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48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

[Docket No. FAR 2014–0051, Sequence
No. 8]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2005–80;
Introduction**

AGENCIES: Department of Defense (DoD),
General Services Administration (GSA),

and National Aeronautics and Space
Administration (NASA).

ACTION: Summary presentation of final
rules.

SUMMARY: This document summarizes
the Federal Acquisition Regulation
(FAR) rules agreed to by the Civilian
Agency Acquisition Council and the
Defense Acquisition Regulations
Council (Councils) in this Federal
Acquisition Circular (FAC) 2005–80. A
companion document, the *Small Entity
Compliance Guide* (SECG), follows this
FAC. The FAC, including the SECG, is
available via the Internet at [http://
www.regulations.gov](http://www.regulations.gov).

DATES: For effective dates see the
separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The
analyst whose name appears in the table
below in relation to the FAR case.
Please cite FAC 2005–80 and the
specific FAR case number. For
information pertaining to status or
publication schedules, contact the
Regulatory Secretariat at 202–501–4755.

RULES LISTED IN FAC 2005–80

Item	Subject	FAR case	Analyst
I	Ending Trafficking in Persons	2013–001	Davis.
II	Management and Oversight of the Acquisition of Services	2014–008	Jackson.
III	Technical Amendments		

SUPPLEMENTARY INFORMATION:
Summaries for each FAR rule follow.
For the actual revisions and/or
amendments made by these rules, refer
to the specific item numbers and
subjects set forth in the documents
following these item summaries. FAC
2005–80 amends the FAR as specified
below:

**Item I—Ending Trafficking in Persons
(FAR Case 2013–001)**

This final rule amends the FAR to
implement Executive Order 13627 and
Title XVII of the National Defense
Authorization Act for Fiscal Year 2013
and promotes the United States policy
prohibiting trafficking in persons.
Contractors and subcontractors must
disclose to employees the key
conditions of employment, starting with
wages and work location; no recruiting
fees are allowed to be charged to
employees.

Compliance plans and annual
certifications are required for portions of
contracts over \$500,000 performed
outside the United States, except for
commercially available off-the-shelf
items of supply; plans shall be
appropriate to the size and complexity
of the contract or subcontract, and the
nature and scope of the activities under
the contract or subcontract. These plan
exceptions will significantly reduce the
impact on small entities.

Contracting officers should specify in
the contract whether a written employee
work document is required, which
notifies the employee of certain details
about the work and about trafficking in

persons. The contracting officer is also
required to notify the agency Inspector
General, debarring and suspending
official, and, if appropriate, law
enforcement of credible information
regarding violations. The contracting
officer is required to put into FAPIIS
violations substantiated by the agency
Inspector General, after a final agency
determination.

**Item II—Management and Oversight of
the Acquisition of Services (FAR Case
2014–008)**

This final rule amends the FAR to
implement a recommendation to
strengthen guidance on service
acquisitions by incorporating at FAR
37.101 the definitions relating to
“uncompensated overtime” presently
set forth in FAR 52.237–10(a), except
that the defined term “uncompensated
overtime rate” has been changed to
“adjusted hourly rate (including
uncompensated overtime).”
Additionally, the definition of the new
term “adjusted hourly rate (including
uncompensated overtime)” clarifies that
the proposed hours per week include
uncompensated overtime hours over
and above the standard 40-hour work
week. FAR 52.237–10 is further
amended to clarify the application of
the adjusted hourly rate, and
categorization of proposed hours subject
to the adjusted hourly rate. In addition,
FAR 52.237–10 has been amended to
reflect that all proposed labor hours
subject to the adjusted hourly rate shall
be identified as either regular or
overtime hours, by labor categories.

Finally, FAR 37.115–2 has been
amended to add a paragraph (d) to
clarify that when there is
uncompensated overtime, the adjusted
hourly rate, rather than the hourly rate
shall be applied to all proposed hours,
whether regular or overtime hours.

This rule is not expected to have a
significant cost or administrative impact
on contractors or offerors. This final rule
is also not expected to have a significant
impact on contracting officers because it
only clarifies policy that is already
stated in the FAR. These requirements
affect only the internal operating
procedures of the Government.

Item III—Technical Amendments

Editorial changes are made at FAR
46.202–4, 52.212–3, and 52.225–18.

Dated: January 22, 2015.

William Clark,
*Director, Office of Government-wide
Acquisition Policy, Office of Acquisition
Policy, Office of Government-wide Policy.*

Federal Acquisition Circular (FAC)
2005–80 is issued under the authority of
the Secretary of Defense, the
Administrator of General Services, and
the Administrator for the National
Aeronautics and Space Administration.

