

List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Revise subpart 4.13 to read as follows:

Subpart 4.13—Personal Identity Verification

Sec.

4.1300 Scope of subpart.

4.1301 Policy.

4.1302 Acquisition of approved products and services for personal identity verification.

4.1303 Contract clause.

Subpart 4.13—Personal Identity Verification**4.1300 Scope of subpart.**

This subpart provides policy and procedures associated with Personal Identity Verification as required by—

(a) Federal Information Processing Standards Publication (FIPS PUB) Number 201, “Personal Identity Verification of Federal Employees and Contractors”; and

(b) Office of Management and Budget (OMB) Guidance M–05–24, dated August 5, 2005, “Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors.”

4.1301 Policy.

(a) Agencies must follow FIPS PUB Number 201 and the associated OMB implementation guidance for personal identity verification for all affected contractor and subcontractor personnel when contract performance requires contractors to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(b) Agencies must include their implementation of FIPS PUB 201 and OMB Guidance M–05–24 in solicitations and contracts that require the contractor to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(c) Agencies must designate an official responsible for verifying contractor employee personal identity.

4.1302 Acquisition of approved products and services for personal identity verification.

(a) In order to comply with FIPS PUB 201, agencies must purchase only approved personal identity verification products and services.

(b) Agencies may acquire the approved products and services from the GSA, Federal Supply Schedule 70, Special Item Number (SIN) 132–62, HSPD–12 Product and Service Components, in accordance with ordering procedures outlined in FAR Subpart 8.4.

(c) When acquiring personal identity verification products and services not using the process in paragraph (b) of this section, agencies must ensure that the applicable products and services are approved as compliant with FIPS PUB 201 including—

(1) Certifying the products and services procured meet all applicable Federal standards and requirements;

(2) Ensuring interoperability and conformance to applicable Federal standards for the lifecycle of the components; and

(3) Maintaining a written plan for ensuring ongoing conformance to applicable Federal standards for the lifecycle of the components.

(d) For more information on personal identity verification products and services see <http://www.idmanagement.gov>.

4.1303 Contract clause.

The contracting officer shall insert the clause at 52.204–9, Personal Identity Verification of Contractor Personnel, in solicitations and contracts when contract performance requires contractors to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. The clause shall not be used when contractors require only intermittent access to Federally-controlled facilities.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.204–9 by—

■ a. Removing from the introductory text of the clause “4.1301” and adding “4.1303” in its place;

■ b. Revising the date of clause to read “(SEP 2007)”; and

■ c. Removing from paragraph (a) “as amended,” and “as amended”.

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 12, 22 and 52**

[FAC 2005–19; FAR Case 2005–012; Item V; Docket 2006–0020; Sequence 1]

RIN 9000–AK31

Federal Acquisition Regulation; FAR Case 2005–012, Combating Trafficking in Persons (Revised Interim Rule)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement 22 U.S.C. 7104(g). This statute requires that contracts must include a provision that authorizes the department or agency to terminate the contract, if the contractor or any subcontractor engages in trafficking in persons. This interim rule contains a clause to be used in all contracts.

DATES: *Effective Date:* August 17, 2007.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before October 16, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–19, FAR case 2005–012, by any of the following methods:

• Federal eRulemaking Portal:<http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting “Federal Acquisition Regulation” as the agency of choice. At the “Keyword” prompt, type in the FAR case number (for example, FAR Case 2006–001) and click on the “Submit” button. Please include your name and company name (if any) inside the document.

You may also search for any document by clicking on the “Advanced search/document search” tab at the top of the screen, selecting from the agency field “Federal Acquisition Regulation”, and typing the FAR case number in the keyword field. Select the “Submit” button.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–19, FAR case 2005–012, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. Please cite FAC 2005–19, FAR case 2005–012. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Trafficking Victims Protection Reauthorization Act of 2003, as amended by the Trafficking Victims Protection Reauthorization Act of 2005, addresses the victimization of countless men, women, and children in the United States and abroad. In order to implement the law, DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 20301, April 19, 2006 with request for comments by June 19, 2006. The interim rule implemented 22 U.S.C. 7104(g) by adding FAR Subpart 22.17 with an associated clause at 52.222–50 which address combating trafficking in persons. The interim rule applied to all contracts for services, other than commercial service contracts under FAR Part 12. The interim rule prohibited the contractor and contractor employees from engaging in or supporting severe forms of trafficking in persons, procurement of commercial sex acts, or use of forced labor during the performance of the contract.

