

**National Action Plan on Responsible Business Conduct
Federal Procurement Recommendations**

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Supply chains are increasingly global as production continues to move to countries with lower production costs and wages, and sub-standard human and labor rights compliance. In its procurement practices, the U.S. government relies on these same global supply chains, all too often purchasing goods produced in environments where rights violations are commonplace. U.S. procurement contracts frequently reward sellers who offer the lowest bid, with insufficient consideration of how they operate and, especially, how they treat their workers.

According to the [International Corporate Accountability Roundtable](#) (the “Roundtable”), human rights violations occur across myriad sectors in U.S. government supply chains, including electronics, minerals, logistical and security support abroad, apparel, and agriculture. The Roundtable points to excessive working hours, harsh and unsafe working conditions, child and forced labor, and debt bondage. Today, U.S. agencies dedicate insufficient resources to monitoring these supply chains and addressing violations of the rights of workers in producing countries. This means that U.S. taxpayers are inadvertently implicated in the ongoing mistreatment of foreign workers.

These widespread violations undermine U.S. economic interests and are at odds with our values. *First*, workers who are treated humanely typically are more reliable, more productive, and less likely to defraud their employers. *Second*, ensuring [fair competition](#) animates much of U.S. procurement law, but relying on lowest-price contracting creates incentives for companies to use subcontractors with access to low-cost labor in countries where the rule of law is not respected. Contractors who can offer lower prices because they or their subcontractors violate the rights of workers gain an unfair advantage over contractors, including American companies, that pay higher prices to maintain adequate human rights standards and comply with domestic labor regulation. *Finally*, supporting supply chains in which rights are violated frustrates U.S. foreign policy, including efforts to improve national security and alleviate poverty.

With purchases that total more than \$600 billion in goods and services each year, the U.S. government’s market power is powerful potential leverage with which to strengthen the protection

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of workers' rights. If the U.S. government sets a high standard in this regard, other governments are more likely to follow, as will global brands and retailers as well as their suppliers.

Recently, the U.S. has taken promising steps to address these issues, including the closure of the so-called consumptive demand exemption in the Smoot-Hawley Tariff Act. This action enhanced the ability of the Custom and Border Patrol ("CBP") to prevent the importation of goods it has reason to believe were created wholly or in part by forced labor. The current version of the Federal Acquisition Regulations (FAR) also takes steps to address these issues by (1) prohibiting all contractors, their subcontractors, and employees from engaging in human trafficking, forced labor, and associated practices; (2) tasking contractors with notifying the relevant agency of any credible allegations of violations; and (3) requiring certain contractors to draft compliance plans and certify that such plans have been implemented; they must stipulate that, to the best of the contractor's knowledge, prohibited activities have not occurred or, once identified, have been adequately addressed. The U.S. has also taken more geographically-targeted action through the Uyghur Forced Labor Prevention Act. Despite these positive steps, more needs to be done to incentivize and reward strong monitoring and rights enforcement.

We recommend that the National Action Plan include the following steps:

1. **By Executive Order, create a Procurement Labor Compliance Unit ("PLCU").** The inter-agency PLCU should be housed within GSA and staffed with individuals from the Departments of Labor, State, and other relevant departments, with expertise related to international human and labor rights, forced labor, human trafficking, social audits and labor rights monitoring, and child labor. The PLCU can serve as a central repository of expertise within the federal government to aid the acquisition workforce in the assessment of human rights due diligence ("HRDD"), human trafficking compliance plans, and penalties and remedies in response to violation, among other things. The PLCU can also provide day-to-day support to the acquisition workforce on issues related to human and labor rights compliance by contractors and subcontractors.
 - a. The PLCU should be tasked with defining "High Risk" sectors, taking into account the vast amount of information the U.S. government already compiles, including but not limited to the Department of Labor lists related to child and forced labor, State Department country reports, information held by the Federal Acquisition Security Council, and CBP's Withhold Release Order ("WRO") findings.
 - b. The PLCU should promulgate guidance
 - i. to contractors and subcontractors on the meaning of, and requirements inherent in, a "good faith effort," as used in relation to forced or indentured child labor at Federal Acquisition Regulation ("FAR") § 22.1503(c)(2), and "due diligence" as used in relation to human trafficking and forced labor at FAR §§ 22.1703(c)(ii)(B), 52.222-56(c)(2);
 - ii. to agency Inspectors General outlining the steps that need to be undertaken when human and labor rights-related complaints and violations are submitted by contractors; and