Unless otherwise specified, all
Federal Acquisition Regulation (FAR)
and other directive material contained
in FAC 2005–80 is effective March 2,
2015.

Dated: January 22, 2015.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: January 22, 2015.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: January 21, 2015.

William P. McNally,

Assistant Administrator, Office of Procurement National Aeronautics and Space Administration.

[FR Doc. 2015-01523 Filed 1-28-15; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 9, 12, 22, 42, and 52

[FAC 2005-80; FAR Case 2013-001; Item I; Docket 2013-0001; Sequence No. 1]

RIN 9000-AM55

Federal Acquisition Regulation; Ending Trafficking in Persons

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

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to strengthen protections against trafficking in persons in Federal contracts. These changes are intended to implement Executive Order (E.O.) 13627, entitled “Strengthening Protections Against Trafficking in Persons in Federal Contracts,” and title XVII of the National Defense Authorization Act for Fiscal Year 2013.

DATES: *Effective:* March 2, 2015.

Applicability: Contracting officers shall modify, on a bilateral basis, existing indefinite-delivery/indefinite-quantity contracts to include the clause for future orders, if additional orders are anticipated.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202-219-0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-80, FAR Case 2013-001.

SUPPLEMENTARY INFORMATION:

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 - 4. Compliance Plan/Certification (FAR 22.1703(d) (now at Paragraph (c)), 52.222-50(h), and 52.222-56)
 - 5. Full Cooperation (FAR 22.1703(d) and 52.222-50(g))
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- VI. Regulatory Flexibility Act
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II. Background

The United States has long had a policy prohibiting Government employees and contractor personnel from engaging in trafficking in persons activities, including severe forms of trafficking in persons. “Severe forms of trafficking in persons” is defined in section 103 of the Trafficking Victims Protection Act of 2000 (TVPA) (22 U.S.C. 7102) to include 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, and sex trafficking.

FAR subpart 22.17 strengthens the efficacy of the policy prohibiting trafficking in persons by codifying trafficking-related prohibitions for Federal contractors and subcontractors. It provides for the use of a clause that requires contractors and subcontractors to notify Government employees of trafficking in persons violations and puts parties on notice that the Government may impose remedies, including termination, for failure to comply with the requirements. Recent studies of trafficking in persons, including findings made by the Commission on Wartime Contracting and agency Inspectors General, as well as testimony provided at congressional hearings, have identified a need for

additional steps to prohibit trafficking in Government contracting—including regulatory action.

E.O. 13627, entitled “Strengthening Protections Against Trafficking in Persons in Federal Contracts,” issued on September 25, 2012 (77 FR 60029, October 2, 2012), and title XVII, entitled “Ending Trafficking in Government Contracting,” of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239, enacted January 2, 2013) create a stronger framework to eliminate trafficking in persons from Government contracts. The E.O. and statute provide new policies applicable to all contracts that prohibit contractors and subcontractors from engaging in prohibited practices such as destroying, concealing, confiscating, or otherwise denying access by an employee to his or her identity or immigration documents; using misleading or fraudulent recruitment practices; charging employees recruitment fees; and providing or arranging housing that fails to meet the host country housing and safety standards. Additionally, the E.O. and statute provide new policies for contracts performed outside the United States that exceed \$500,000, including a requirement for a compliance plan and annual certifications.

Contractors and subcontractors are reminded of their responsibilities associated with H-1B, H-2A, and H-2B Programs or Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and should act accordingly. Nothing in this rule shall be construed to permit a contractor or subcontractor from failing to comply with any provision of any other law, including, for example, the requirements of the MSPA, as amended, 29 U.S.C. 1801, *et seq.* and the Immigration and Nationality Act, in particular nonimmigrants entering the country under 8 U.S.C. 1101(a)(15)(H)(i)(b) (“H-1B Program”), 8 U.S.C. 1101(a)(15)(H)(ii)(a) (“H-2A Program”), or 8 U.S.C. 1101(a)(15)(H)(ii)(b) (“H-2B Program”). The requirements of these programs were not incorporated into the FAR because this rule is implementing a specific statute and E.O. which are separate and apart from the immigration laws cited and because all of the responsibilities that employers have under H-1B, H-2A, and H-2B Programs or MSPA are already enumerated in law and separate regulations.

The Federal Acquisition Regulatory Council, on March 5, 2013, sponsored a public meeting and request for comment on the implementation of E.O. 13627 and title XVII of the NDAA for FY 2013. Feedback from that meeting has been