The Councils have determined to issue a revised interim rule with request for comments. Changes implemented in this revised interim rule, which are being made as a result of the public comments and further discussions by the Councils, are summarized as follows:

Applicability of the rule. In revising the interim rule, the Councils noted that the statutory language at 22 U.S.C. 7104(g) contained no exceptions or limitations with regard to its application to Federal contracts. Therefore, while the interim rule only applied to contracts for services (other than commercial), this revised interim rule applies to all contracts, including

contracts for supplies, and all contracts for commercial items as defined at 2.101. Although the Federal Acquisition Streamlining Act (FASA) governs and limits the applicability of laws to commercial items, it also provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council determines that it is not in the best interest of the Federal Government to exempt commercial item contracts, then the provision of law will apply to contracts for commercial items.

Section 112 of the Trafficking Victims Protection Act of 2000 amended 18 U.S.C. Part 1 to provide for civil and criminal penalties for severe forms of trafficking in persons and use of forced labor. Therefore, consistent with FASA, the Councils have determined that the statutory requirements prohibiting such activities apply to contracts for commercial items.

Prohibited Activities. To accurately reflect the statutory language, the revised interim rule provides for contract termination for *engaging in severe forms of trafficking in persons or procurement of a commercial sex act during the period of performance of the contract*, and provides for contract termination for use of forced labor *in the performance of the contract*.

Employee Notification. The requirements for the contractor to establish policies and procedures and develop an awareness program have been replaced with the requirement to notify employees of the U.S. policy and actions that will be taken against them for violations. Additionally, the requirement to obtain written agreement from employees has been deleted.

Disposition of Comments received on the interim rule.

The Council received six responses with multiple comments on the interim rule (available at <http://www.regulations.gov>). The responses were from Government personnel and industry and are grouped into six categories. A summary of the comments and their respective dispositions are as follows:

Applicability of the Rule

Five comments were received concerning the rule's applicability:

Comment: One respondent questioned the rule's applicability to noncommercial purchases below the micro–purchase threshold.

Response: Because micro–purchases do not require provisions or clauses, except as provided at 4.1104 and 32.1110, the rule will not apply to

noncommercial purchases below the micro–purchase threshold.

Comment: One respondent suggested that the clause at 52.213–4, Terms and Conditions – Simplified Acquisitions (Other Than Commercial Items), be amended to include the new 52.222–50, Combating Trafficking in Persons.

Response: The Councils concur with the respondent's suggestion. The clause has been listed at 52.213–4(b)(vii), and provides for application to all contracts.

Comment: One respondent questioned the rule's applicability to all service contracts.

Response: The revised interim rule applies to all contracts, including all service contracts.

Comment: One respondent indicated that the Trafficking Victims Protection Reauthorization Act of 2003, the Trafficking Victims Protection Reauthorization Act of 2005, and 22 U.S.C. 7104 all state that the provisions apply to grants, contracts, and cooperative agreements to carry out activities abroad; and that the public laws and U.S. Code state that these provisions apply only to activities funded by budget category 150 regarding international affairs.

Response: The Trafficking Victims Protection Reauthorization Act of 2005 amended 22 U.S.C. 7104(g) to remove the language speaking to budget category 150 funds and activities performed abroad. Therefore, the statutory language is no longer limited by type of funds or location of performance.

Comment: One respondent strongly supported the exclusion for acquisitions of commercial services under FAR Part 12.

Response: Although the interim rule did not apply to commercial services, this revised interim rule applies to all contracts, including contracts for commercial items. The language in the statute does not indicate exceptions to the termination authority for engaging in the prohibited activities. The Councils note the criminal and civil penalties in Title 18 that apply to severe forms of trafficking in persons and the use of forced labor, and FASA does not provide an exception for commercial items in such a case.

Statutory Requirements

Several comments were received suggesting that the rule exceeds the statutory requirements of the Act and that the rule was overly broad and burdensome.

Comment: One respondent suggested that the rule goes beyond the statutory requirements and is overly broad and burdensome. In questioning the

statutory requirements, the respondent questioned why FAR Part 12 services are exempt.