- iii. to suspension and debarment committees regarding the use of suspension and debarment as a tool to combat human and labor rights violations by contractors. Guidance should be carefully tailored so as not to deter responsible reporting and to incentivize global buyers to work with their suppliers to improve working conditions. Suspension and debarment should be used only to punish the worst repeat offenders, who refuse to promptly report and adequately remedy violations.
 - c. The PLCU should undertake a cross-government review of the agency-issued guidance with regard to the forced labor and child labor rules in the FAR to ensure consistency.
 - d. The PLCU should oversee the accreditation of monitoring groups contingent on sufficient expertise. Accredited monitoring groups should then perform repeated audits of facilities producing goods pursuant to High Risk contracts and should assist in the formulation of any corrective action plan for violations. To help ensure their independence, external monitoring groups should be compensated through a centralized funding pool overseen by the PLCU, with funds collected through the inclusion of a monitoring rebate in all High Risk procurement contracts. Contractors should not be penalized for violations if monitor-recommended remediation is implemented within a reasonable period of time.
 - e. Eventually, the PLCU could house a program similar to the EPA's ENERGY STAR program through which it would certify producers in High Risk sectors for human and labor rights compliance.
 - f. The PLCU should act as a constant companion to the acquisition workforce in all efforts to improve human and labor rights compliance by contractors, and should serve as a single point of reference and expertise for any and all questions and decision-making related to rights compliance in federal procurement. The PLCU can also be a resource to industry in their efforts to improve human and labor rights compliance across their supply chains and adhere to government standards.
 - g. The PLCU should also maintain a database of all forced labor compliance plans, rights violations (reported and discovered), and remediation undertaken by contractors and subcontractors, which contracting officers and Labor Rights Compliance Officers (see below) can consult when reviewing tender offers and human rights due diligence representations.
- 2. **By Executive Order, expand existing FAR protections.** Existing FAR provisions to combat human trafficking, forced labor, and child labor, should be amended to increase the utility of compliance plans and certification processes, and to ensure that requirements reach to subcontractors and suppliers in a meaningful way. Contractors with ongoing contracts should be given time to bring their practices into compliance with these new standards.
 - a. Amend FAR § 22.17 "[Combatting Trafficking in Persons](#)" as follows:

- i. All contractors who are subject to the certification requirement under FAR §22.17 should be required to provide a copy of their compliance plan to the PLCU for review. The PLCU should review the compliance plan and make recommendations as necessary. *Id.* § 22.1703(d).
 - ii. All contractors who are subject to the certification requirement under FAR §22.17 should be required to obtain certification related to forced labor from each subcontractor, regardless of the estimated value of the subcontract. *Id.* § 22.1703(c)(3)(i). This will help counteract incentives to subdivide subcontracts in order to avoid the certification requirement, which complicates supply chains and monitoring efforts.
 - iii. In case of violation, the contracting officer should report the violation to the PLCU, and together, the contracting officer and the PLCU should direct contractors to take specific steps to abate the alleged violation or enforce the requirements of the contractor's compliance plan. *Id.* § 22.1704(b).
 - iv. In case of violation, a copy of the agency Inspector General's report should be shared with the PLCU, and the PLCU should be involved in any administrative proceeding with the contractor. *Id.* § 22.1704(c).
 - v. In case of violation, the contracting officer should be required to consult with the PLCU to determine an appropriate remedy. *Id.* § 22.1704(d).
 - vi. Corresponding amendments should be made to the contract provisions outlined at FAR §§ 52.222-50 and 52.222-56.
- b. Amend FAR § 22.15 "[Prohibition of Acquisition of Produced by Forced or Indentured Child Labor](#)" as follows:
- i. When a contracting officer has reason to believe that forced or indentured child labor was used to produce products pursuant to a U.S. government contract, the contracting officer should refer the matter for investigation to the PLCU in addition to the other entities listed. *Id.* § 22.1503(e).
 - ii. In case of violation, the contracting officer should be required to consult with the PLCU to determine an appropriate remedy. *Id.* § 22.1504(b). Together, they should be empowered to offer a series of remediating steps the contractor can undertake promptly in order to avoid termination of the contract, suspension, or debarment.
 - iii. Corresponding amendments should be made to the contract provisions outlined at FAR 52.222-18 and 52.222-19.
3. **By Executive Order, mandate Human Rights Due Diligence ("HRDD") and third-party monitoring for all procurement in High Risk sectors.** HRDD is the process by which a company can proactively manage potential and actual adverse human rights impacts of their business activities. This should be required of all contractors engaged in High Risk contracts,

