

CA Technologies Combating Trafficking in Persons Compliance Plan



Compliance Plan for Contracts and Subcontracts Subject to FAR Subpart 22.17 and FAR Clause 52.222-50 Combating Trafficking

I. Awareness Program to Combat Trafficking in Persons

CA Technologies is opposed to trafficking in persons and forced labor in any form, and is committed to working to mitigate the risk of trafficking in persons and forced labor in all aspects of our business. The United States Government has adopted a policy prohibiting trafficking in persons.

The government's policy *applies to all government acquisitions*, including subcontracts. FAR 22.1701 (emphasis added). The government's policy is enforceable against not only contractors and subcontractors, but also individuals acting on behalf of those contractors. The government's policy as applied to federal contractors, and the repercussions for violating that policy, are described in FAR Clause 52.222-50, "Combating Trafficking in Persons (March 2015)," (FAR Clause) which is a mandatory clause inserted into all solicitations and contracts. This FAR Clause is required to be flowed down to all subcontracts that support a contract with the government.

Definitions Used in the FAR Clause

The government's policy not only applies to the contractor as a business entity, it also prohibits the individuals who are associated with the business entity from engaging in the prohibited conduct listed below. To understand the scope and breadth of the government's policy and the applicability of CA Technologies Compliance Plan, it is worthwhile to keep the following definitions from the FAR Clause in mind:

- An agent is any individual, including a director, officer, employee or independent contractor who is authorized to act on behalf of an organization.
- An employee is an employee of the contractor or subcontractor, who is directly engaged in the performance of work under the contract, whose efforts are more than "a minimal impact or involvement in contract performance."
- A subcontract is any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.
- A subcontractor is any supplier, distributor, vendor or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Note: These definitions do not require that the subcontractor affirmatively know or agree to be a government subcontractor. Also, the definitions of a subcontract and subcontractor are not limited to “first-tier” subcontracts, but all subcontractor relationships on that particular government contract.

The FAR Clause, and therefore each CA Technologies government contract and subcontract, forbids contractors, their employees and their agents from engaging in certain activities, including but not limited to:

- (1) Engaging in severe forms of trafficking in persons¹ during the period of performance of the contract;
- (2) Procuring commercial sex acts² during the period of performance of the contract;

**Note: Commercial sex acts prohibited by the FAR Clause might not be illegal (consider, for example, prostitution in certain areas of the State of Nevada.)*

- (3) Using forced labor in the performance of the contract;
- (4) Destroying, concealing, confiscating, or otherwise denying access by an employee to the employee’s identity or immigration documents, such as passports or drivers’ licenses, regardless of issuing authority;
- (5) (a) Using misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees

¹ The FAR clause defines “severe forms of trafficking in persons” as (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

² FAR Clause 52.222-50(a) defines a “commercial sex act” as any sex act on account of which anything of value is given to or received by any person. However, no other federal statutes, the U.S. Model Penal Code or the FAR Clause explain or define what constitutes a “sex act.” The Model Elements of Comprehensive State Legislation to Combat Trafficking in Persons defines a “sex act” as “any touching of the sexual or intimate parts of another person for the purpose of gratifying sexual desire of any person. It includes touching of the actor as well as touching by the actor, whether directly or through clothing.” Merriam-Webster’s dictionary defines a “sex act” as an “action performed with another person for sexual pleasure or gratification.”

regarding the key terms and conditions of employment (*examples of basic information and key terms and conditions are contained in the FAR Clause 52.222-50*)

(b) Using recruiters that do not comply with local labor laws of the country in which the recruiting takes place

(6) Charging employees recruitment fees;

(7) Failing to provide return transportation or pay for the cost of return transportation upon the end of employment; (*note that there are country-specific requirements contained in the FAR Clause 52.222-50 that must be reviewed when determining what types of transportation are necessary*);

(8) Providing or arranging housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, failing to provide an employment contract, recruitment agreement, or other required work document in writing in a language that the employee understands.

Employee Reporting Requirements and Protection from Retaliation

Because trafficking in persons is a violation of CA Technologies policy to combat trafficking in persons, and because evidence of such wrongdoing will jeopardize CA Technologies business interests with the government, CA Technologies employees must immediately report all allegations of actions that could constitute one or more of the nine prohibited activities listed in Section I of this Compliance Plan.

Employees Should Submit Reports to:

- The CA Technologies Business Practices & Compliance Team
- A member of the CA Technologies Worldwide Law Department
- Their local Human Resources Business Partner
- The CA Technologies Business Practices and Compliance Helpline (U.S. and Canada: 1-800-648-8014; All other countries: <https://km.ca.com/legal/BusinessPracticeandCompliance/Pages/HelplineContactNumbers.aspx>)
- The CA Technologies Business Practices and Compliance Webline (<https://www.cawebline.com>)

In the event none of these options is available, CA Technologies employees may contact the Global Human Trafficking Hotline:

1-844-888-FREE by telephone or help@befree.org by e-mail.