Response: The Councils have made various revisions to the rule as a result of comments on the breadth of the rule and specific requirements of the rule. Such revisions include deletion of the requirement in the clause to obtain written agreement from the employee, deletion of the requirement in FAR Part 22 to monitor employees, replacement of the awareness program with a notification requirement to employees, and deletion of the requirement to identify all related U.S. and host country laws and regulations. The Councils have addressed the rule's application to FAR Part 12 services in the response provided above concerning the applicability of the rule.

Comment: One respondent suggested eliminating the condition of "supporting" or "promoting" trafficking, noting that the restriction does not appear in the statute and may interfere with scholarly social and behavioral research on such topics as the incidence or prevalence of sexually transmitted diseases among prostitutes.

Response: The Councils note the respondent's concerns as they relate to behavioral and scholarly research. The terms "supporting or promoting" have not been included in the revised interim rule. The revised interim rule reflects the terms used in the statute.

Comment: One respondent suggested revising the policy requirement at 22.1703(b) to prohibit engaging in the prescribed activities rather than expecting the institution to proactively combat trafficking.

Response: The policy in 22.1703(b) has been revised to reflect the requirements in the clause at 52.222–50(c). The revised interim rule requires that contractors notify employees of the U.S. policy and the actions that may be taken against them for violating the policy.

Comment: One respondent suggested that any and all references to contractor requirements and violations and the Government's remedies should clearly relate to the specific award. The problem is exacerbated by the current definition of employee which implies a broader application than the specific contract.

Response: The rule has been revised to align with the statutory language. The revised interim rule provides that requirements and remedies associated with engaging in severe forms of trafficking in persons and the procurement of commercial sex acts apply during the period of performance of the contract. The revised interim rule

provides that requirements and remedies associated with the use of forced labor apply in the performance of the contract. In regard to the definition of employee, the Councils note the respondent's concerns and have amended the definition to mean "an employee of the contractor directly engaged in performance of work under the contract who has other than a minimal impact or involvement in contract performance."

Comment: One respondent suggested adding the phrase "in the performance of this contract" at FAR 22.1703(b) and (c), and at FAR 52.222–50, at the prohibition on forced labor.

Response: The rule has been revised to reflect the statutory language prohibiting the use of forced labor in the performance of the contract.

Comment: One respondent suggested that FAR 22.1703(a)(2) and (a)(3) are not necessary in the rule as they are already included in the definition of "severe forms of trafficking in persons" in FAR 22.1702.

Response: The Councils believe the separate references are necessary in that the rule reflects the statutory prohibitions, which are listed separately at 22 U.S.C. 7104(g). Furthermore, the Councils note that the prohibited behavior in 22.1703(a)(2) and (a)(3) are not included in the definition of "severe forms of trafficking in persons." For example, the procurement of a commercial sex act (prohibited by 22.1703(a)(2)) for which the commercial sex act is not induced by force, fraud, or coercion, is not included within the definition of severe forms of trafficking in persons.

Comment: One respondent was concerned that certain types of sex acts are legal in several jurisdictions of the U.S. and in some foreign countries and urge that careful attention be given to how the remedies in this rule intersect with otherwise lawful conduct.

Response: The Trafficking Victims Protection Reauthorization Act of 2005 speaks to both "unlawful commercial sex acts" and "commercial sex acts." The section of the Act implemented by this rule, 22 U.S.C. 7104(g), speaks to "commercial sex acts," and is not qualified by the words "illegal" or "unlawful." Furthermore, the National Security Presidential Directive (NSPD) 22, which espouses the United States "zero tolerance policy" regarding trafficking in persons, states that "the United States Government opposes prostitution and related activities, including pimping, pandering, or maintaining brothels, as contributing to the phenomenon of trafficking in persons." The Councils believe that

Congress' intent is to reduce the demand for commercial sex acts, both lawful and unlawful, as such activities have contributed to the worldwide problem of trafficking in persons. Commercial sex venues are one of the prime areas in which trafficking victims are exploited, and customers are very often unable to tell the difference between an individual who has been trafficked and one who has not. Thus, Congress has made reducing the demand for commercial sex acts—both lawful and unlawful—a key component in the fight against human trafficking, not only in the statutory provision at issue here, but also in other provisions of the Trafficking Victims Protection Act (for example, 22 U.S.C. § 7106(b)(3) lists "measures to reduce the demand for commercial sex acts" as an indicator of a serious and sustained effort to eliminate trafficking; 22 U.S.C. § 7110(g) prohibits any U.S. anti-trafficking funds from going to an organization that "promotes, supports, or advocates the legalization or practice of prostitution."). Application of this aspect of the Trafficking Victims Protection Act to commercial items corresponds to the Government's zero tolerance policy. Therefore, neither the interim nor the revised interim rule differentiates between lawful and unlawful commercial sex acts.

