

**To:** Contract & Grants Officers

**Subject:** Federal Clauses on Trafficking in Persons, Prostitution, and Related Activities

[Reissue of Memo 11-02](#)

**Background**

Federal agencies are required to implement federally legislated restrictions against sex trafficking, prostitution, and related activities via contract clauses and grant terms. As the sources of these restrictions may be in different pieces of federal legislation, the clauses and their requirements may differ accordingly.

The 2013 Supreme Court decision in [Agency for International Development v. Alliance for Open Society International, Inc](#) affects previously issued guidance in [RPAC Memo 11-02](#).

**Contract Clauses and Grant Terms**

The federal grants and cooperative agreements award term for Trafficking in Persons, [2 CFR Part 175](#) which implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), requires that the recipient employees and subrecipients under the award may not:

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or subawards under the award.

The award can be terminated if a recipient or subrecipient employee under the award engages in such practices. The recipient must immediately inform the federal funding agency "...of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term." This grant term is included in all subawards.

Federal Acquisition Regulation [FAR 52.222-50, Combating Trafficking in Persons](#), sets forth the requirements below for federal contractors:

- b) Policy. The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—
  - (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
  - (2) Procure commercial sex acts during the period of performance of the contract; or
  - (3) Use forced labor in the performance of the contract.

Under this contract clause, the Contractor shall:

(1) Notify its employees of—

(i) The United States Government's zero tolerance policy described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* The Contractor shall inform the Contracting Officer immediately of—

(1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and

(2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

Failure of an Employee or Contractor to comply with these requirements may result in the Government requiring the Contractor to remove a Contractor employee or employees from the performance of the contract; requiring the Contractor to terminate a subcontract; suspending contract payments; terminating the contract for default or cause, in accordance with the termination clause of this contract; or suspending or debarring the Contractor.

FAR 52.222-50 is a required flow-down term in subcontracts.

There is a possibility that the Department of Health and Human Services (DHHS) may insert Acquisition Regulation (HHSAR) [352.270-8, Prostitution and Related Activities](#) in solicitations and contracts

in connection with the implementation of HIV/AIDS programs under the President's Emergency Plan for AIDS Relief; or where the contractor will receive funding under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 ([HHSAR 370.701](#)).

This HHSAR contract clause requires the Contractor to have “a policy explicitly opposing prostitution and sex trafficking.” Additionally, the Contractor must have and maintain “‘objective integrity and independence’ from any organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking.” Finally, the clause requires the Contractor to certify: 1) this previous statement; 2) that any subcontractor will certify the same; and 3) acknowledge the certification as a prerequisite to receipt of funding under this contract. The clause must be flowed-down to subcontractors and does not “affect the applicability of the FAR clause at 52.222-50...”

The Supreme Court’s recent decision in *Agency for International Development v. Alliance for Open Society International* ruled the above clause unconstitutional. Therefore, HHS and USAID should

discontinue their use of this clause. However, if a contract or solicitation includes this clause, campuses should request removal pursuant to the Supreme Court's decision.

## Guidance

As set forth in the terms and clauses described above, federal law prohibits trafficking in persons, procuring commercial sex acts, or using forced labor in the performance of a federal award. California law also prohibits prostitution (both engaging in and soliciting prostitution), and individuals who violate the law may be subject to criminal prosecution. Federal contracts and grants condition the receipt and funding of awards on compliance with specific federal requirements. The awarding agency may terminate the award for violations. Employees who violate these requirements may be subject to removal from the contract, disciplinary action up to and including termination of employment, and criminal prosecution.

University of California's [Statement of Ethical Values](#) sets forth its "*Standards of Ethical Conduct*," which include "Compliance with Applicable Laws and Regulations." This encompasses an expectation of compliance with the applicable federal laws and regulations referenced in this Memo.

In addition to the above statements of the University's compliance with federal and State laws, employees under federal contracts which contain [FAR 52.222-50, Combating Trafficking in Persons](#) must receive a notification of "the United States Government's zero tolerance policy described in paragraph (b) of this clause."

The attachment to this Memo provides a sample letter for campuses to give to any University employee paid under federal contracts with this FAR clause.

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**Attachment:** Sample Notification Letter