

EVOLVING COMPLIANCE REQUIREMENTS: **Addressing Human Trafficking**



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AS SET FORTH in the Winter 2015 edition of *Surety Bond Quarterly*, federal government contractors must comply with various contract requirements, such as limitations on the ability to subcontract and requirements on the wages paid to employees. Contractors' failure to comply with these requirements places contractors at serious risk, with liability under the civil False Claims Act, suspension, debarment, and contract termination. This article addresses the new compliance obligations relating to human trafficking and is the second in a series of articles that address the hot topic of federal government contract compliance.

Most federal construction contractors hear the term "human trafficking" and immediately believe that their businesses have nothing to do with the practice and that they should not be concerned with the issue. Nothing could be further from the truth. While human trafficking may not be on most construction contractors' radar screens, recent developments in federal policies and procurement regulations should have all contractors paying particular attention to this quickly developing topic. Recent amendments to the Federal Acquisition Regulation, in addition to the President's announced intent to enforce these regulations, mean that contractors must take affirmative actions to comply with the law in this area and mitigate their risk for non-compliance.

Set forth below is a discussion of important federal regulations addressing human trafficking in federal procurement of which surety professionals and their contractors should be aware, two case studies that highlight the importance of complying with current human trafficking policies and legislation, and conclusions for surety professionals and their contractors.

A. Anti-Human Trafficking Compliance Requirements are Stringent

In recent years, the federal government has taken a keen interest in identifying and preventing human trafficking, with the government identifying human trafficking as both sex trafficking and labor trafficking. With the goal of preventing human trafficking, the government has identified a number of activities that are associated with human trafficking, and the government has chosen to advance its stated policy of preventing trafficking by imposing restrictions on contractors.

In 2015, the Federal Acquisition Regulation (FAR) Council issued a final anti-trafficking rule that prohibits contractors from engaging in certain activities. Under the FAR, contractors must adhere to a "zero-tolerance policy" that prohibits them or their subcontractors' employees from (1) engaging



in “severe forms of trafficking,” including both commercial sex and coercive labor trafficking; (2) procuring commercial sex acts; (3) using forced labor in the performance of contracts; (4) preventing access to an employee’s identity or immigration documents; (5) using misleading employee recruitment practices or recruiters who do not comply with local laws; (6) charging employees recruitment fees; (7) failing to provide employees with return transportation at the end of employment; (8) housing employees in conditions that violate local law; and (9) failing to provide an employment contract in writing. In addition, the FAR also requires certain contractors to maintain a compliance plan designed to detect and deter human trafficking.

B. Consequences for Compliance Failures are Severe

Penalties for violating these prohibitions are severe. Contractors may be terminated, suspended and debarred, or face civil liability and penalties for violations. Moreover, the threat of these penalties is heightened by increased enforcement of the anti-trafficking rules, where certain contractors found in violation have paid a high price, both to their finances and to their reputation. Two recent examples highlight this area of concern.

In July 2011, ArmorGroup North America (ArmorGroup) and its affiliates paid the government \$7.5 million to settle False Claims Act allegations that the company submitted false invoices regarding charges for its services to protect the U.S. embassy in Kabul, Afghanistan. The settlement resolved allegations that ArmorGroup violated the Trafficking Victims Protection Act, a precursor to the FAR’s anti-trafficking regulations addressed above, by ignoring calls that its employees frequented brothels that might have been engaged in sex trafficking. Under the False Claims Act, the government may have been able to recover up to three times the amount of the false invoices, plus civil penalties.

Further, in 2015, Signal International (Signal), a U.S. shipbuilding and oil rig repair firm with multiple government contracts, agreed to pay approximately \$20 million to resolve all human trafficking lawsuits involving exploited Indian guest workers. Signal sought additional workers to repair storm-damaged oil rigs in the aftermath of Hurricane Katrina. Workers claimed that Signal colluded with recruiters to lure them into the U.S. to work as welders and pipefitters under a guest worker visa program. It was alleged that workers were falsely promised permanent U.S. residency and were each charged thousands of dollars in recruitment and travel fees to work in the U.S., only to find themselves forced into involuntary servitude. Workers paid Signal \$1,050 per month to live under inhumane conditions in guarded and overcrowded labor camps.

Accordingly, with these steep penalties and the clear ongoing efforts to enforce anti-trafficking laws, contractors are well-advised to comply with anti-trafficking requirements.

C. Conclusions for Surety Professionals and their Contractors

As addressed above, the failure to comply with human trafficking laws can result in severe ramifications. Termination for default, suspension and debarment, and False Claims Act and civil lawsuits may be used against a non-compliant government contractor, with any one of these mechanisms capable of serving a crippling blow to a contractor’s business. Therefore, surety professionals should advise their contractors to pay particular attention to their responsibilities and obligations in connection with the anti-trafficking regulations. In this regard, construction contractors should conduct a “housekeeping” check to ensure that they are in compliance with the new requirements and keep in mind several important elements of the new anti-trafficking requirements. Specifically, construction contractors should:

- Confirm that contracts contain anti-human trafficking requirements, specifically whether contracts contain FAR 52.222-56, Certification Regarding Trafficking in Persons Compliance Plan, or FAR 52.222-50, Combating Trafficking in Persons;
- Notify employees and subcontractors of the activities in which they cannot engage under the government’s zero-tolerance policy;
- Notify employees of the actions that can be taken against them in the event they violate that zero-tolerance policy;
- Prepare and implement an anti-human trafficking compliance plan consistent with the FAR’s requirements; and
- Contact knowledgeable counsel in the event employees engage in any activity that could violate the government’s zero-tolerance policy.

With these measures, construction contractors can significantly reduce their risk of non-compliance with the federal government’s new anti-human trafficking requirements. ●

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Be sure to read Avery’s next article in the Summer 2016 edition of *Surety Bond Quarterly* on designated business entities requirements in prime contracts and recent developments in DBE-related fraud and enforcement.