



This document is scheduled to be published in the Federal Register on 02/12/2013 and available online at <http://federalregister.gov/a/2013-03142>, and on FDsys.gov

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice-MVC-2013-01; Docket 2013-0081; Sequence 1]

**Protections Against Trafficking In Persons In Federal
Contracts**

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

ACTION: Notice of a public meeting and request for comments.

SUMMARY: The Federal Acquisition Regulatory Council (FAR Council) is issuing this notice to announce a public meeting and request for comment on the implementation of Executive Order (E.O.) 13627, Strengthening Protections Against Trafficking In Persons In Federal Contracts, and Title XVII of the National Defense Authorization Act, Public Law 112-239, the End Trafficking In Government Contracting Act (ETGCA). Feedback will be used to help inform the development of regulations and other guidance to implement the E.O. and new statutory provisions and strengthen existing prohibitions on trafficking in persons ("TIP").

Interested parties may offer oral and/or written comments at a public meeting to be held on March 5, 2013.

Parties are also encouraged to provide all written comments directly to www.regulations.gov.

DATES: A public meeting will be conducted on March 5, 2013, at 9:00 a.m. eastern time.

Pre-Registration: The public is asked to pre-register by February 25, 2013, due to security and seating limitations. To pre-register, please send an email to Ms. Deborah Lague of the General Services Administration (GSA) at deborah.lague@gsa.gov. The pre-registration request should include the first and last name of the attendee(s), and, if applicable, company or organization name. Registration check-in will begin at 8:00 a.m. eastern time and the meeting will start at 9:00 a.m. eastern time and conclude by 12:00 p.m. eastern time. Attendees must be prepared to present a form of government issued photo identification.

Oral Public Comments: Parties wishing to make formal oral presentations at the public meeting must contact Ms. Deborah Lague by electronic mail at deborah.lague@gsa.gov no later than February 25, 2013, to be placed on the public speaker list. Time allocations for oral presentations will be limited to five minutes. All formal oral public comments should also be followed-up in writing and submitted to www.regulations.gov. When submitting your comments, search

for "Notice-MVC-2013-01" and reference "Public Comments on Protections Against Trafficking in Persons". **Note:** Requests made after the deadline for formal oral presentations will be permitted as time permits and assigned based on the order the requests are received.

Written Comments/Statements: In lieu of, or in addition to, participating in the public meeting, interested parties may submit written comments to www.regulations.gov by March 12, 2013. When submitting your comments, search for "Notice-MVC-2013-01" and reference "Public Comments on Protections Against TIP." Parties wishing to share written statements at the public meeting must submit such statements to Ms. Deborah Lague at deborah.lague@gsa.gov by February 25, 2013.

ADDRESSES: The public meeting will be held at the General Services Administration Auditorium located at 1800 F Street, NW, Washington, DC, 20405.

Meeting Accommodations: The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Ms. Lague at deborah.lague@gsa.gov or 202-694-8149 by February 25, 2013.

The TTY number for further information is: 1-800-877-8339. When the operator answers the call, let them know the

agency is the General Services Administration; the point-of-contact is Deborah Lague at 202.694-8149.

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrusek, GSA, Procurement Analyst, at 202-501-0136, for clarification of content. For public meeting information and submission of comment, contact Ms. Deborah Lague, GSA, at 202-694-8149 or deborah.lague@gsa.gov.

SUPPLEMENTARY INFORMATION: More than 20 million men, women, and children throughout the world are victims of severe forms of trafficking in persons, defined in section 103 of the Trafficking Victims Protection Act (TVPA) 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 as well as sex trafficking. As the largest single purchaser of goods and services in the world, the Federal Government bears a responsibility to ensure that taxpayer dollars do not contribute to trafficking.

The United States has long had a zero-tolerance policy regarding Government employees and contractor personnel engaging in any form of this criminal behavior. FAR Subpart 22.17 codifies the zero tolerance policy. It provides for the use of a clause that requires contractors and

subcontractors to notify government employees of trafficking violations and puts parties on notice that the government may impose remedies, including termination, for failure to comply with the requirements.

Recent studies of TIP, including findings made by the Commission on Wartime Contracting and agency Inspectors General, pointed to the need for strengthened guidance and tools to address TIP. Both E.O. 13627, issued on September 25, 2012, and the ETGCA, which became law on January 2, 2013, create a stronger framework for agency prevention of trafficking by, among other things, (i) clarifying what constitutes trafficking or trafficking-related activities in the Federal supply chain, (ii) requiring contractors in certain circumstances to maintain compliance plans to help ensure their employees do not engage in, or become complicit to, human trafficking in their supply chain, and (iii) establishing requirements for training the Federal acquisition workforce.