Definitions in the Rule

Four comments were received concerning the definitions in the rule:

Comment: One respondent suggested that the definition of employee be revised to limit it only to the person's activities performing work under the award.

Response: The Councils believe that limiting the definition of employee in this manner would inadequately implement the statute since employee violations are more likely to occur after working hours. Furthermore, contractor employees are often perceived as representing the Government, and their actions reflect upon the Government's integrity and ethics. Therefore, to ensure that U.S. Government contracts do not contribute to trafficking in persons, the rule requires the contractor to notify its employees (as defined in the clause) of the U.S. zero tolerance policy, and take action against those employees who violate the U.S. policy.

Comment: One respondent suggested revising the definition of commercial sex act to add "in a manner that violates any applicable state or Federal law."

Response: The rule reflects the definition of commercial sex act at 22 U.S.C. 7102. As previously stated in the response to a comment concerning the

statutory requirements of the rule, 22 U.S.C. 7104(g) does not provide for limiting application of the rule to only unlawful commercial sex acts.

Comment: One respondent recommended revising “direct cost” to “direct charge” or alternatively delete the phrase “including all direct cost employees,” in the definition of employee at FAR 22.1702 and 52.222–50(b).

Response: The Councils concur with the respondent’s alternative recommendation and have revised the definition of employee by deleting the phrase “including all direct cost employees.”

Comment: One respondent was concerned that Section 22.1702 does not include a definition of “individual” although the term is defined in the clause at 52.222–50(a). The respondent recommends adding this as a defined term at the appropriate place.

Response: Revisions to the interim rule have eliminated the need to use the term “individual.” Therefore, the definition has been removed from the clause.

Awareness Program

Several respondents raised concerns that the rule’s requirements for an awareness program, certification of contractor’s employees and for the contractor to identify, interpret, analyze, and explain every host country law and regulation in which it may do business exceed the statutory requirements of 22 U.S.C. 7104(g).

Comment: One respondent questioned what constitutes a suitable awareness program, and recommended that the FAR establish program guidelines to meet the “suitable” definition.

Response: The Councils have replaced the requirement for an awareness program with a requirement to notify employees of the Government policy and actions that may be taken in response to violations.

Comment: One respondent was concerned that the requirements at FAR 22.17 and 52.222–50 to develop a policy, communicate the policy to employees, require certification of compliance from employees, and monitor and report violations to the Federal Government exceed the statutory requirements of 22 U.S.C. 7104(g).

Response: The Councils have replaced the requirement for the contractor to develop a policy and an awareness program with a requirement to notify employees of the Government’s policy and actions that may be taken in response to violations. Although the interim rule did not require

“certification of compliance from employees,” as stated by the respondent, it did require the contractor to obtain the employee’s written agreement. Based on the respondent’s comment and further discussion, the Councils determined that this requirement is overly burdensome and have therefore deleted the language from paragraph (c) of the clause. Additionally, the Councils recognize the respondent’s concerns related to monitoring employees and also noted that the requirement to monitor was stated in 22.1703(c), but not in the clause. Therefore, the requirement for monitoring that was included at 22.1703(c) has been removed from the revised interim rule.

Comment: One respondent recommended that the rule and clause be revised to simply prohibit the awardee and any sub-awardee and their respective employees from engaging in severe forms of trafficking in persons, procuring commercial sex acts, or using forced labor in the performance of the award.

Response: The Councils have made revisions to the rule as a result of this and other comments on the breadth of the rule and specific requirements. The revised interim rule prohibits engaging in severe forms of trafficking in persons and procurement of commercial sex acts during the performance period of the contract, and prohibits the use of forced labor in the performance of the contract. However, the Councils do not believe it is sufficient to simply state the prohibited behavior in the clause. As such, the revised interim rule replaces the requirement for an awareness program with a notification requirement to employees of the U.S. policy and actions that may be taken against employees for violating the U.S. policy.

Comment: One respondent was concerned that FAR 52.222–50(c)(2)(iii)(A) and (B) place an unrealistic burden on the contractor to correctly identify and actually obtain copies of every host country law and regulation in which it may do business and then interpret, analyze, and explain any and every such law or regulation.

