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OFFICE OF MANAGEMENT AND BUDGET  
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DEPUTY DIRECTOR  
FOR MANAGEMENT

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MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Margaret M. Weichert  
Deputy Director for Management 

SUBJECT: Anti-Trafficking Risk Management Best Practices & Mitigation Considerations

The purpose of this memorandum is to enhance the effectiveness of anti-trafficking requirements in Federal acquisition while helping contractors manage and reduce the burden associated with meeting these responsibilities. To achieve these dual goals, this memorandum describes anti-trafficking risk management best practices and mitigation considerations for acquisition officials and agency trafficking in persons experts to take into account when working with the agency's contractors to address their obligations.

Title XVII of the National Defense Authorization Act (NDAA) for FY 2013 and FAR Subpart 22.17 require Federal contractors to work proactively to prevent human trafficking in their supply chains and take remedial steps if such activities are identified. The Administration is committed to combatting human trafficking and ensuring the responsibilities of law and regulation are met effectively. Anti-trafficking advocacy organizations have urged the Senior Policy Operating Group of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons ("the SPOG") to emphasize practices that have been shown to prevent or mitigate the effects of trafficking. Contractors have also sought additional information on how best to manage risk and minimize the compliance costs associated with the law and regulation, which include certifications, violation reporting, compliance plans, and other proactive measures.

Accordingly, this guidance:

- reviews the key responsibilities of FAR Subpart 22.17 ([Attachment A](#));
- highlights best practices that have been shown to contribute to effective deterrence ([Attachment B](#));
- describes mitigation actions that should be given appropriate consideration by contracting officers in evaluating the suitability of steps taken by a contractor that has reported a trafficking incident ([Attachment C](#)); and
- provides responses to a number of frequently asked questions posed by stakeholders following the publication of the final FAR rule ([Attachment D](#)).

Efforts to combat trafficking in persons (TIP) are evolving as better practices and new technologies are identified. For this reason, the SPOG's Procurement and Supply Chains Committee intends to periodically review this guidance to determine whether updates may be required.

