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Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2014–0051, Sequence No. 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–80; Introduction

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

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–80. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

DATES: For effective dates see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–80 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULES LISTED IN FAC 2005–80

Item	Subject	FAR case	Analyst
I	Ending Trafficking in Persons	2013–001	Davis.
II	Management and Oversight of the Acquisition of Services	2014–008	Jackson.
III	Technical Amendments		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–80 amends the FAR as specified below:

Item I—Ending Trafficking in Persons (FAR Case 2013–001)

This final rule amends the FAR to implement Executive Order 13627 and Title XVII of the National Defense Authorization Act for Fiscal Year 2013 and promotes the United States policy prohibiting trafficking in persons. Contractors and subcontractors must disclose to employees the key conditions of employment, starting with wages and work location; no recruiting fees are allowed to be charged to employees.

Compliance plans and annual certifications are required for portions of contracts over \$500,000 performed outside the United States, except for commercially available off-the-shelf items of supply; plans shall be appropriate to the size and complexity of the contract or subcontract, and the nature and scope of the activities under the contract or subcontract. These plan exceptions will significantly reduce the impact on small entities.

Contracting officers should specify in the contract whether a written employee work document is required, which notifies the employee of certain details about the work and about trafficking in

persons. The contracting officer is also required to notify the agency Inspector General, debarring and suspending official, and, if appropriate, law enforcement of credible information regarding violations. The contracting officer is required to put into FAPIIS violations substantiated by the agency Inspector General, after a final agency determination.

Item II—Management and Oversight of the Acquisition of Services (FAR Case 2014–008)

This final rule amends the FAR to implement a recommendation to strengthen guidance on service acquisitions by incorporating at FAR 37.101 the definitions relating to “uncompensated overtime” presently set forth in FAR 52.237–10(a), except that the defined term “uncompensated overtime rate” has been changed to “adjusted hourly rate (including uncompensated overtime).” Additionally, the definition of the new term “adjusted hourly rate (including uncompensated overtime)” clarifies that the proposed hours per week include uncompensated overtime hours over and above the standard 40-hour work week. FAR 52.237–10 is further amended to clarify the application of the adjusted hourly rate, and categorization of proposed hours subject to the adjusted hourly rate. In addition, FAR 52.237–10 has been amended to reflect that all proposed labor hours subject to the adjusted hourly rate shall be identified as either regular or overtime hours, by labor categories.

Finally, FAR 37.115–2 has been amended to add a paragraph (d) to clarify that when there is uncompensated overtime, the adjusted hourly rate, rather than the hourly rate shall be applied to all proposed hours, whether regular or overtime hours.

This rule is not expected to have a significant cost or administrative impact on contractors or offerors. This final rule is also not expected to have a significant impact on contracting officers because it only clarifies policy that is already stated in the FAR. These requirements affect only the internal operating procedures of the Government.

Item III—Technical Amendments

Editorial changes are made at FAR 46.202–4, 52.212–3, and 52.225–18.

Dated: January 22, 2015.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2005–80 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–80 is effective March 2, 2015.

Dated: January 22, 2015.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: January 22, 2015.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: January 21, 2015.

William P. McNally,

Assistant Administrator, Office of Procurement National Aeronautics and Space Administration.

[FR Doc. 2015-01523 Filed 1-28-15; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 9, 12, 22, 42, and 52

[FAC 2005-80; FAR Case 2013-001; Item I; Docket 2013-0001; Sequence No. 1]

RIN 9000-AM55

Federal Acquisition Regulation; Ending Trafficking in Persons

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to strengthen protections against trafficking in persons in Federal contracts. These changes are intended to implement Executive Order (E.O.) 13627, entitled “Strengthening Protections Against Trafficking in Persons in Federal Contracts,” and title XVII of the National Defense Authorization Act for Fiscal Year 2013.

DATES: *Effective:* March 2, 2015.

Applicability: Contracting officers shall modify, on a bilateral basis, existing indefinite-delivery/indefinite-quantity contracts to include the clause for future orders, if additional orders are anticipated.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202-219-0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-80, FAR Case 2013-001.

SUPPLEMENTARY INFORMATION:

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- VI. Regulatory Flexibility Act
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II. Background

The United States has long had a policy prohibiting Government employees and contractor personnel from engaging in trafficking in persons activities, including severe forms of trafficking in persons. “Severe forms of trafficking in persons” is defined in section 103 of the Trafficking Victims Protection Act of 2000 (TVPA) (22 U.S.C. 7102) to include 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, and sex trafficking.

FAR subpart 22.17 strengthens the efficacy of the policy prohibiting trafficking in persons by codifying trafficking-related prohibitions for Federal contractors and subcontractors. It provides for the use of a clause that requires contractors and subcontractors to notify Government employees of trafficking in persons violations and puts parties on notice that the Government may impose remedies, including termination, for failure to comply with the requirements. Recent studies of trafficking in persons, including findings made by the Commission on Wartime Contracting and agency Inspectors General, as well as testimony provided at congressional hearings, have identified a need for

additional steps to prohibit trafficking in Government contracting—including regulatory action.

E.O. 13627, entitled “Strengthening Protections Against Trafficking in Persons in Federal Contracts,” issued on September 25, 2012 (77 FR 60029, October 2, 2012), and title XVII, entitled “Ending Trafficking in Government Contracting,” of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239, enacted January 2, 2013) create a stronger framework to eliminate trafficking in persons from Government contracts. The E.O. and statute provide new policies applicable to all contracts that prohibit contractors and subcontractors from engaging in prohibited practices such as destroying, concealing, confiscating, or otherwise denying access by an employee to his or her identity or immigration documents; using misleading or fraudulent recruitment practices; charging employees recruitment fees; and providing or arranging housing that fails to meet the host country housing and safety standards. Additionally, the E.O. and statute provide new policies for contracts performed outside the United States that exceed \$500,000, including a requirement for a compliance plan and annual certifications.

Contractors and subcontractors are reminded of their responsibilities associated with H-1B, H-2A, and H-2B Programs or Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and should act accordingly. Nothing in this rule shall be construed to permit a contractor or subcontractor from failing to comply with any provision of any other law, including, for example, the requirements of the MSPA, as amended, 29 U.S.C. 1801, *et seq.* and the Immigration and Nationality Act, in particular nonimmigrants entering the country under 8 U.S.C. 1101(a)(15)(H)(i)(b) (“H-1B Program”), 8 U.S.C. 1101(a)(15)(H)(ii)(a) (“H-2A Program”), or 8 U.S.C. 1101(a)(15)(H)(ii)(b) (“H-2B Program”). The requirements of these programs were not incorporated into the FAR because this rule is implementing a specific statute and E.O. which are separate and apart from the immigration laws cited and because all of the responsibilities that employers have under H-1B, H-2A, and H-2B Programs or MSPA are already enumerated in law and separate regulations.

The Federal Acquisition Regulatory Council, on March 5, 2013, sponsored a public meeting and request for comment on the implementation of E.O. 13627 and title XVII of the NDAA for FY 2013. Feedback from that meeting has been