Response: The Councils have considered this concern and deleted the requirement for the contractor to identify and inform employees of all host country laws and regulations, and all U.S. laws and regulations which may apply to its employees in the host country. The contractor is required to notify employees of the U.S. policy and the actions that may be taken against them for violation of the policy. The Councils have added an Alternate I to the clause for use in contracts

performed outside the U.S. when the contracting officer has been advised of specific directives or notices regarding combating trafficking in persons (such as lists of off-limits establishments) that are applicable to contractor employees performing at the contract place of performance.

Comment: One respondent suggested that if the awareness program continues to include applicable international laws, the Government should compile and provide the list of laws to the contractor. Presumably the U.S. Government will compile such information to inform and provide direction to U.S. Government employees working outside the U.S.

Response: In response to comments and concerns received about the burden involved in identifying host country laws and regulations, the Councils have deleted the requirement. The Councils have added an Alternate I to the clause as described in the response to the preceding comment.

Comment: One respondent suggested asking employees to enter into a separate contract with their employers respecting their obligations not to traffic in humans and not to procure commercial sex acts is unnecessary and overly intrusive in the employer–employee relationship.

Response: As discussed in the response to prior concern on the subject, this revised interim rule removes the requirement for the contractor to obtain the employee’s written agreement to abide by the U.S. zero tolerance policy. However, the contractor remains responsible for notifying its employees of the U.S. zero tolerance policy, as well as the actions that may be taken against them as a result of a violation.

Comment: One respondent suggested that a program of education and certification by direct cost employees increases administrative burden, is unnecessary, and represents a questionable intrusion by the Government in how institutions manage their employees’ conduct. The requirements in the clause are sufficient to educate employees.

Response: As discussed in the responses to a prior question in this category and another concerning definitions, the definition of employee has been revised and the requirement to obtain the employee’s signature is not included in the revised interim rule. Additionally, the requirement for an awareness program has been replaced by a requirement to notify employees of the U.S. policy, including the actions that may be taken against them as a result of violating the policy.

Enforcement Requirements

Six comments were received regarding the rule's enforcement requirements.

Comment: One respondent wanted to know what constitutes a violation of FAR 52.222–50, explaining that a company may not be aware of a violation unless it interferes with job performance and that a company should not be obligated to have knowledge of an incident nor be obligated to terminate the employee if the company does not deem termination appropriate.

Response: Failure to comply with the requirements of the clause constitutes a violation. Contractors must inform employees of the prohibited activities, and the actions that will be taken against them if they participate in the prohibited activities. The contractor is obligated to take appropriate action when it becomes aware of an employee violation. The clause does not require termination, but provides that termination of employment should be considered when appropriate.

Comment: One respondent indicated that the prime contractor cannot assure compliance by subcontractors and should not be held responsible or liable for the conduct of subcontractor employees.

Response: The prime contractor is responsible for determining the responsibility of its prospective subcontractors (FAR 9.104–4(a)), which includes determining that the subcontractor has a satisfactory record of integrity and business ethics (FAR 9.104–1(d)). Therefore, prime contractors should be selecting subcontractors that comply with laws and regulations, and exercise care when selecting individuals for employment. Upon award, the prime contractor is required to flow down the clause and take appropriate action against subcontractors when the prime becomes aware that a subcontractor or subcontractor employee has violated U.S. policy. The prime contractor is required to take action against those subcontractors that do not comply with the terms of the clause, including termination if the subcontractor fails to take corrective action. The prime contractor's failure to take action against a subcontractor that has violated U.S. policy, or evidence that the prime contractor failed to exercise due diligence in determining said subcontractor responsible prior to making the award, may result in the Government taking action against the prime contractor as a result of violations committed by the subcontractor. Although one respondent suggested that

certifications of compliance and reports would be necessary to “ensure” compliance, the Councils do not believe that such measures would further compliance with U.S. policy, and believe that it is sufficient to flow down the clause and require appropriate action and notification when instances of noncompliance have occurred.

Comment: One respondent suggested that the requirement in FAR 52.222–50(d)(1), for the Government to expect the reporting of allegations before those allegations are thoroughly investigated by the institution and found to be true, is inappropriate.

Response: Many allegations become a subject of interest outside the company or organization before they are thoroughly investigated. As a result, the contracting officer needs to be made aware of allegations of a violation of U.S. policy immediately after the contractor becomes aware.