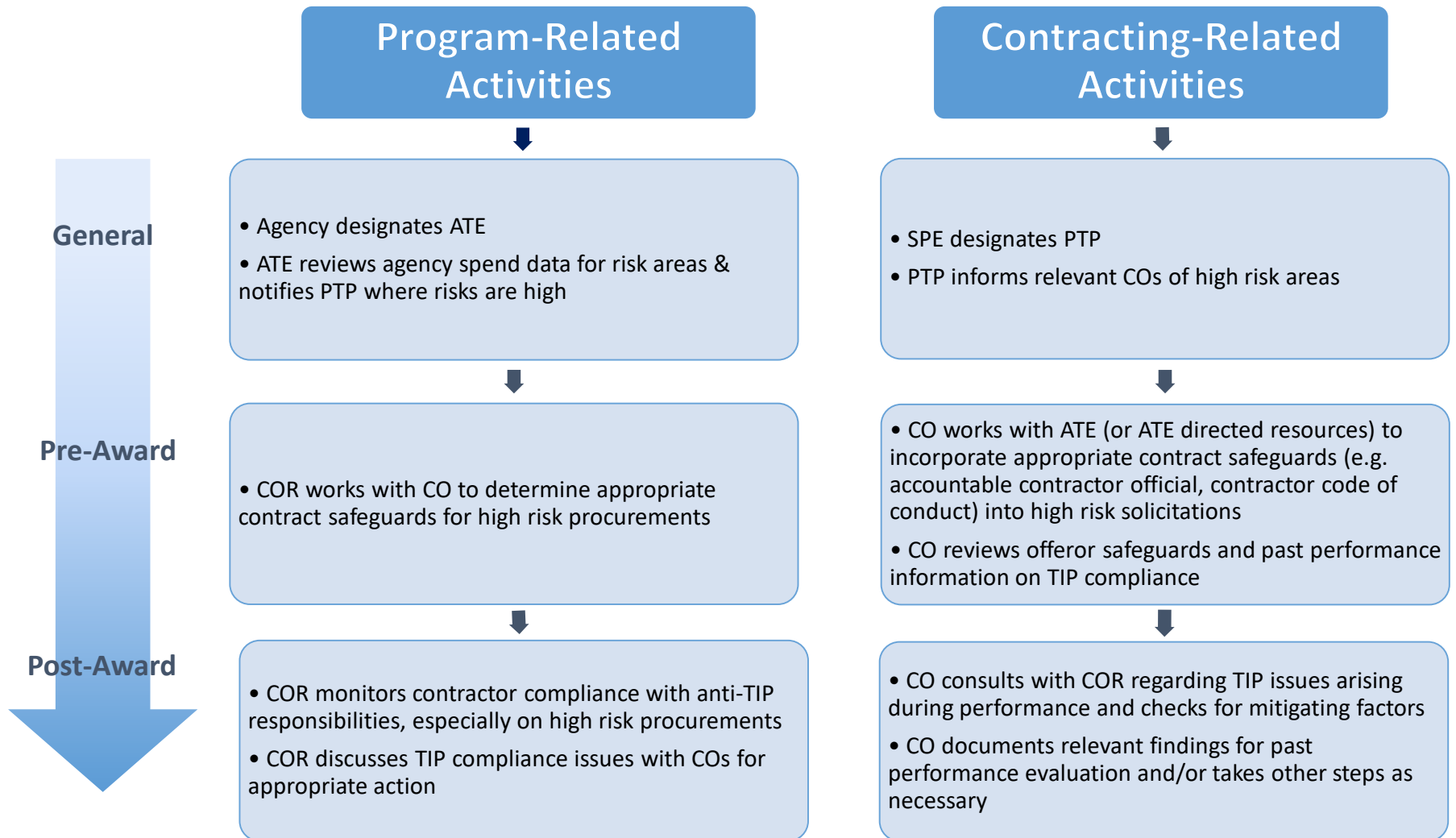
Finally, effective implementation of anti-trafficking requirements is a shared responsibility involving all parties to an acquisition, including the customer-program office, Contracting Officer (CO), Contracting Officer's Representative (COR), and the Senior Procurement Executive (SPE). To understand their TIP risk profiles, agencies should review their contract spending and ensure necessary safeguards and reviews are in place for high-risk areas. [Figure 1](#) breaks out the general risk management steps agencies should take, as well as specific steps and roles parties play in the acquisition lifecycle.

Accordingly, within 90 days of the issuance of this memorandum, Chief Financial Officers (CFO) Act agencies shall identify an agency TIP expert (ATE) and a procurement TIP POC (PTP) to facilitate collaboration among agency stakeholders on implementing anti-trafficking requirements in Federal acquisition. Agencies that are members of the SPOG may designate their SPOG representative as the ATE regarding the responsibilities in this memorandum. CFO Act agencies who are not members of the SPOG and lack TIP expertise should reach out to the Office of Federal Procurement Policy (OFPP) and the Department of State's Office to Monitor and Combat Trafficking in Persons to discuss the best manner of securing the requisite expertise. Names and contact information for the ATE and the PTP, and any requests for assistance, should be sent to Porter Glock in OFPP at [pglock@omb.eop.gov](mailto:pglock@omb.eop.gov).

Please share this guidance document widely across your acquisition workforce and with those responsible for anti-trafficking and related compliance efforts. Questions regarding this guidance document may be directed to your agency representative on the SPOG, OFPP at (202) 395-7579, or Porter Glock at [pglock@omb.eop.gov](mailto:pglock@omb.eop.gov).

Attachments

Figure 1. Anti-Trafficking Roles and Responsibilities



**ATE** = Agency TIP Expert; **CO** = Contracting Officer; **COR** = Contracting Officer's Representative; **POC** = Point of Contact; **PTP** = Procurement TIP POC; **SPE** = Senior Procurement Executive; **TIP** = Trafficking in Persons

### Regulatory Revisions to FAR Subpart 22.17

FAR Subpart 22.17 sets forth regulatory guidance to implement the improved safeguards called for by Title XVII of the NDAA for FY 2013, *Ending Trafficking in Government Contracting*, and E.O. 13627, *Strengthening Protections Against Trafficking In Persons In Federal Contracts*. These safeguards include (i) a number of express prohibitions on certain types of trafficking-related activities (*e.g.*, prohibition on charging employees recruitment fees; destroying, concealing, confiscating or otherwise denying access to identity or immigration documents) and (ii) risk management practices (*e.g.*, an employee awareness program, a recruitment and wage plan, a housing plan).

