

September 25, 2012

# Executive Order - Strengthening Protections Against Trafficking In Persons In Federal Contracts

## EXECUTIVE ORDER

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### STRENGTHENING PROTECTIONS AGAINST TRAFFICKING IN PERSONS IN FEDERAL CONTRACTS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act (40 U.S.C. 101 et seq.) and the Trafficking Victims Protection Act of 2000, as amended (TVPA) (Public Law 106-386, Division A), and in order to strengthen protections against trafficking in persons in Federal contracting, it is hereby ordered as follows:

Section 1. Policy. More than 20 million men, women, and children throughout the world are victims of severe forms of trafficking in persons ("trafficking" or "trafficking in persons") -- defined in section 103 of the TVPA, 22 U.S.C. 7102(8), to include 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 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.

The United States has long had a zero-tolerance policy regarding Government employees and contractor personnel engaging in any form of this criminal behavior. As the largest single purchaser of goods and services in the world, the United States Government bears a responsibility to ensure that taxpayer dollars

do not contribute to trafficking in persons. By providing our Government workforce with additional tools and training to apply and enforce existing policy, and by providing additional clarity to Government contractors and subcontractors on the steps necessary to fully comply with that policy, this order will help to protect vulnerable individuals as contractors and subcontractors perform vital services and manufacture the goods procured by the United States.

In addition, the improved safeguards provided by this order to strengthen compliance with anti-trafficking laws will promote economy and efficiency in Government procurement. These safeguards, which have been largely modeled on successful practices in the private sector, will increase stability, productivity, and certainty in Federal contracting by avoiding the disruption and disarray caused by the use of trafficked labor and resulting investigative and enforcement actions.

**Sec. 2. Anti-Trafficking Provisions.** (a) Within 180 days of the date of this order, the Federal Acquisition Regulatory (FAR) Council, in consultation with the Secretary of State, the Attorney General, the Secretary of Labor, the Secretary of Homeland Security, the Administrator for the United States Agency for International Development, and the heads of such other executive departments and agencies (agencies) as the FAR Council determines to be appropriate, shall take steps necessary to amend the Federal Acquisition Regulation to:

(1) strengthen the efficacy of the Government's zero-tolerance policy on trafficking in persons by Federal contractors and subcontractors in solicitations, contracts, and subcontracts for supplies or services (including construction and commercial items), by:

(A) expressly prohibiting Federal contractors, contractor employees, subcontractors, and subcontractor employees from engaging in any of the following types of trafficking-related activities:

(i) using misleading or fraudulent recruitment practices during the recruitment of employees, such as failing to disclose basic information or making material misrepresentations regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, living conditions and housing (if employer provided or arranged), any significant costs to be charged to the employee, and, if applicable, the hazardous nature of the work;

(ii) charging employees recruitment fees;

(iii) destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity documents, such as passports or drivers' licenses; and

(iv) for portions of contracts and subcontracts:

(I) performed outside the United States, failing to pay return transportation costs upon the end of employment, for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract;

(II) not covered by subsection (a)(1)(A)(iv)(I) of this section, failing to pay return transportation costs upon the end of employment, for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee; provided, however

(III) that the requirements of subsections (a)(1)(A)(iv)(I) and (II) shall not apply to:

(aa) an employee who is legally permitted to remain in the country of employment and who chooses to do so; or

(bb) an employee who is a victim of trafficking and is seeking victim services or legal redress in the country of employment, or an employee who is a witness in a trafficking-related enforcement action;

(v) other specific activities that the FAR Council identifies as directly supporting or promoting trafficking in persons, the procurement of commercial sex acts, or the use of forced labor in the performance of the contract or subcontract;

(B) requiring contractors and their subcontractors, by contract clause, to agree to cooperate fully in providing reasonable access to allow contracting agencies and other responsible enforcement agencies to conduct audits, investigations, or other actions to ascertain compliance with the TVPA, this order, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(C) requiring contracting officers to notify, in accordance with agency procedures, the agency's Inspector General, the agency official responsible for initiating suspension or debarment actions, and law enforcement, if appropriate, if they become aware of any activities that would justify termination under section 106(g) of the TVPA, 22 U.S.C. 7104(g), or are inconsistent with the requirements of this order or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor, and further requiring that the agency official responsible for initiating suspension and debarment actions consider whether suspension or debarment is necessary in order to protect the Government's interest;