Comment: One respondent was concerned that the requirement in Section 22.1704, providing that the contracting officer initiate actions after determining that “adequate evidence” exists to suspect any violation of the policy, be revised to provide that the standard for initiating action be based on “clear and convincing evidence.”

Response: The Councils believe that receipt of “adequate evidence” is reasonable and sufficient for the contracting officer to take action. The phrase “clear and convincing” implies a much more stringent standard which the Councils believe would severely restrict the contracting officer's ability to take appropriate action within an appropriate timeframe.

Comment: One respondent was concerned that the contractor cannot “ensure” that no violation will occur, as required by FAR 52.222–50(b). The contractor can establish clear rules of conduct and impose penalties for violations.

Response: The Councils concur with the comment. The requirement has been removed and FAR 52.222–50(c) has been revised to require the contractor to notify employees of the U.S. policy and actions that may be taken against them for violation of the policy.

Remedies

Seven comments were received concerning the rule's requirement for remedies:

Comment: One respondent indicated that the laws and the U.S. Code state that violators will not be subject to any penalty besides termination of the contract or grant. FAR 52.222–50, paragraph (e), Remedies, applies penalties such as loss of award fee,

termination for default, suspension or debarment, suspension of contract payments, etc. These remedies are clearly penalties.

Response: 22 U.S.C. Section 7104(g) states that the contract shall include a condition that authorizes the department or agency to terminate the contract without penalty if the contractor engages in the prohibited acts. The term “without penalty” means that the Government is able to terminate without the Government incurring breach of contract damages, but does not affect other actions the Government may take under the clause.

Comment: One respondent suggested revising the language on remedies to state only that in addition to all other rights and remedies available, the Government may terminate the award, without penalty, if the awardee or any sub-awardee commits a violation during the period in which the award is in effect.

Response: Whereas the statutory language uses the phrase “period in which the award is in effect,” the FAR rule uses the equivalent phrase currently used throughout the FAR, which is “period of performance,” and the term “contract” rather than “award.” This phrase is reflected in the final rule at 22.1703(a)(1), 22.1703(a)(2), 22.1704(a)(1), 22.1704(a)(2) and at paragraphs (b)(1) and (b)(2) of the clause.

Comment: One respondent suggested that the statute is directed toward the institution or organization as awardee and its sub-awardees. It is not appropriate to penalize the institution for activities of its employees outside of work under the Federal award or in their personal lives.

Response: The Government seeks to ensure that contractor employees who traffic in persons or procure commercial sex acts do not work on Government contracts. The clause requires the contractor to notify employees of the U.S. policy and actions that can be taken against employees for violating the policy. Should the contractor become aware that the employee has violated these terms, the Government requires the contractor to take appropriate action against the employee. The clause provides for remedies when the contractor fails to take appropriate action against an employee who has violated the policy.

Comment: One respondent was concerned that FAR 22.1703(c) should refer to remedies for violations of the statutory prohibitions, and should not refer to remedies for “supporting or promoting” the proscribed activities or for failing to “monitor” employees and

sub-awardees. The term "monitor" has a connotation of invading employee privacy, not merely supervising employees in the conduct of their work.

Response: The Councils have considered the comment and revised the language to be consistent with statute. The terms "supporting or promoting" and "monitor" are not included in the revised interim rule.

Comment: One respondent suggested that the FAR should not describe its expectations of remedies that the institution may pursue against employees who violate the policy. The respondent recommends deletion of the phrase "up to and including termination" from FAR 52.222-50(c)(4).

Response: The Councils believe it is important to provide examples of actions that are appropriate to be taken against employees who violate the policy. The clause provides the contractor discretion to determine the appropriate action based on the circumstances surrounding a violation.

Comment: One respondent requested that paragraph (3), suspension of contract payments, be deleted from the remedies at FAR 52.222-50(e).

Response: The Councils believe this is a suitable remedy for violations of U.S. policy on trafficking in persons. The authority to suspend payments is modeled after the remedies in paragraph (d) of the clause at FAR 52.223-6, Drug-Free Workplace. FAR 22.1704 requires that the contracting officer may pursue this remedy only after making a written determination that adequate evidence exists to suspect a violation of U.S. policy.

Comment: One respondent requested that FAR 52.222-50(f) exclude the flow down to subcontracts for commercial items awarded pursuant to FAR Part 12 as well as to subcontracts to "individuals" as defined in 52.222-50(a).