Specifically, in March 2015, revisions to FAR subpart 22.17 and the corresponding clause at 52.222-50 relating to trafficking in persons in Federal contracts became effective for all new contract awards and for all new orders under existing Indefinite Delivery, Indefinite Quantity contracts. The revisions strengthen the longstanding ban against human trafficking by:

- i. Clearly identifying prohibited trafficking-related activities for all products and services. Previously, there was only a general prohibition during the period of performance of a contract on (1) engaging in human trafficking, (2) procuring commercial sex acts, and (3) using forced labor. Under the revisions to the FAR, the following trafficking-related activities are also expressly prohibited:
  - Destroying, concealing, confiscating, or otherwise denying access by an employee to his or her identity or immigration documents;
  - Charging employees recruitment fees;<sup>1</sup>
  - Using misleading or fraudulent recruitment practices;
  - Providing or arranging housing that fails to meet the host country housing and safety standards, if housing is provided;
  - Failing to provide return transportation costs upon the end of employment, except in special cases;
  - Using recruiters that do not comply with local labor laws in the country where the recruitment takes place; and
  - Failing to provide an employment contract, recruitment agreement, or other required work document in writing, if required by law or contract.<sup>2</sup>

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<sup>1</sup> A definition of “Recruitment Fees” was added to FAR 22.1702 (and relevant clauses) on January 22, 2019. See [83 FR 65466](#).

<sup>2</sup> FAR 52.222-50(b).

- ii. Imposing additional requirements on contractors regarding their own employees. Under the FAR revisions, contractors are required to:
- Inform their employees of prohibited activities and the consequences for violations;<sup>3</sup> and
  - Take appropriate action against employees, agents, or subcontractors that violate prohibitions;<sup>4</sup>
- iii. Requiring contractors to notify contracting officers and the agency Inspector General of any credible information they receive from any sources alleging a violation of the anti-trafficking prohibitions, and any actions taken in response, and to provide reasonable access to facilities and staff to allow audits, investigations, and/or other actions to ascertain compliance;<sup>5</sup>
- iv. Imposing a number of additional responsibilities for any portion of a contract or subcontract in excess of \$500,000 performed outside the United States that involves the acquisition of non-commercial off-the-shelf goods or the performance of services:
- Contractors must develop a compliance plan that includes:
    - (a) an employee awareness program about trafficking in persons policies, prohibited activities, and remedies when violations occur;
    - (b) a process for employees to report violations without fear of retaliation;
    - (c) a recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees, and ensures that wages meet host-country requirements or explains any variance;
    - (d) a housing plan that ensures the housing meets host country housing and safety standards; and
    - (e) procedures to place the same requirements on subcontractors at any tier.<sup>6</sup>

The compliance plan must be appropriate for the nature and scope of activities they are performing as well as the size and complexity of their contracts.

- Contractors must certify before contract award and annually thereafter that they have developed and implemented compliance plans.<sup>7</sup> A contractor must also include as part of the certification that it has conducted due diligence and that (1)

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<sup>3</sup> FAR 52.222-50(c)(1).

<sup>4</sup> FAR 52.222-50(c)(2).

<sup>5</sup> FAR 52.222-50(d) and (g).

<sup>6</sup> FAR 52.222-50(h).

<sup>7</sup> FAR 52.222-50(h).

to the best of the contractor's knowledge or belief, neither it, nor its agents or subcontractors, has engaged in any of the prohibited practices, or (2) if any violations have been found, the contractor has taken the appropriate remedial and referral actions.

- Prime contractors must include the substance of clause 52.222-50 in all portions of a subcontracts in excess of \$500,000 performed outside the United States that involve the provision of acquisition of non-commercial off-the-shelf goods or the performance of services.