(2) except as provided in subsection (a)(3) of this section, ensure that provisions in solicitations and clauses in contracts and subcontracts, where the estimated value of the supplies acquired or services required to be performed outside the United States exceeds \$500,000, include the following requirements pertaining to the portion of the contract or subcontract performed outside the United States:

(A) that each such contractor and subcontractor maintain a compliance plan during the performance of the contract or subcontract that is appropriate for the size and complexity of the contract or subcontract and the nature and scope of the activities performed, including the risk that the contract or subcontract will involve services or supplies susceptible to trafficking. The compliance plan shall be provided to the contracting officer upon request, and relevant contents of the plan shall be posted no later than the initiation of contract performance at the workplace and on the contractor or subcontractor's website (if one is maintained), and shall, at a minimum, include:

(i) an awareness program to inform employees about:

(I) the policy of ensuring that employees do not engage in trafficking in persons or related activities, including those specified in subsection (a)(1)(A) of this section, the procurement of commercial sex acts, or the use of forced labor; and

(II) the actions that will be taken against employees for violation of such policy;

(ii) a process for employees to report, without fear of retaliation, any activity that would justify termination under section 106(g) of the TVPA, or is inconsistent with the requirements of this order, or any other applicable law or regulation

establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor;

(iii) a recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host country legal requirements or explains any variance;

(iv) a housing plan, if the contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host country housing and safety standards or explains any variance; and

(v) procedures to prevent subcontractors at any tier from engaging in trafficking in persons, including those trafficking-related activities described in subsection (a)(1)(A) of this section, and to monitor, detect, and terminate any subcontractors or subcontractor employees that have engaged in such activities; and

(B) that each such contractor and subcontractor shall certify, prior to receiving an award and annually thereafter during the term of the contract or subcontract, that:

(i) it has the compliance plan referred to in subsection (a)(2)(A) of this section in place to prevent trafficking-related activities described in section 106(g) of the TVPA and this order; and

(ii) either, to the best of its knowledge and belief, neither it nor any of its subcontractors has engaged in any such activities; or, if abuses have been found, the contractor or subcontractor has taken the appropriate remedial and referral actions;

(3) specify that the requirements in subsections (a)(2)(A) and (B) of this section shall not apply with respect to contracts or subcontracts for commercially available off-the-shelf items.

(b) Not later than 1 year after the date of this order, the member agencies of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons (PITF), established pursuant to section 105 of the TVPA, 22 U.S.C. 7103, shall jointly establish a process for evaluating and identifying, for Federal contracts and subcontracts performed substantially within the United States, whether there are

industries or sectors with a history (or where there is current evidence) of trafficking-related or forced labor activities described in section 106(g) of the TVPA, in subsection (a)(1)(A) of this section, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor. Where the PITF has identified such industries or sectors, it shall notify agencies of these designations, and individual agencies shall, in consultation with the Office of Federal Procurement Policy of the Office of Management and Budget, adopt and publish appropriate safeguards, guidance, and compliance assistance to prevent trafficking and forced labor in Federal contracting in these identified areas.

**Sec. 3. Guidance and Training.** (a) The Administrator for Federal Procurement Policy shall:

(1) in consultation with appropriate management councils, such as the Chief Acquisition Officers Council, provide guidance to agencies on developing appropriate internal procedures and controls for awarding and administering Federal contracts to improve monitoring of and compliance with actions to prevent trafficking in persons, consistent with section 106 of the TVPA, including the development of methods to track the number of trafficking violations reported and remedies applied; and

(2) in consultation with the Federal Acquisition Institute and appropriate management councils, such as the Chief Acquisition Officers Council:

(A) develop methods to track the number of Federal employees trained; and

(B) implement training requirements to ensure that the Federal acquisition workforce is trained on the policies and responsibilities for combating trafficking, including on:

(i) applicable laws, regulations, and policies; and

(ii) internal controls and oversight procedures implemented by the agency, including enforcement procedures available to the agency to investigate, manage, and mitigate contractor and subcontractor trafficking violations.

(b) The member agencies of PITF shall jointly facilitate the sharing of information that may be used by acquisition, program, and other offices within agencies to

evaluate where the risk of trafficking in persons may be heightened based on the nature of the work to be performed, the place of performance, and any other relevant considerations.

Sec. 4. Effective Date. This order shall become effective immediately and shall apply to solicitations issued on or after the effective date for the action taken by the FAR Council under subsection 2(a) of this order.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(1) the authority granted by law to an executive department, agency, or the head thereof; or

(2) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA