

Recommendations

The following recommendations should be applied across the U.S. government’s procurement regulations, policy and guidance documents, and procurement activities. While Transparentem recognizes that some of the recommendations have been implemented to varying extents, there is room for improvement.

We have provided examples of how these recommendations may be integrated into the Federal Acquisition Regulation (FAR) to illustrate their potential application to the United States Government’s procurement materials. These examples address gaps and deficits in the present FAR language and model how the United States Government may improve human rights due diligence in its procurement supply chains.

Within the following recommendations, a ‘**contractor**’ refers to any entity with a direct contractual relationship with a public buyer to provide goods or services in fulfillment of a government contract. A ‘**subcontractor**’ refers to any entity contracted by the contractor or by subcontractors to contribute to the fulfillment of a government contract (including the ‘contractors’ suppliers’ and ‘suppliers’ to the contractors’ suppliers’ detailed above).

Policy Development

1. Align the FAR’s definition of forced labor with U.S. trade law and adopt the “menace of penalty” standard to ensure consistency across regulatory schemes.

The trade law definition is “all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer work or service voluntarily.”¹ FAR 22.17 states that 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.”²

2. Human trafficking should be considered in relation to all contracts on the basis of risk, rather than considered only on bases of contract value or type. Such limitations can undermine public buyers’ efforts to carry out appropriate human trafficking risk management measures.³

FAR Application:

- **22.1701 (b)** – Add a separate qualification “is determined to be high-risk for human trafficking” for the requirement for a certification and compliance plan for any portion of a contract or subcontract. This will apply the requirement regardless of whether any portion of a contract or subcontract meets the first two criteria (related to contract value or type).
- **22.1703 (a)(9)** – Remove “If required by contract or law” as a necessary component for the prohibition of failing to provide an employment contract or recruitment agreement in writing in accordance with the subpart.

- **52.209-6 (c)** – Apply to all subcontractors the requirement that subcontractors disclose debarment, suspension, proposed debarment, or voluntary exclusion by the Federal Government regardless of whether the subcontractor is providing COTS items.
- 3. Publicly disclose all procurement anti-trafficking practices and policies, contractors and subcontractors involved in the performance of a contract, violations of anti-trafficking requirements and subsequent remediation in government supply chains.⁴

FAR Application:

- **52.222-50 (h)(4)(i) & (5)** – Disclose compliance plans and certifications in full through SAM.gov.
 - **4.1401 (b)** – Align subcontractor applicability of the subpart, which requires contractors to report subcontract award data, and currently limits applicability to the first-tier contractor, with the Federal Funding Accountability and Transparency Act of 2006 (FFATA). FFATA defines in-scope entities as “any subcontractor or subgrantee.”⁵
 - **52.204-10 (a)** – Remove the ‘first-tier subcontract’ definition’s exclusion of long-term vendor agreements for materials or supplies.
4. Consider establishing purchasing consortia with anti-trafficking expertise to organize procurement across agencies for high-risk sectors.⁶
- Purchasing consortia can provide significant procurement value and cost efficiencies to agencies, in addition to the efficiencies gained from agencies pooling anti-trafficking capabilities and resources.

Pre-Tender Phase

1. Require contracting officers to reference the Bureau of International Labor Affairs’ List of Goods Produced by Child Labor or Forced Labor during the pre-tender phase to meaningfully assess labor rights risks per contract.⁷ Further, require contracting officers to check the List against proposed acquisitions as end-products and as inputs to other end-products on the List to ensure adequate due diligence is applied to any goods that may be produced in part through human trafficking.⁸

FAR Application:

- **22.1703 (c)** – Require contracting officers to reference the List during the pre-tender phase to meaningfully assess human rights risks.
- 2. Require potential contractors and subcontractors to disclose how they identify and manage human trafficking risks in their operations and supply chains,⁹ and whether they have been subject to any judicial, administrative, or otherwise credible allegations related to human trafficking.¹⁰

As smaller companies may have less capacity to conduct comprehensive supply chain due diligence, evaluations of these disclosures should consider company annual turnover, resources, and human trafficking risks.¹¹

FAR Application:

- **52.222-50 (h)(4)(ii)** – Require apparent successful offerors to provide compliance plans, not just certifications of compliance plans, prior to contract award.