Response: The revisions to the rule result in this suggestion no longer being applicable. In accordance with the statute, the revised rule applies to all subcontracts.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The revised interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the impact will be minimal unless the contractor or its

employees engage in forms of trafficking in persons, use forced labor, or procure commercial sex acts that are illegal within the U.S. Although not considered significant, additional impact may be associated with contract performance in counties/states and locations outside the U.S. where certain commercial sex acts are legal. However, the termination authorities at 22 U.S.C. 7104(g) apply to Government contracts performed in these areas. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 12, 22, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005-19, FAR case 2005-012), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the interim rule contains information collection requirements. Accordingly, the FAR Secretariat will forward a request for approval of a new information collection requirement concerning OMB Number 9000-00XX to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The clause at 52.222-50 requires the contractor to notify the contracting officer of any information alleging employee misconduct under the clause, and any actions taken against employees pursuant to the clause.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 250

Responses per respondent: 1

Total annual responses: 250

Preparation hours per response: 1

Total response burden hours: 250

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than October 16, 2007 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000-00XX, Combating Trafficking in

Persons (FAR Case 2005-012), in all correspondence.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Number 9000-00XX, Combating Trafficking in Persons (FAR Case 2005-012), in all correspondence.

E. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Trafficking Victims Protection Reauthorization Act of 2003 (Pub. L. 108-193), and the Trafficking Victims Protection Reauthorization Act of 2005 (Pub. L. 109-164) were effective upon enactment.

However, pursuant to Public Law 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 12, 22 and 52

Government procurement.

Dated: July 30, 2007.

Al Matera,

Acting Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 22 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.503 [Amended]

- 2. Amend section 12.503 by removing paragraph (a)(6).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1700 [Amended]

- 3. Amend section 22.1700 by removing “as amended by Pub. L. No. 108–193 and 109–164”.
- 4. Amend section 22.1701 to read as follows:

22.1701 Applicability.

This subpart applies to all acquisitions.

- 5. Amend section 22.1702 by revising the definition “Employee” to read as follows:

22.1702 Definitions.

* * * * *

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.

* * * * *

- 6. Revise section 22.1703 to read as follows:

22.1703 Policy.

The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Government contracts shall—

(a) Prohibit contractors, contractor employees, subcontractors, and subcontractor employees 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; and

(3) Using forced labor in the performance of 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; and

(c) Impose suitable remedies, including termination, on contractors that fail to comply with the requirements of paragraphs (a) and (b) of this section.

- 7. Revise section 22.1704 to read as follows:

22.1704 Violations and remedies.

(a) *Violations.* The Government may impose the remedies set forth in paragraph (b) of this section if—

(1) The contractor, contractor employee, subcontractor, or subcontractor employee engages in severe forms of trafficking in persons during the period of performance of the contract;

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

(3) The contractor, contractor employee, subcontractor, or subcontractor employee 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) *Remedies.* After determining in writing that adequate evidence exists to suspect any of the violations at paragraph (a) of this section, the contracting officer may pursue 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.

- 8. Revise section 22.1705 to read as follows:

22.1705 Contract clause.

(a) Insert the clause at 52.222–50, Combating Trafficking in Persons, in all solicitations and contracts.

(b) Use the basic clause with its Alternate I when the contract will be performed outside the United States (as defined at 25.003) 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.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 9. Amend section 52.212–5 by—

■ a. Revising the date of the clause to read “(AUG 2007)”;

■ b. Redesignating paragraphs (b)(24) through (b)(37) as (b)(25) through (b)(38), respectively, and adding a new paragraph (b)(24); and

■ c. Redesignating paragraph (e)(1)(vii) as paragraph (e)(1)(viii); and adding a new paragraph (e)(1)(vii).

The revised text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

(b) * * *

(24)(i) 52.222–50, Combating Trafficking in Persons (AUG 2007) (Applies to all contracts).

(ii) Alternate I (AUG 2007) of 52.222–50.

* * * * *

(e)(1) * * *

(vii) 52.222–50, Combating Trafficking in Persons (AUG 2007) (22 U.S.C. 7104(g)). Flow down required in accordance with paragraph (f) of FAR clause 52.222–50.

