

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

[FAC 2005–09; FAR Case 2005–012; Item IV; Docket FAR–2006–0020]

RIN 9000–AK31

**Federal Acquisition Regulation; FAR
Case 2005–012, Combating Trafficking
in Persons**

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.

DATES: *Effective Date:* April 19, 2006.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 19, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–09, FAR case 2005–012, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web site: <http://www.acqnet.gov/far/ProposedRules/proposed.htm>. Click on the FAR case number to submit comments.
- E-mail: farcase.2005-012@gsa.gov. Include FAC 2005–09, FAR case 2005–012 in the subject line of the message.
- 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 2005–09, FAR case 2005–012, in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/>

proposed.htm, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. William Clark, Procurement Analyst, at (202) 219–1813. Please cite FAC 2005–09, 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. The United States believes that its contractors can help combat trafficking in persons. 22 U.S.C. 7104(g) requires that the contract contain a clause allowing the agency to terminate the contract if the contractor or subcontractor engages in severe forms of trafficking in persons or has procured a commercial sex act, or used forced labor in the performance of the contract. For this purpose, “contractors” includes the contractor employees.

In order to implement the law, the Councils have added FAR Subpart 22.17 with an associated clause at 52.222–50 which address combating trafficking in persons.

The interim rule applies to contractors awarded service contracts (other than commercial service contracts under FAR Part 12). Such contractors must develop policies to combat trafficking in persons. The clause lists remedies, including termination, that may be imposed on contractors that support or promote or fail to monitor the conduct of their employees and subcontractors with regard to severe forms of trafficking in persons, the procurement of commercial sex acts, or use of forced labor.

This is a significant regulatory action and, therefore, is subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This interim rule raises novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The 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 rule only applies to the acquisition of services (except commercial services under FAR Part 12). Furthermore, the impact will be minimal unless the contractor or its employees engage in forms of trafficking in persons or 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 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 2005–09, 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 has forwarded 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 June 19, 2006 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: April 12, 2006.

Gerald Zaffos,

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

■ 2. Amend section 12.503 by revising the section heading and adding paragraph (a)(6) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial services.

(a)* * *
(6) 22 U.S.C. 7104, Trafficking Victims Protection Reauthorization Act of 2003 (see 22.1705).

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 3. Add Subpart 22.17 to read as follows:

Subpart 22.17—Combating Trafficking in Persons

Sec.

22.1700 Scope of subpart.
22.1701 Applicability.
22.1702 Definitions.
22.1703 Policy.
22.1704 Violations and remedies.
22.1705 Contract clause.

22.1700 Scope of subpart.

This subpart prescribes policy for implementing 22 U.S.C. 7104 as amended by Pub. L. No. 108-193 and 109-164.

22.1701 Applicability.

This subpart applies to acquisitions of all services except for commercial services under Part 12.

22.1702 Definitions.

As used in this subpart—
Coercion means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Employee means an employee of a contractor directly engaged in the

performance of work under a Government contract, including all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

Involuntary servitude includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Severe forms of trafficking in persons means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) 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 means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

22.1703 Policy.

Contracts for services (except commercial services under Part 12) shall—

(a) Prohibit any activities on the part of the contractor or contractor employees that support or promote—

(1) Severe forms of trafficking in persons;

(2) The procurement of commercial sex acts; or

(3) The use of forced labor in the performance of the contract;

(b) Require contractors to develop policies to combat severe forms of trafficking in persons, the procurement of commercial sex acts, and use of forced labor; and

(c) Impose suitable remedies, including termination, on contractors that support or promote or fail to monitor the conduct of their employees and subcontractors with regard to severe forms of trafficking in persons, the procurement of commercial sex acts, and use of forced labor.

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 or any contractor employee engages in severe forms of trafficking in persons;

(2) Any contractor employee procures a commercial sex act during the period of performance of the contract;

(3) The contractor or any contractor 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 Government.

22.1705 Contract clause.

Insert the clause at 52.222–50, Combating Trafficking in Persons, in all solicitations and contracts for the acquisition of services (except commercial services under Part 12).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 52.222–50 to read as follows:

52.222–50 Combating Trafficking in Persons.

As prescribed in 22.1705, insert the following clause:

COMBATING TRAFFICKING IN PERSONS (APR 2006)

(a) *Definitions.* As used in this clause—
Coercion means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Employee means an employee of a Contractor directly engaged in the performance of work under a Government contract, including all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

Individual means a Contractor that has no more than one employee including the Contractor.

Involuntary servitude includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Severe forms of trafficking in persons means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) 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 means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding Contractors and Contractor employees that engage in or support severe forms of trafficking in persons, procurement of commercial sex acts, or use of forced labor. During the performance of this contract, the Contractor shall ensure that its employees do not violate this policy.

(c) *Contractor requirements.* The Contractor, if other than an individual, shall establish policies and procedures for ensuring that its employees do not engage in or support severe forms of trafficking in persons, procure commercial sex acts, or use forced labor in the performance of this contract. At a minimum, the Contractor shall—

(1) Publish a statement notifying its employees of the United States Government's zero tolerance policy described in paragraph (b) of this clause and specifying 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;

(2) Establish an awareness program to inform employees about—

(i) The Contractor's policy of ensuring that employees do not engage in severe forms of trafficking in persons, procure commercial sex acts, or use forced labor;

(ii) The actions that will be taken against employees for violation of such policy;

(iii) Regulations applying to conduct if performance of the contract is outside the U.S., including—

(A) All host country Government laws and regulations relating to severe forms of trafficking in persons, procurement of commercial sex acts, and use of forced labor; and

(B) All United States laws and regulations on severe forms of trafficking in persons, procurement of commercial sex acts, and use

of forced labor which may apply to its employees' conduct in the host nation, including those laws for which jurisdiction is established by the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261–3267), and 18 U.S.C. 3271, Trafficking in Persons Offenses Committed by Persons Employed by or Accompanying the Federal Government Outside the United States;

(3) Provide all employees directly engaged in performance of the contract with a copy of the statement required by paragraph (c)(1) of this clause and obtain written agreement from the employee that the employee shall abide by the terms of the statement; and

(4) 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 contract employee has engaged in conduct that violates this policy; and

(2) Any actions taken against 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) or (d) 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 for the performance period in which the Government determined Contractor non-compliance;

(5) Termination of the contract for default, 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 for the acquisition of services.

[FR Doc. 06–3681 Filed 4–18–06; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2005–09; FAR Case 2005–009; Item V; Docket FAR–2006–0020]

RIN 9000–AK22

Federal Acquisition Regulation; FAR Case 2005–009, Confirmation of HUBZone Certification

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