- **22.1703 (c)(5)** – Require Contracting Officers to review compliance plans before award decisions are made.
 - **52.209-5 (a)(1)(i)(B)** – Require offerors to certify that they have not, within a three-year period preceding the offer, been convicted or had a civil judgment rendered against them or received credible information regarding forced labor at their operations or within their supply chain.
 - **52.209-7 (1)** – Remove the exclusions that restrict offerors with current active Federal contracts and grants with total value greater than \$10,000,000 from certifying that their disclosure in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of the offer in regard to convictions or findings of fault or liability that are connected with federal awards, and convictions or findings of fault or liability to U.S. based federal or state proceedings.
3. Disqualify companies from public tendering if they have failed to take positive, proactive steps to address human trafficking risks and cases in their operations or supply chains following a reasonable window for action.¹²

FAR Application:

- **9.104-1 (d)** – In order for a contracting officer to determine a prospective contractor is responsible, require contracting officers to evaluate the prospective contractor’s history of human rights performance and remediation.
- **9.104-1 (e)** – In order for a contracting officer to determine a prospective contractor is responsible, require contracting officers to evaluate whether the prospective contractor has in place the necessary operational controls and safety programs to address the risk of adverse human rights impacts.

Tender Phase

Technical Specifications and Clauses

Embed anti-trafficking requirements and obligations into the technical specifications and clauses of supplier eligibility requirements, tender requirements, and tender award criteria.¹³

Requirements and obligations must apply to subcontractors.¹⁴

Supplier Relations Management

Offer educational and training programs to support smaller or less-resourced potential contractors and subcontractors navigate compliance and adequately manage human trafficking risks.¹⁵

Post-Tender Phase

Monitoring

Conduct supply chain risk management at and around production facilities in high-risk sectors to evaluate contractor and subcontractor contractual compliance and assure that relevant responsibilities are fulfilled.¹⁶

Audits and other assessments of contractor and subcontractor compliance should maximize worker agency and be structured to minimize the risks of audit deception and maximize public transparency. Public buyers should be aware that traditional audits often do not uncover extreme labor abuses. See Transparentem’s report [Hidden Harm](#) for more details.

Internal Capacity Building

1. Develop and mandate function-specific training on human trafficking risk management for all public procurement officials at the point of hiring and annually thereafter.¹⁷
Function-specific training can increase training efficiency and impact. It is important for officials across various roles, and with varying responsibilities, to understand how to identify, respond to, and report cases of abuse,¹⁸ and how to include anti-trafficking terms in all tender and contract documentation.¹⁹
2. Collaborate and share information regarding best practices and lessons learned for risk management, both domestically—with other federal agencies, including Customs and Border Protection’s Forced Labor Division, and procurement bodies—and internationally—with other governments and public buyers.²⁰

Reporting & Grievance Mechanism

1. Require contractors and subcontractors to widely advertise the contact information of the Global Human Trafficking Hotline, referenced in FAR 52.222-50, at and around worksites for affected individuals or relevant stakeholders to report any adverse impact from contractor or subcontractor actions.²¹

FAR Application:

- **52.222-50 (h)(3)(ii)** – Require compliance plans to include the process of advertising this contact information specifically at and around worksites.
2. Apply the Trafficking Victims Protection Act’s definition of ‘credible information’ throughout the FAR, which currently does not define ‘credible information,’ to explicitly outline for contractors what information, and which sources, the U.S. government considers as credible reports of human trafficking.