as defined by the PLCU, via a new FAR provision which mirrors FAR § 22.15. Monitoring throughout contract performance is also required to ensure that rights compliance is meaningful and consistent.

- a. Under the new FAR provision, solicitations for labor or for supplies expected to exceed the micro-purchase threshold, from sectors identified as High Risk, must request an HRDD representation from all prospective contractors who submit tender offers. All contractors with ongoing contracts in High Risk sectors should be given an appropriate period of time, determined based on the size and duration of the contract, to submit a HRDD representation.
 - b. This submission should constitute a representation including (1) a gender- and racially-informed human rights impact assessment based significantly on worker reporting, (2) a supply chain map which includes as much detail as possible and is as complete as possible, (3) a summary of the contractors relevant human and labor rights policies and practices, (4) an overview of the contractor's due diligence process with regard to subcontractors and suppliers, and (5) a report of any non-remediated and repeated violations of human and labor rights, as well as acts of criminal negligence. Requiring the submission in the form of a representation creates potential liability for misrepresentation or omission under the False Claims Act. The exact requirements should be outlined by the PLCU.
 - c. All contractors engaged in High Risk contracts must submit to unannounced monitoring undertaken by monitoring groups accredited by the PLCU.
 - d. All agencies should hire a Labor Rights Compliance Officer with expertise in international human and labor rights, and human rights due diligence. For ongoing contracts in High Risk sectors, the Labor Rights Compliance Officer should review the HRDD representation and report to the relevant contracting officer and contractor whether the representation is adequate. If it is inadequate, the Labor Rights Compliance Officer should make recommendations, in concert with the PLCU, to improve the contractor's human and labor rights practices, and contractors should be given a reasonable amount of time to implement the recommendations depending on their scale.
4. **By Executive Order, build HRDD reporting into responsibility determination; phase in strength of HRDD representation as an evaluation factor in High Risk contracts.** Companies that undertake serious HRDD efforts with respect to their global supply chains, and/or demonstrate improved performance resulting from those efforts, need to be rewarded. By building HRDD assessments into the responsibility determination, and eventually considering it as an evaluation factor in all High Risk Contracts, companies will be incentivized to undertake meaningful due diligence aided by substantial transparency.
- a. Representations from all competitive bids should be reviewed for adequacy by the Labor Rights Compliance Officer. This review should be mandatory before an award decision is made, and should factor into the contracting officer's responsibility

determination. As needed, the Labor Rights Compliance Officer can seek guidance from the PLCU.

- b. FAR Section 9 should be amended to include human and labor rights compliance in responsibility determination:
 - i. To be determined responsible, a prospective contract should be required to have a satisfactory record of compliance with international human and labor rights requirements. *Id.* § 9.104-1.
 - ii. The prospective contractor should also be required to certify that, to the best of its knowledge and belief, the contractor, its principals, and its subcontractors, have not engaged in international labor or human rights violations, or have promptly and effectively reported and remediated violations; and have not subcontracted with subcontractors who have engaged in international labor or human rights violations, or who failed to promptly and effectively report and remediate violations. *Id.* § 52.209-5.
 - iii. In High Risk sectors, as determined by the PLCU, the contracting officer should also be required to directly determine the responsibility of all prospective subcontractors which are expected to play a significant role in the supply chain, including but not limited to the suppliers of raw materials and first-level production. *Id.* § 9.104-4. The PLCU should determine the reach of this requirements. In effect, this will require supply chain mapping.
- c. Over time, the strength of the representation should be considered as an evaluation factor in all High Risk contracts.
- d. Eventually, a mechanism like the federal program favoring women- and minority-owned small businesses, through the U.S. Small Business Administration's Women-Owned Small Businesses (WOSBs) and Small Disadvantaged Businesses (SDBs) designations, should be implemented for businesses with strong rights compliance and violation-remediation records.

