T. MARKUS FUNK | PARTNER
LITIGATION, WHITE COLLAR DEFENSE & COMPLIANCE
Founding Co-Chair, Supply Chain Compliance and Corporate Social Responsibility Practice
Founding Co-Chair, ABA Global Anti-Corruption Committee
MFunk@perkinscoie.com

PERKINSCOIE
COUNSEL TO GREAT COMPANIES

Deconstructing Government Contractor Anti-Trafficking Provisions

(Federal Acquisition Regulation Subpart 22.17 and Contract Clause 52.222-50 - Effective 2015)

Federal Contractor for Goods/Services (size/nature of contract irrelevant)?

NO → FAR anti-trafficking provisions do not apply - but 18 U.S.C. § 545 (Smuggling) and 19 U.S.C. § 1307 (Forced Labor Prohibitions) might

YES ↓

Federal contractor, subcontractors, their employees *and their agents* prohibited from engaging in human trafficking including, for example:

- Using forced labor
- Misleading/fraudulent recruitment practices
- Charging recruitment fees
- Destroying, concealing, confiscating, or otherwise denying employee access to his or her identity docs
- Failing to pay return transportation costs
- Failing to provide employment agreement (if required) in employee's native tongue and prior to employee's departure from home country

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Contractors and their subcontractors contractually agree to:

- Cooperate fully with, and provide reasonable access to, agencies conducting investigations into, among other things, violations of this order
- Self-report, among other things, activities that are inconsistent with the requirements of this order or any other applicable law or regulation

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Contract for Services or Supplies *that are not off-the-shelf items* that (1) exceed $500,000 in value and (2) are to be performed outside U.S.

YES ↑

Contractors and subcontractors must create and post (1) at the workplace and (2) on their company website a formal compliance plan including, as appropriate:

- An employee awareness program about U.S. anti-trafficking policy
- A process for employees to report activity inconsistent with zero-tolerance policy without fear of retaliation
- A recruitment and wage plan
- Available disciplinary actions for employees that violate the policy
- Reciprocal expectations between company and supplier
- A housing plan
- Preventative procedures for subcontractors

Each contractor and subcontractor must formally certify it has a compliance plan in place, due diligence was conducted, the absence of misconduct, and that, if misconduct was observed, that appropriate remediation and referral actions were taken

NO →

Note: "Trafficking" is defined broadly to include (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, and (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

Potential Liability From Non-Compliance:

- Suspension of contract or contract payment
- Loss of award fee or termination of contract
- Debarment (48 C.F.R. 9.406-2)
- 18 U.S.C. § 1001 (False Statement)
- 18 U.S.C. § 545 (Smuggling)
- 19 U.S.C. § 1307 (Forced Labor Prohibitions)
- 31 U.S.C. § 3729 (False Claims Act)
- Class action lawsuits
- Consumer advocacy/NGO actions

The information contained herein is not, and should not be relied upon as, legal advice, and is not a substitute for qualified legal counsel.