The Trafficking Victims Protection Act of 2017 defined ‘credible information’ as inclusive of “all of the following: (A) Reports by the Department of State. (B) Reports of other Federal agencies, including the Department of Labor’s List of Goods Produced by Child Labor or Forced Labor and List of Products Produced by Forced Labor or Indentured Child Labor. (C) Documentation provided by a foreign country, including—(i) copies of relevant laws, regulations, and policies adopted or modified; and (ii) an official record of enforcement actions taken, judicial proceedings, training conducted, consultations conducted, programs and partnerships launched, and services provided. (D) Materials developed by civil society organizations. (E) Information from survivors of human trafficking, vulnerable persons, and whistleblowers. (F) All relevant media and academic reports that, in light of reason and common sense, are worthy of belief. (G) Information developed by multilateral institutions. (H) An assessment of the

impact of the actions described in subparagraphs (A) through (I) of paragraph (5) on the prevalence of human trafficking in the country.”²²

FAR Application:

- **22.1702 & 52.222-50 (a)** – Include this definition of ‘credible information.’

Remedy

Require contractors and subcontractors that contribute to or cause harm to individuals during the contract performance to provide effective remediation.²³ If contractors or subcontractors are unwilling or unable to do so, public buyers should provide remediation themselves.

Effective remedy for affected parties should align with international standards and be developed with rights-holders as well as their legitimate representatives and trade unions.²⁴

¹ 19 U.S.C. § 1307 (2023)

² 48 C.F.R. § 22.17 (2023)

³ Amanze, M., and A. Eyo. (2023). Strengthening the Prohibition of Forced or Indentured Child Labor in Government Contracts: A Critical Analysis of FAR Subpart 22.15. <https://oro.open.ac.uk/83600/>; Martin-Ortega, O., Trusgnach, M., & Berman, C. (2024). Push, pull, dance: Approaches to address labour abuse in public health supply chains. <https://doi.org/10.1177/00221856241242222>

⁴ OECD. (2022). Pilot on Integrating OECD Due Diligence into Public Procurement in the Garment Sector. <https://mneguidelines.oecd.org/pilot-on-integrating-oecd-due-diligence-into-public-procurement-in-the-garment-sector.pdf>

⁵ 31 U.S.C. §§ 6101 note, 6106 (2023) (emphasis added)

⁶ Rogerson, M., Grosvold, J., & Alves, K. (2024). Climate change and modern slavery in public procurement. <https://www.unseenuk.org/wp-content/uploads/2024/01/Procurement-modern-slavery-full-report-1.pdf>

⁷ Amanze, M., and A. Eyo. (2023). Strengthening the Prohibition of Forced or Indentured Child Labor in Government Contracts: A Critical Analysis of FAR Subpart 22.15. <https://oro.open.ac.uk/83600/>

⁸ Amanze, M., and A. Eyo. (2023). Strengthening the Prohibition of Forced or Indentured Child Labor in Government Contracts: A Critical Analysis of FAR Subpart 22.15. <https://oro.open.ac.uk/83600/>

⁹ Rogerson, M., Grosvold, J., & Alves, K. (2024). Climate change and modern slavery in public procurement. <https://www.unseenuk.org/wp-content/uploads/2024/01/Procurement-modern-slavery-full-report-1.pdf>

¹⁰ Amanze, M., Cahill, D., & Evans, C. (2022). Tackling Human Trafficking in Governments Supply Chains: Legal Certainty and Effectiveness Issues Under the Australian Commonwealth Procurement Rules Model. <https://doi.org/10.1177/0067205X221126554>

¹¹ Rogerson, M., Grosvold, J., & Alves, K. (2024). Climate change and modern slavery in public procurement. <https://www.unseenuk.org/wp-content/uploads/2024/01/Procurement-modern-slavery-full-report-1.pdf>

¹² Rogerson, M., Grosvold, J., & Alves, K. (2024). Climate change and modern slavery in public procurement. <https://www.unseenuk.org/wp-content/uploads/2024/01/Procurement-modern-slavery-full-report-1.pdf>