5. **Expand the use of suspension and debarment through an Executive Order and legislative action.** Suspensions and debarments have a strong deterrent effect, but must be carefully used so as not to deter companies from working with suppliers to improve working conditions. Suspension and debarment should be used only to punish the most egregious and chronic repeat offenders, who refuse to promptly report and adequately remediate violations. More frequent use of these tools will indicate the government's commitment to enforcing human rights standards, and will motivate contractors with less severe human rights challenges to proactively remedy and improve their practices.

- a. The PLCU's guidance on suspension and debarment should be integrated into the decision-making of each agency's suspension and debarment committees.

- b. Through legislative action, the scope of suspension and debarment should be expanded to include affiliation with transnational criminal actors and fraud.
 - c. CBP's findings with regard to the promulgation of WROs should be leveraged in suspension and debarment proceedings, and should trigger the review of supply chains in the same sector and geography as the company subject to a WRO.
6. **Introduce worker complaint mechanism.** Workers across the world should have an accessible way to raise complaints and seek redress with the U.S. government for human and labor rights violations related to the fulfillment of federal contracts. This is not intended to replace or undermine existing internal grievance channels in contractor or subcontractor facilities, or legal remedies available at the country level. Rather, it provides an added layer of protection. In any form, confidentiality is crucial to ensure protection from retribution for whistleblowers. Contractors and subcontractors should also be required to educate workers on all complaint mechanisms in clear and accessible terms.
- a. Initially, this could exist in the form of a central tipline, manned by the PLCU. Once the PLCU verifies whether the alleged violation is associated with a contractor, subcontractor, or facility producing goods or providing services pursuant to a government contract, the PLCU would work with accredited monitors to investigate the allegation.
 - b. If violations are identified, the PLCU and relevant accredited monitors should work with the contractor or subcontractor to develop a remediation plan in consultation with workers. Monitors should continue periodic reviews to ensure remediation is underway, and should report any issues to the PLCU.
 - c. Over time, provisions should be introduced to give workers third party beneficiary rights to enforce contract provisions, including forced and child labor prohibitions in the FAR. This should not be limited to contracts in High Risk sectors.
7. **Special considerations for defense spending via Executive Order.** In addition to the above, the Department of Defense and other agencies engaged in defense-related spending should:
- a. Ensure that extant and contemplated FAR provisions addressing forced labor, child labor, and other international human and labor rights violations, are consistently applied to defense spending abroad. While the current FAR provisions on forced labor technically apply to defense spending, we've seen violations in practice. In the Arabian Gulf, for example, more than 10 million migrant construction workers, mostly from South Asia, are subject to various forms of exploitation. Most of these workers pay their own recruitment costs — often the equivalent of a year's wages — enabling other forms of exploitation. U.S. defense spending must be undertaken in a way that prevents such exploitation in the procurement of labor and services for projects that benefit the U.S. government, such as military bases or embassy construction.
 - b. Require its private security contractors to be members of [International Code of Conduct Association \(ICoCA\)](#), adopting the requirements that the State Department

has undertaken. The U.S. government helped launch ICoCA in 2013 to set and enforce human rights standards for private security contractors around the globe. ICoCA has developed rules on the use of firearms, detention practices, prohibitions of torture and cruel treatment, the employment of former child soldiers, and the prevention of violence against women. The State Department's diplomatic security arm has made ICoCA membership mandatory for private security contractors it hires. Through the new National Action Plan, the U.S. should require all federal agencies to follow suit.