## Anti-Trafficking Risk Management Best Practices

The Procurement and Supply Chains Committee of the Senior Policy Operating Group of the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons (“the SPOG Committee”) has identified a number of risk management best practices. Many of these practices are discussed in the Responsible Sourcing Tool website ([responsiblesourcingtool.org](https://responsiblesourcingtool.org)), designed to assist Federal contractors, in identifying human trafficking or trafficking-related activities in their supply chains and developing effective management systems to prevent and mitigate these activities.<sup>8</sup> Some of the practices focus on actions a contractor may take internally while others address actions a contractor may take to protect its supply chain.

Contracting officers will periodically need to evaluate the quality of a contractor’s anti-trafficking efforts. For example, an evaluation may be required where (i) a contractor reports a human trafficking incident under an ongoing contract and the contracting officer is trying to determine if the contractor’s actions were sufficient (as explained in Attachment C),<sup>9</sup> (ii) the agency is planning an acquisition in an environment that is at high risk of trafficking (*e.g.*, the agency is aware that the work it is acquiring is at a heightened risk of trafficking and the agency must evaluate prospective offerors’ safeguards), or (iii) the agency is evaluating past performance information on compliance for contracts where the risk of trafficking was significant. The best practices list, which describes safeguards that have been recognized by agency anti-trafficking experts, industry associations, and non-governmental organizations for their effectiveness in helping to prevent or mitigate trafficking risks, is intended to give contracting officers a fuller understanding of the types of actions that a contractor with an effective anti-trafficking program might take to meet its responsibilities under the FAR. The list is meant to be illustrative, not exhaustive, and is not intended to represent a compliance floor or to augment or otherwise change existing regulatory requirements.

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<sup>8</sup> The tool enables Federal contractors and other entities to visualize human trafficking risks by location, industry sector, and commodity. Additionally, it includes resources such a model compliance plan, a sample code of conduct, a supplier/subcontractor self-assessment questionnaire, and criteria to select and monitor labor recruiters. Another resource is a NGO research report, funded by the Department of State, titled “[Strengthening Protections Against Trafficking Persons in Federal and Corporate Supply Chains](#)” which covers commodities and industry sectors at increased risk for trafficking or trafficking-related activities.

<sup>9</sup> FAR 52.222-50(f).



1. Contractor’s internal steps

<i>Accountable official</i>	
The FAR Requires:	The FAR does not require an accountable official for trafficking issues.
Best Practice:	To create appropriate accountability and to highlight the importance of anti-trafficking efforts, the contractor has identified an internal position and individual to be responsible for compliance plan implementation (if a plan is required, or if the contractor chooses to create a compliance plan), including risk prioritization. The designated position has the necessary authority to ensure compliance at all levels of the company and throughout the supply chain, and should be able to ensure the accuracy of its certification to the government. <sup>10</sup>

<i>Code of conduct and policies around trafficking</i>	
The FAR Requires:	The FAR does not require a code of conduct and policies around trafficking.
Best Practice:	The contractor has reviewed its internal practices, including its recruitment processes, <sup>11</sup> for preventing any fraudulent recruitment or coercive treatment of workers from occurring at any level of the organization. As part of this review, the contractor developed or adopted an appropriate code of conduct and/or corporate policies on trafficking in persons, covering such issues as: hiring recruiters and conducting recruitment, disciplinary processes for employees that commit violations, otherwise ensuring that no prohibited activity takes place, and complying with host country employment law and housing standards (if housing is provided). The code of conduct is revisited on a set schedule, with senior-level approval, and if possible, with external validation.

<i>Regular review of mechanisms to deter trafficking</i>	
The FAR Requires:	A compliance plan when the value of a contract’s overseas <sup>12</sup> work is expected to exceed \$500,000 for services or non-Commercially Available Off-the-Shelf (COTS) supplies. The plan is appropriate to the size and complexity of the contract and to the nature and scope of the activities to be performed.
Best Practice:	The contractor continuously reviews the plan (recognizing it may be tailored for many contracts over a period of time) and makes revisions and updates whenever necessary, including to employee awareness and reporting programs, based on best practices and lessons learned. Revisions are reviewed at a senior level and, if possible, with external validation.

<sup>10</sup>As specified in FAR 52.222-50(h)(5) and 52.222-56. For additional information see Attachment A.