¹³ Amanze, M., and A. Eyo. (2023). Strengthening the Prohibition of Forced or Indentured Child Labor in Government Contracts: A Critical Analysis of FAR Subpart 22.15. <https://oro.open.ac.uk/83600/>; Amanze, M., Cahill, D., & Evans, C. (2022). Tackling Human Trafficking in Governments Supply Chains: Legal Certainty and Effectiveness Issues Under the Australian Commonwealth Procurement Rules Model. <https://doi.org/10.1177/0067205X221126554>; New Zealand Ministry of Business, Innovation and Employment. (2022). Consultation on legislation to address modern slavery and worker exploitation: Summary of feedback. <https://www.mbie.govt.nz/assets/consultation-on-legislation-to-address-modern-slavery-and-worker-exploitation-summary-of-feedback.pdf>; Rogerson, M., Grosvold, J., & Alves, K. (2024). Climate change and modern slavery in public procurement. <https://www.unseenuk.org/wp-content/uploads/2024/01/Procurement-modern-slavery-full-report-1.pdf>

¹⁴ New Zealand Ministry of Business, Innovation and Employment. (2022). Consultation on legislation to address modern slavery and worker exploitation: Summary of feedback. <https://www.mbie.govt.nz/assets/consultation-on-legislation-to-address-modern-slavery-and-worker-exploitation-summary-of-feedback.pdf>

¹⁵ De Aguinaga, S.G. (2022). Evidence review: Effectiveness of public procurement measures at addressing modern slavery in supply chains. <https://modern-slavery.files.svdcdn.com/production/assets/downloads/Public-procurement-evidence-review-final.pdf?dm=1667559321>

¹⁶ Rogerson, M., Grosvold, J., & Alves, K. (2024). Climate change and modern slavery in public procurement. <https://www.unseenuk.org/wp-content/uploads/2024/01/Procurement-modern-slavery-full-report-1.pdf>; United States Government Accountability Office. (2024). Report to Congressional Committees - HUMAN TRAFFICKING: Agencies Need to Adopt a Systematic Approach to Manage Risks in Contracts. <https://www.gao.gov/assets/gao-24-106973.pdf>

¹⁷ Rogerson, M., Grosvold, J., & Alves, K. (2024). Climate change and modern slavery in public procurement. <https://www.unseenuk.org/wp-content/uploads/2024/01/Procurement-modern-slavery-full-report-1.pdf>

¹⁸ Rogerson, M., Grosvold, J., & Alves, K. (2024). Climate change and modern slavery in public procurement. <https://www.unseenuk.org/wp-content/uploads/2024/01/Procurement-modern-slavery-full-report-1.pdf>

¹⁹ Amanze, M., Cahill, D., & Evans, C. (2022). Tackling Human Trafficking in Governments Supply Chains: Legal Certainty and Effectiveness Issues Under the Australian Commonwealth Procurement Rules Model. <https://doi.org/10.1177/0067205X221126554>

²⁰ OECD. (2022). Pilot on Integrating OECD Due Diligence into Public Procurement in the Garment Sector. <https://mneguidelines.oecd.org/pilot-on-integrating-oecd-due-diligence-into-public-procurement-in-the-garment-sector.pdf>

²¹ New Zealand Ministry of Business, Innovation and Employment. (2022). Consultation on legislation to address modern slavery and worker exploitation: Summary of feedback. <https://www.mbie.govt.nz/assets/consultation-on-legislation-to-address-modern-slavery-and-worker-exploitation-summary-of-feedback.pdf>

²² Trafficking Victims Protection Act of 2017, Pub. L. No. 115-164, 132 Stat. 1257 (2018)

²³ New Zealand Ministry of Business, Innovation and Employment. (2022). Consultation on legislation to address modern slavery and worker exploitation: Summary of feedback. <https://www.mbie.govt.nz/assets/consultation-on-legislation-to-address-modern-slavery-and-worker-exploitation-summary-of-feedback.pdf>

²⁴ Martin-Ortega, O., Trusgnach, M., & Berman, C. (2024). Push, pull, dance: Approaches to address labour abuse in public health supply chains. <https://doi.org/10.1177/00221856241242222>