22.17

- Original version, April 2006
 - Prohibited engaging in severe forms of trafficking, procuring commercial sex acts; or using forced labor during performance of contract
 - Required notification to employees and an awareness program
 - Required notification to the government of “any information” of an alleged violation
 - Specified penalties for human trafficking violations
 - Mandatory flow down in all subcontracts for the acquisition of services



Requirements of FAR Subpart 22.17

- 2007 expansion

Covered all federal contracts and subcontracts, including those for supplies and commercial items

- 2009 revision

Trafficking in Persons awareness program as a mitigating factor in determining the appropriate remedy for a trafficking violation



Requirements of FAR Subpart 22.17

- Substantial 2015 Revisions
 - See 80 Fed. Reg. 4967 (Jan. 29, 2015)
 - Implements Executive Order 13627 and parts of the National Defense Authorization Act for Fiscal Year 2013, making changes to Federal Acquisition Regulation subpart 22.17 and FAR Contract Clause 52.222-50
 - Effective March 2, 2015



Requirements of FAR Subpart 22.17

- 2015 revisions
 - Expanded list of prohibited conduct
 - Changes in reporting requirements
 - Compliance plan and annual certification requirements
 - Importance of compliance as a mitigating factor
 - Contractor “agents” better defined and subject to requirements



Employee Notification

- Contractors must notify employees of prohibited activities and actions that will be taken for violations
- Take appropriate actions against employees, agents, or subcontractors that engage in prohibited conduct, including termination



Government Notification

- Must notify the contracting officer and agency Inspector General of any credible information of allegations of trafficking
- Applies to employees, subcontractor, subcontractor employees, or agents



Government Investigations

Must cooperate with government investigations and audits by

- Disclosing requested information
 - Providing reasonable access to facilities and staff; and
 - Protecting employees suspected of being victims or witnesses
 - Contractor/employees maintain right to attorney-client privilege, Fifth Amendment rights, and rights to internal investigation



Government Investigations

- Identify the nature and extent of an offense and the individuals responsible
- Provide “timely and complete responses” to requests for documents requested information
 - Provide reasonable access to facilities and staff
 - Protect employees suspected of being victims or witnesses
 - Contractor/employees maintain right to attorney-client privilege, Fifth Amendment rights, and rights to internal investigation



What it Means to Participate in Trafficking in Persons

9 Types of Prohibited Conduct

- 1) Engaging in severe forms of trafficking (sex trafficking, involuntary servitude, peonage, debt bondage, or slavery)
- 2) Procuring commercial sex acts
- 3) Using forced labor
- 4) Destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity or immigration documents, such as passports or drivers' license, regardless of issuing authority



What it Means to Participate in Trafficking in Persons

- 5) Use of misleading or fraudulent practices during the recruitment of employees or offering of employment, or using recruiters that do not comply with local labor law of the country in which the recruiting takes place
- 6) Charging employees recruitment fees
- 7) Failing to provide return transportation or pay for the cost of return transportation upon the end of employment, unless an exception applies



What it Means to Participate in Trafficking in Persons

- 8) Providing or arranging for 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 if they are separately required to do so by law or by contract



Essential Components of a CTIPS Compliance Plan ((FAR 52.222-50(h)))

Plan is required for any portion of a contract with estimated value in excess of \$500,000 for non-COTS supplies acquired outside of US or for services performed outside US



Essential Components of a CTIPS Compliance Plan ((FAR 52.222-50(h))

Minimum requirements

- Plan must be “appropriate” to the “size and complexity of the contract” and “nature and scope of the activities to be performed.”



Essential Components of a CTIPS Compliance Plan ((FAR 52.222-50(h)))

Plan must include:

- Awareness program for employees
- Employee reporting process
- Recruiting and wage plan addressing restrictions
- Housing plan that ensures housing meets host-country housing and safety standards
- Procedures to prevent trafficking activities by agents and subcontractors, and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that engage in such activities



Essential Components of a CTIPS Compliance Plan ((FAR 52.222-50(h))

Posting

- Must post relevant contents of compliance plan at workplace and on website
- If impracticable, must provide to each worker in writing

Certification

- Must submit annual certification to CO that it has implemented compliance plan, and that after conducting due diligence, it is unaware of violations or appropriate remedial and referral actions have been taken



Implementation Challenges

Awareness Program

- What type of program will you have?
- How in-depth?
- Will you check for understanding?
- How will you monitor and reinforce?



Implementation Challenges

Employee reporting procedures

- How will you ensure a secure reporting procedure free of fear of retaliation?
- How will information be displayed at project sites?



Implementation Challenges

Notifications of reported violations

- Government notification process
 - Informing CO and agency IG of credible information of trafficking and actions taken against employees or agency.
 - Internal procedures

Actions for employee violations → terminated and removed from contract?

- Something else?



Implementation Challenges

Ensuring Compliance with Housing Requirements

- Cultural and Location Challenges
 - How to determine if you are meeting local housing and safety standards?
- Random interviews?
- Random employee accommodation inspections?
- Quality assurance assessments?



Implementation Challenges

Ensuring Labor Compliance

- May only use recruitment companies with trained employees
- Must ensure wages meet applicable host-country legal requirements or explain any variance
- Misleading or fraudulent recruitment practices



Implementation Challenges

Ensuring Labor Compliance

- Charging employees recruitment fees
- Failing to pay for return transportation of employees
- Failing to provide, if required, an employment contract, recruitment agreement, or other required work document in writing in a language the employee understands



Implementation Challenges

Ensuring Subcontractor and Agent Compliance

- Procedures to prevent agents and subcontractors from engaging in trafficking (including prohibited activities listed in FAR § 52.222-50) and to monitor, detect and terminate agents, subcontracts, or subcontractor employees who have engaged in such activities
- Subcontract Agreement Should Include:
 - CTIPS Compliance Plan Requirements
 - Flow Down
 - Inspection and Information Access



Implementation Challenges

- Due diligence to ensure subcontractor compliance
 - Random subcontractor employee interviews?
 - Random subcontractor management and accommodation inspections?
 - Quality assurance assessments?
 - Yearly assessments of subcontractors' compliance plans?
 - Special assessments can be done at any time at discretion of project management?
 - Requiring subcontractor certifications?



Implementation Challenges

Prime Contractor Liability for Subcontractors

- FAR Council chose not to fully shield a prime contractor from its subcontractors' actions
- Liability will be determined on a case-by-case basis



Penalties

- Requiring employee removal from the performance of the contract
- Requiring subcontract termination
- Suspension of contract payments until appropriate remedial action has been taken
- Loss of award fee for the period in which the contractor was determined non-compliant
- Declining to exercise option periods
- Termination of the contract for default or cause
- Suspension or debarment



Mitigating Factor

Compliance plan may be considered a mitigating factor only if contractor

- Had plan in place at time of violation
- Was in compliance with plan
- Took appropriate remedial actions to address violation, including making reparation to victims



Aggravating Factors

Contracting Officer may consider aggravating factors

- Contractor's failure to abate an alleged violation or enforce the requirements of a compliance plan



Questions?

Isaias “Cy” Alba IV, Esq.
ialba@pilieromazza.com
202-857-1000

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