

### Subpart 22.16—Notification of Employee Rights Concerning Payment of Union Dues or Fees

SOURCE: 69 FR 76353, Dec. 20, 2004, unless otherwise noted.

#### 22.1600 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order 13201, February 17, 2001.

#### 22.1601 Definitions.

As used in this subpart—

*Secretary* means the Secretary of Labor, U.S. Department of Labor.

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

#### 22.1602 Policy.

Executive Order 13201 generally requires contractors to post a notice informing employees of their rights concerning payment of union dues or fees and to include this requirement in subcontracts and purchases that exceed the simplified acquisition threshold.

#### 22.1603 Exemptions granted by the Secretary of Labor.

(a) The Secretary may grant exemptions from the requirements of this subpart, including the requirement to include the clause at 52.222–39, or parts of that clause, in contracts. Requests for exemptions may be submitted in accordance with Department of Labor regulations at 29 CFR 470.3.

(b) The requirements of this subpart do not apply to contracts or subcontracts or purchases that do not exceed the simplified acquisition threshold.

#### 22.1604 Compliance investigations and sanctions for violations.

The Secretary may investigate any contractor, subcontractor, or vendor to determine if any of the requirements of the clause at 52.222–39 have been violated. The procedures for conducting the investigations and effecting the sanctions are in 29 CFR part 470, Subpart B—Compliance Evaluations, Com-

plaint Investigations and Enforcement Procedures. If the Secretary determines that there has been a violation, the Secretary may, to the extent authorized by 29 CFR 470.14 (which, in part, requires coordination between the head of the agency and the Secretary), direct that the contract be cancelled, terminated, or suspended in whole or in part. The Secretary may also declare the contractor ineligible for further Government contracts. Each contracting agency shall cooperate with the Secretary and provide such information and assistance as the Secretary may require in the performance of the Secretary's functions.

#### 22.1605 Contract clause.

Insert the clause at 52.222–39, Notification of Employee Rights Concerning Payment of Union Dues or Fees, in all solicitations and contracts, except—

(a) Acquisitions that do not exceed the simplified acquisition threshold. For indefinite quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold; or

(b) Contracts covered by an exemption granted by the Secretary of Labor. A contracting agency may modify the clause at 52.222–39, if necessary, to reflect an exemption granted by the Secretary (see 22.1603(a)).

### Subpart 22.17—Combating Trafficking in Persons

SOURCE: 71 FR 20302, Apr. 19, 2006, unless otherwise noted.

#### 22.1700 Scope of subpart.

This subpart prescribes policy for implementing 22 U.S.C. 7104.

[71 FR 20302, Apr. 19, 2006, as amended at 72 FR 46341, Aug. 17, 2007]

#### 22.1701 Applicability.

This subpart applies to all acquisitions.

[71 FR 20302, Apr. 19, 2006, as amended at 72 FR 46341, Aug. 17, 2007]

#### 22.1702 Definitions.

As used in this subpart—  
*Coercion* means—

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(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 the Contractor directly engaged in the performance of work under the contract 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.

*Forced labor* means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or 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 per-

son 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.

[71 FR 20302, Apr. 19, 2006, as amended at 72 FR 46341, Aug. 17, 2007; 74 FR 2744, Jan. 15, 2009]

### 22.1703 Policy.

The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Additional information about trafficking in persons may be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons' at <http://www.state.gov/g/tip>. 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; or

(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.

[72 FR 46341, Aug. 17, 2007, as amended at 74 FR 2744, Jan. 15, 2009]

### 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

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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. The contracting officer may take into consideration whether the contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining the appropriate remedies. These remedies are in addition to any other remedies available to the United States Government.

[72 FR 46341, Aug. 17, 2007, as amended at 74 FR 2744, Jan. 15, 2009]

**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.

[72 FR 46341, Aug. 17, 2007]

### **Subpart 22.18—Employment Eligibility Verification**

SOURCE: 73 FR 67703, Nov. 14, 2008, unless otherwise noted.

**22.1800 Scope.**

This subpart prescribes policies and procedures requiring contractors to utilize the Department of Homeland Security (DHS), United States Citizenship and Immigration Service’s employment eligibility verification program (E-Verify) as the means for verifying employment eligibility of certain employees.

**22.1801 Definitions.**

As used in this subpart—  
*Commercially available off-the-shelf (COTS) item*—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

*Employee assigned to the contract* means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

*Subcontract* means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and