22.1604 Compliance evaluation and complaint investigations and sanctions for violations.

(a) The Secretary may conduct compliance evaluations or investigate complaints of any contractor or subcontractor to determine if any of the requirements of the clause at 22.222–40 have been violated.

(b) Contracting departments and agencies shall cooperate with the Secretary and provide such information and assistance as the Secretary may require in the performance of the Secretary’s functions.

(c) If the Secretary determines that there has been a violation, the Secretary may take such actions as set forth in 29 CFR 471.14.

(d) The Secretary may not terminate or suspend a contract or suspend or debar a contractor if the agency head has provided written objections, which must include a statement of reasons for the objection and a finding that the contractor’s performance is essential to the agency’s mission, and continues to object to the imposition of such sanctions and penalties. Procedures for enforcement by the Secretary are set out in 29 CFR 471.10 through 29 CFR 471.16.

22.1605 Contract clause.

(a) Insert the clause at 22.222–40, Notification of Employee Rights under the National Labor Relations Act, in all solicitations and contracts, including acquisitions for commercial items and commercially available off-the-shelf items, except acquisitions—

(1) Under the simplified acquisition threshold. For indefinite-quantity contracts, include the clause only if the value of orders in any calendar year of the contract is expected to exceed the simplified acquisition threshold;

(2) For work performed exclusively outside the United States; or

(3) Covered (in their entirety) by an exemption granted by the Secretary.

(b) A contracting agency may modify the clause at 22.222–40, if necessary, to reflect an exemption granted by the Secretary (see 22.1608(b)).
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22.1704 Violations and remedies.

(a) Violations. The Government may impose the remedies set forth in paragraph (b) of this section if—

(1) The contractor, contractor employee, subcontractor, or subcontractor employee engages in severe forms of trafficking in persons during the period of performance of the contract;

(2) The contractor, contractor employee, subcontractor, or subcontractor employee uses forced labor in the performance of the contract; or

(3) The contractor fails to comply with the requirements of the clause at 53.223-50, Combating Trafficking in Persons.

(b) Remedies. After determining in writing that adequate evidence exists to suspect any of the violations at paragraph (a) of this section, the contracting officer may pursue any of the remedies specified in paragraph (e) of the clause at 53.223-50, Combating Trafficking in Persons. The contracting officer may take into consideration whether the contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining the appropriate remedies. These remedies are in addition to any other remedies available to the United States Government.

22.1705 Contract clause.

(a) Insert the clause at 22.222-50, Combating Trafficking in Persons, in all solicitations and contracts.

(b) Use the basic clause with its Alternate I when the contract will be performed outside the United States (as defined at 22.203) and the contracting officer has been notified of specific U.S. directives or notices regarding combating trafficking in persons (such as general orders or military listings of "shadiness" local establishments) that apply to contractor employees at the contract place of performance.

[72 FR 46841, Aug. 17, 2007]

Subpart 22.18—Employment Eligibility Verification

SOURCE: 72 FR 67703, Nov. 14, 2007, unless otherwise noted.

22.1800 Scope.

This subpart prescribes policies and procedures requiring contractors to utilize the Department of Homeland Security (DHS), United States Citizenship and Immigration Service’s employment eligibility verification program (E-Verify) as the means for verifying employment eligibility of certain employees.

22.1801 Definitions.

As used in this subpart—

Commendatory available off-the-shelf (COTS) item—

(1) Means any item of supply that is

(A) A commercial item (as defined in paragraph (1) of the definition at 2101);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1916 (46 U.S.C. App. 1722), such as agricultural products and petroleum products. Per 46 CFR 252.1(c)(3), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

Employee assigned to the contract means an employee who was hired after November 6, 1986, who is directly performing work in the United States, under a contract that is required to include the clause prescribed at 22.1303. An employee is considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

Subcontract means any contract, as defined in 2101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, change orders, and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

United States, as defined in 8 U.S.C. 1101(a)(36), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

22.1802 Policy.

(a) Statutes and Executive orders require employers to abide by the immigration laws of the United States and to employ in the United States only individuals who are eligible to work in the United States. The E-Verify program provides an Internet-based means of verifying employment eligibility of workers employed in the United States, but is not a substitute for any other employment eligibility verification requirements.

(b) Contracting officers shall include in solicitations and contracts, as prescribed at 22.1801, requirements that Federal contractors must—

(1) Enroll as Federal contractors in E-Verify;

(2) Use E-Verify to verify employment eligibility of all new hires working in the United States, except that the contractor may choose to verify