For example, E.O. 13627:

- Expressly prohibits Federal contractors, contractor employees, subcontractors and subcontractor employees from (i) failing to disclose basic information or making material misrepresentations regarding the key terms, location, and conditions of employment, (ii)

charging employees recruitment fees, (iii) destroying or denying access to an employee's identify documents, and (iv) failing to pay return transportation costs, with certain exceptions, where work is performed outside the United States and the employee 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;

- Directs that for portions of contract and subcontract work (other than commercially available off-the-shelf items) performed outside the United States where the estimated value of the work performed abroad exceeds \$500,000, federal contractors and subcontractors shall maintain an appropriate compliance program during the performance of the contract or subcontract, which shall include: an awareness program for employees, a process for employees to report trafficking-related legal violations, a wage and housing plan in applicable circumstances, and procedures to promote compliance by their subcontractors;
- Requires covered contractors and subcontractors to certify, both before receiving a contract and annually thereafter during the term of the contract or

subcontract, to their maintenance of a compliance plan and their lack of engagement in (or remediation and referral of) any trafficking related activities; and

- Directs federal contracting officers to provide notification of trafficking-related violations by contractors or subcontractors to agency Inspectors General and agency officials responsible for suspension and debarment actions.

E.O. 13627 also instructs the Administrator for Federal Procurement Policy to develop guidance to assist agencies in training the Federal acquisition workforce regarding the anti-trafficking obligations of contractors and subcontractors.

Many similar (but not identical) provisions are contained in the ETGCA. In addition, the ETGCA amends title 18 of the United States Code to extend criminal prohibitions against fraudulent labor practices, including trafficking, to contractors and subcontractors overseas. Effective implementation of the trafficking safeguards provided by E.O. 13627 and the ETGCA will increase stability, productivity, and certainty in federal contracting and avoid the disruption and disarray caused by the use of trafficked labor and resulting investigative and enforcement actions.

The FAR Council seeks public comment on the most effective and least burdensome approaches for implementing E.O. 13627 and the ETGCA (which it currently plans to implement through one rulemaking). The input will be considered during the rulemaking process as the FAR Council develops and refines amendments to FAR Subpart 22.7 and other relevant FAR parts to address these actions.

The Council especially welcomes public comment on the following issues:

1. Focus of guidance. What requirements do you think are in greatest need of guidance to ensure the goals of E.O. 13627 and the ETGCA are met and what guidance do you recommend?

2. Contractor practices. Studies indicate that a number of private sector companies have established, or are in the process of establishing, codes of conduct to eliminate trafficked labor from their supply chains.

a. If you are a contractor, do you already have a code of conduct or plan that addresses trafficked labor? If so, what behavior does it address and what controls does it require? Does your entity perform a significant amount of work overseas? Based on your reading of E.O. 13627 and the ETGCA, what actions do you envision having to take as a government contractor (or subcontractor) beyond what you

already are doing to be in compliance with these new requirements?

b. Either based on experience or research of the marketplace, what practices are most effective in prohibiting TIP by contractor and subcontractor employees? What practices will help contractor and subcontractor employees comply with the requirements of E.O. 13627 and the ETGCA?

3. Oversight. E.O. 13627 requires federal contractors and subcontractors to allow contracting agencies and other responsible enforcement agencies to have reasonable access to conduct audits, investigations, and other compliance activities. This provision is modeled after a similar requirement in E.O. 13126, which established requirements to ensure that federal agencies do not procure goods made by forced or indentured child labor. Have you had any experiences with the application of audits under E.O. 13126 that the Council should be aware of as it develops its implementing guidance?

4. Burden considerations. Both E.O. 13627 and the ETGCA make clear that plans and procedures shall be appropriate to the size and complexity of the contract and to the nature and scope of activities to be performed. As the Council develops regulations to implement this guiding

principle and evaluates burden associated with potential guidance, it seek input on the following—

a. What are the types of personnel that you would anticipate being involved in developing and maintaining compliance plans and certifications (e.g., compliance officers, attorneys, human capital specialists)?

b. What do you view to be the most significant drivers of cost in developing and maintaining the plan (e.g., general corporate governance; and

c. What assumptions should the Council make about the amount of labor hours and associated costs required to meet the contractor responsibilities in E.O. 13627 and the law?

Dated: February 6, 2013.

William Clark,
Acting Director,
Federal Acquisition Policy Division,
Office of Governmentwide Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

[Billing Code 6820-EP]

[FR Doc. 2013-03142 Filed 02/11/2013 at 8:45 am; Publication Date:
02/12/2013]