<sup>11</sup> [ResponsibleSourcingTool.org](https://www.responsibleSourcingTool.org) contains helpful guidance on due diligence when screening recruiters.

<sup>12</sup> Supplies acquired outside the United States or services to be performed outside the United States.



2. Contractor’s external steps

<i><b>Impactful due diligence to maximize effectiveness</b></i>	
The FAR Requires:	That contractors certify that they have conducted due diligence and found no violations or taken appropriate remedial and referral actions with respect to with their agents, subcontractors, or subcontractor agents when the value of overseas work is expected to exceed \$500,000 for services or non-COTS supplies.
Best Practice:	The contractor has taken steps to prioritize risk assessment. High-risk portions of the contractor’s supply chain have been identified (including contractors and/or subcontractors who use labor agents/recruiters), or the contractor has plans in place to do so ( <i>e.g.</i> , through third-party audits, external consultants or experts, or other mechanisms). <sup>13</sup> The contractor also works with suppliers to implement information reporting processes for high-risk sites, such as through self-audit reports and supplier-conducted employee surveys.

<i><b>Corrective actions</b></i>	
The FAR Requires:	That contractors takes appropriate remedial action to the extent required when a trafficking violation is identified.
Best Practice:	The contractor has developed targeted action plans that include industry and other broadly demonstrated best practices for addressing violations that are identified in its supply chain. For example, where termination of a contract is necessary, the placement and treatment of its workers is considered and addressed. In addition, it monitors progress through contractor follow-up audits for sites identified as being out of compliance ( <i>e.g.</i> ensures recruitment fees have been refunded to workers; employees have been given secure accessible storage solutions for their identity documents).

<i><b>Engagement with subcontractors</b></i>	
The FAR Requires:	A flowdown of clause 52.222-50 to subcontractors. The clause does not require a code of conduct and only requires an awareness program as a component of a compliance plan when the value of the overseas work is expected to exceed \$500,000 for services or non-COTS supplies
Best Practice:	The contractor has ensured its subcontractors have their own codes of conduct or flow down the code developed/adopted by the prime contractor. These are accompanied by direct engagement with subcontractors to ensure that they fully understand their obligations.

<sup>13</sup> Tools that could be used in such risk assessments include the U.S. Department of Labor’s [List of Goods Produced by Child Labor or Forced Labor](#) and the U.S. Department of State’s annual [Trafficking in Persons \(TIP\) Report](#).

<i>Subcontractor compliance reviews</i>	
The FAR Requires:	The FAR does not require compliance reviews.
Best Practice:	The contractor has implemented appropriate auditing processes to assess subcontractor compliance with its code of conduct/policy, particularly for suppliers identified as high risk, including unannounced audits as appropriate. These audits include, among other considerations, whether its subcontractors: (i) are directly hiring, (ii) are using licensed recruiters, or using additional scrutiny in countries where there are known trafficking risks and/or recruiters are unregulated, (iii) have effective reporting and whistleblowing mechanisms, and (iv) have copies of their signed contracts in a language the worker understands. Audit processes are validated externally.

## Mitigating Factors

If trafficking issues arise during the performance of a contract, FAR 52.222-50(f) instructs contracting officers to take into account mitigating factors in determining remedies. Mitigating factors are designed to strike a balance between the effectiveness and reasonableness of the contractor's actions. This balanced approach should help ensure achievement of the desired goals of the regulation without imposing unmanageable regulatory burdens or expectations on the contract community.

Accordingly, in reviewing whether a contractor has complied with its anti-trafficking responsibilities, the contracting agency should consider the mitigating factors described in the FAR<sup>14</sup> as well as whether the contractor adopted any of the best practices described in Attachment B or other suitable practices.