* * * * *

- 10. Amend section 52.213–4 by revising the clause date to read “(AUG 2007)”;
- redesignating paragraphs (a)(1)(iv) through (a)(1)(vi) as paragraphs (a)(1)(v) through (a)(1)(vii); and adding a new paragraph (a)(1)(iv) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

(a) * * *

(1) * * *

(iv) 52.222–50, Combating Trafficking in Persons (AUG 2007) (22 U.S.C. 7104(g)).

* * * * *

- 11. Amend section 52.222–50 by

a. Amending the introductory text by removing “22.1705” and adding “22.1705(a)” in its place; and revising the date of the clause to read “(AUG 2007)”;

b. Amending paragraph (a) by revising the definition “Employee”, and removing the definition “Individual”; and

c. Revising paragraphs (b), (c), (d), (e), and (f), and adding Alternate I.

The revised text reads as follows:

52.222–50 Combating Trafficking in Persons.

* * * * *

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.

* * * * *

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract; or

(3) Use forced labor in the performance of the contract.

(c) *Contractor requirements.* The Contractor shall—

(1) Notify its employees of—
(i) The United States Government's zero tolerance policy described in paragraph (b) of this clause; and
(ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
(2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.
(d) *Notification.* The Contractor shall inform the Contracting Officer immediately of—
(1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or

subcontractor employee has engaged in conduct that violates this policy; and
(2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.
(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may render the Contractor subject to—
(1) Required removal of a Contractor employee or employees from the performance of the contract;
(2) Required subcontractor termination;
(3) Suspension of contract payments;
(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
(6) Suspension or debarment.
(f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.
(End of clause)
Alternate I (AUG 2007). As prescribed in 22.1705(b), substitute the following paragraph in place of paragraph (c)(1)(i) of the basic clause:
(i)(A) The United States Government's zero tolerance policy described in paragraph (b) of this clause; and
(B) The following directive(s) or notice(s) applicable to employees performing work at the contract place(s) of performance as indicated below:

Document Title	Document may be obtained from:	Applies Performance to in/at:

[Contracting Officer shall insert title of directive/notice; indicate the document is attached or provide source (such as website link) for obtaining document; and, indicate the contract performance location outside the U.S. to which the document applies.]
[FR Doc. 07-3796 Filed 8-16-07; 8:45 am]
BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATION

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 18

[FAC 2005-19; FAR Case 2005-038; Item VI; Docket 2006-0020; Sequence 5]

RIN 9000-AK50

Federal Acquisition Regulation; FAR
Case 2005-038, Emergency
Acquisitions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).
ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to adopt the

interim rule published in the **Federal Register** at 71 FR 38247 on July 5, 2006, as a final rule with changes. The final rule amends the Federal Acquisition Regulation (FAR) to provide a single reference to acquisition flexibilities that may be used to facilitate and expedite acquisitions of supplies and services during emergency situations.
DATES: Effective Date: September 17, 2007.

FOR FURTHER INFORMATION CONTACT Mr. William Clark, Procurement Analyst, at (202) 219-1813 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-19, FAR case 2005-038.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to provide a single reference to acquisition flexibilities that may be used to facilitate and expedite acquisitions of supplies and services during emergency situations.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 71 FR 38247 on July 5, 2006, that created a new FAR Part 18 to provide a single reference to acquisition flexibilities available to facilitate contracting during emergencies. Five sources submitted comments on the interim rule. A discussion of those comments is provided below.

(1) *More detailed approach.* Two commenters were very supportive of the rule. However, one of those commenters recommended developing a more detailed, comprehensive approach. The commenter also said including the full text of every associated emergency authority could be unwieldy and might be counterproductive to the "ease of use" goal. Another commenter expressed support for the interim rule but recommended developing more detailed, comprehensive coverage, including guidance related to the proper administration and oversight of federal spending.

Response: Repeating the full text of every emergency acquisition flexibility in Part 18 would be redundant and difficult to maintain. More detailed, comprehensive procedures are better suited to guidebooks, not the acquisition regulations. The Councils note OFPP has updated its guidance on emergency acquisition flexibilities. That guidance includes more detailed, comprehensive procedures for emergency acquisitions.

(2) *Stress small business participation.* Two commenters recommended that the rule address the overall opportunities for small businesses in emergency acquisitions instead of just addressing the additional flexibilities unique to certain categories of small businesses (*i.e.*, ability to award on a sole source basis to 8(a) firms, Historically Underutilized Business Zone (HUBZone) small business