In addition if a trafficking violation has been reported, the contracting officer should consider:

- whether the contractor:
  - became aware of the violation because of an effective monitoring program and/or reporting mechanism;
  - had risk mitigation tools in place at the time an incident arose, such as a current compliance plan or awareness plan that the contractor was following at the time of the incident,<sup>15</sup> or other risk-mitigation best practices;
  - notified to the U.S. government immediately of any violations;<sup>16</sup>
  - abated a violation when directed to do so by the contracting officer;
  - cooperated with investigations;
  - is a new or experienced Federal contractor; and
  - has a particularly lengthy or complex supply chain.
- whether the reported information involves:
  - an isolated incident or is part of a systemic pattern of violations; or
  - an incident that is minor in nature or is significant and shows a basic disregard for anti-trafficking requirements.

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<sup>14</sup> See FAR 52.222-50(f).

<sup>15</sup> Entities need not develop a plan specifically for each contract with overseas work that meets the threshold, as long as it otherwise has a plan in place that is suitable to address the nature and scope of activities to be performed and the size and complexity of its contract work.

<sup>16</sup> See FAR 52.222-50(d).

**Working with the Regulatory Changes to FAR Subpart 22.17  
Combating Trafficking in Persons**

**Questions and Answers**

The following questions and answers have been developed in response to issues that were identified during outreach on the final FAR rule to implement E.O. 13627 and Title XVII of the NDAA for FY 2013, *Ending Trafficking in Government Contracting*.

**Contractor risk mitigation**

**1. When considering a contractor's efforts to meet its anti-trafficking responsibilities, what considerations will contracting officers take into account, especially for contractors with complex and multi-tiered supply chains?**

The FAR rule lays out the requirements, while the guidance developed by the SPOG Procurement and Supply Chains Committee lays out mitigating and aggravating factors that will be carefully considered in determining the adequacy of the contractor's actions should violations be identified. These factors include:

- whether the contractor:
  - worked with subcontractor to appropriately remediate identified issues;
  - took remedial steps on its own (such as to provide reparation to victims where the company has caused or contributed to the impacts) or abated a violation when directed to do so by the contracting officer;
  - became aware of the violation because of an effective monitoring program and/or reporting mechanism had risk mitigation tools in place at the time an incident arose, such as a current compliance plan or awareness plan and was following the plan at the time of the incident;<sup>17</sup>
  - notified to the U.S. government immediately of any incidents;<sup>18</sup>
  - abated a violation when directed to do so by the contracting officer;
  - cooperated with investigations;
  - took logically sequenced and managed steps to increase its understanding of the supply chain; and
  - is a new or experienced Federal contractor.

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<sup>17</sup> Entities need not develop a plan specifically for each contract with overseas work that meets the threshold, as long as it otherwise has a plan in place that is suitable to address the nature and scope of activities to be performed and the size and complexity of its contract work.

<sup>18</sup> See FAR 52.222-50(d).

- whether a reported violation:
  - is an isolated incident or part of a systemic pattern; or
  - is minor in nature or is significant and shows a basic disregard for anti-trafficking requirements.

**2. Isn't a contractor better off having a less robust plan and accompanying management structure to reduce its exposure to liability?**

No. A contractor that is working to implement a compliance plan and awareness program, and that identifies violations as a result of such actions, will be viewed more favorably when mitigating factors are considered than will a contractor that fails to identify these violations because it has made no meaningful effort to implement internal controls that could enable it to uncover trafficking, and has instead either negligently failed to implement controls or made a management decision to treat human trafficking as a cost of doing business.

**3. What steps should a contractor take if it does not perform any work overseas?**

While contractors that only work domestically are not required to develop or submit a compliance plan, they are still subject to the rule's prohibitions and many of its requirements. As such, domestic contractors are strongly encouraged to develop procedures and controls consistent with the best practices identified in Attachment B, which will help ensure that they are meeting their obligations under the requirements, and may act as a mitigating factor if a violation occurs.

**Other issues**

**4. Are contractors required to furnish copies of their compliance plans to agencies?**

In accordance with FAR 52.220-50(h), a contractor must be prepared to furnish a copy of its compliance plan to the contracting officer. This may be required when there is an incident or in some cases, at the agency's discretion, where an acquisition involves high risk and the agency wants to evaluate the contractor's risk mitigation.

**5. When should contracting officers expect to be informed of violations?**

Contractors are required to report "credible information" that a violation of the prohibitions outlined in FAR 52.222-50(b) has occurred, along with any actions taken against the employee, subcontractor, subcontractor employee, or its agent to remedy the violation. The preamble to the FAR rule notes that the rule does not define the term "credible information" but explains that the term refers to believable information received from any source. Agencies should encourage their contractors to remediate issues that fall outside the scope of FAR 52.222-50(b), and as circumstances warrant, to report to law enforcement and/or call an appropriate local NGO or hotline with any information about the violation.

**6. What steps are taken after a contracting officer receives credible information?**

As set out in FAR 52-222.50, when a contracting officer receives credible information that the contractor or its agents or employees have violated the FAR trafficking requirements, the contracting officer must promptly notify the agency Inspector General, the agency debarring and suspending official, and law enforcement officials if appropriate, and can direct the contractor to take specific steps to abate the violation. After receipt of a report from the cognizant agency Inspector General, the authorized agency official conducts an administrative hearing and the contractor has the opportunity to respond to the allegations.

If there is a determination by the Inspector General that allegations of a trafficking in persons violation are substantiated or if the contracting officer finds that the contractor has failed to comply with the procedural requirements in the regulations such as notification, the contracting officer will determine if a contract remedy is appropriate, taking into account the appropriate mitigating and aggravating factors set forth in the FAR and the Anti-Trafficking Risk Management Best Practices guidance developed by the SPOG Procurement and Supply Chains Committee.<sup>19</sup>

**7. How does the \$500,000 dollar ‘flowdown’ threshold operate in practice?**

The contracting officer is responsible for ensuring that the certification clause is included in contracts where the value of the overseas work is expected to exceed \$500,000 for services or non-COTS supplies. The contractor is responsible for flowing down the requirements to its subcontractors and suppliers when the portion of work to be performed overseas exceeds \$500,000 for services or non-COTS supplies.

**8. How does the “portions of work” qualifier affect contractor obligations to develop a compliance plan and to certify?**

Under FAR 52.222-56(b)—

*The apparent successful Offeror shall submit, prior to award, a certification, as specified in paragraph (c) of this provision for the portion (if any) of the contract that—*

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<sup>19</sup> Remedies may include: (1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract; (2) Requiring the Contractor to terminate a subcontract; (3) Suspension of contract payments until the Contractor has taken appropriate remedial action; (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the government determined Contractor non-compliance; (5) Declining to exercise available options under the contract; (6) Termination of the contract for default or cause, in accordance with the termination clause of the contract; or (7) Suspension or debarment. In addition, other remedies available to the government may be exercised.

*(1) Is for supplies, other than commercially available off-the-shelf items, to be acquired outside the United States, or services to be performed outside the United States; and (2) Has an estimated value that exceeds \$500,000.*

Under FAR 52.222-50(h)(1)—

*[The compliance plan requirements apply] to any portion of the contract that—*

*(1) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and (2) Has an estimated value that exceeds \$500,000.*

FAR 52.222-50(h)(2) also ties the nature of the compliance plan to the size and complexity of the particular contract, and to the nature and scope of the activities to be performed for the government. The certification and compliance plan requirements are therefore limited to just the portion of work performed overseas. The regulations do not obligate the contractor to develop a compliance plan for the entire company or to certify that the plan has such a broad scope. However, it may be difficult or impractical for contractors with multiple government contracts to develop multiple plans. Contractors are therefore encouraged to develop corporate-wide compliance plans, which may be further tailored for the individual contract.

- 9. What if a contractor identifies a reportable incident in its supply chains that affects multiple contracts (e.g., a component part manufacturer was using forced labor, and the contractor used the component part in a variety of goods sold to the government)? Does the contractor have a responsibility to trace the component back to every end-product sold to the government, and to notify the individual agency contracting officers who procured that part?**

Under the circumstance where the contractor believes that a violation has occurred which affects multiple contracts, and it is impractical to trace the violation back to a particular contract, the contractor must inform the agency for the contract with the highest dollar value. See FAR 52.222-50(d)(2).

- 10. In cases where contractors have multiple contracts with the government, must the contractor provide individual certifications to each contracting officer on a transactional basis?**

Yes. As the certification is directly related to the particular contract being performed, contractors must provide individual certifications on a per-transaction basis.