In addition, CA Technologies is required to immediately notify the Contracting Officer and agency Inspector General of any credible allegations of trafficking in persons.

Identifying, investigating, and remedying allegations of potential trafficking in persons violations is consistent with CA Technologies business objectives and federal law. Employees may report, and have a responsibility to report, in good faith, concerns regarding trafficking in persons, without fear of retaliation and if applicable, subject to protection under 10 U.S.C. § 2409, as implemented in DFARS Subpart 203.9 for reprisal against whistleblowing on trafficking in persons violations.

II. CA Technologies Obligations and Requirements to Comply with the Government's Policy

Employee and Agent Notification and Possible Remedies Available to the Government

As a government contractor and subcontractor, CA Technologies is required to comply with the government's prohibition on trafficking in persons. The FAR Clause requires CA Technologies to notify its employees and agents of the government's policy prohibiting trafficking in persons, as well as the actions CA Technologies may choose (or be required) to take against the employees and agents that violate the government's policy during the performance of a government contract/subcontract. These actions, authorized under FAR Clause 52.222-50(e) include, but are not limited to:

- Requiring the contractor to remove a contractor employee or employees from the performance of the contract;
- Requiring the contractor to terminate a subcontract;
- Suspension of contract payments until the contractor has taken appropriate remedial action;
- Loss of award fee, consistent with the award fee plan, for the performance period in which the government determined contractor non-compliance;
- Declining to exercise available options under the contract;
- Termination of the contract for default or cause, in accordance with the termination clause of this contract; and
- Suspension or debarment.

CA Technologies will continue to satisfy this notification requirement by including the requirements of FAR Subpart 22.17 and FAR Clause 52.222-50 in CA Technologies mandatory annual U.S. Public Sector Compliance Training and/or by providing a copy of this Compliance Plan or similar information. CA Technologies and its employees' individual obligations under FAR Subpart 22-17 and FAR Clause 52.222-50, are also incorporated into CA Technologies annual U.S. Public Sector Compliance Training materials.

Government Notification

In addition to notifying employees, subcontractors and agents of the prohibited activities listed in FAR Clause 52.222-50, the clause requires CA Technologies to:

- Notify the Contracting Officer and the agency Inspector General immediately of any credible information CA Technologies receives from any source (including host country law enforcement) alleging a contractor employee, subcontractor, subcontractor employee, or agent has engaged in conduct that violates the government's policy; and
- Notify the Contracting Officer and the agency Inspector General of any actions taken against a contractor employee, subcontractor, subcontractor employee or their agent pursuant to this clause.

Full Cooperation with the Government

Pursuant to FAR Clause 52.222-50(g), CA Technologies must disclose to the agency Inspector General sufficient information to identify the nature and extent of an offense and the individuals responsible for the conduct. CA Technologies must cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the United States) to allow federal agencies to: (i) conduct audits; (ii) investigate; or (iii) take other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. Chapter 78), Executive Order 13627 or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor.

CA Technologies must take steps to protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities. Note that CA Technologies contractual requirement to provide full cooperation does not foreclose or undermine any of CA Technologies legal rights under the law, the FAR or the terms of the applicable contract. Full cooperation does not:

- Require CA Technologies to waive its attorney-client privilege or the protections of the attorney-product work doctrine;
- Require CA Technologies directors, officers, owners, employees or agents to waive their attorney-client privilege or Fifth Amendment rights; or
- Restrict CA Technologies from conducting an internal investigation or defending a proceeding or dispute arising under the associated contract, or related to a potential or disclosed violation.

III. Subcontractor Notification Requirements for FAR Clause 52.222-50 and Certification Requirements for Specific Contracts and Subcontracts

CA Technologies must include the substance of FAR Clause 52.222-50 *in all subcontracts* issued by CA Technologies in support of a U.S. Government prime contract or subcontract. On certain contracts and subcontracts, not only must CA Technologies and its subcontractors comply with the government's policy, CA Technologies must provide a written certification to the Contracting Officer. Contracts requiring a certification:

- Have an estimated value exceeding \$500,000.00 **AND EITHER**

- Involve supplies, other than commercially available off the shelf items, to be acquired outside of the United States, **OR**
- Involve services to be performed outside the United States.

Before CA Technologies can be awarded one of the contracts or subcontracts satisfying the criteria above, CA Technologies must certify, pursuant to FAR Clause 52.222-56, that CA Technologies:

- Implemented a compliance plan to prevent any of the nine types of prohibited activities identified in Section I of this Compliance Plan and Paragraph (b) of FAR Clause at 52.222-50;
- Will monitor, detect, and terminate the contract with any subcontractor engaging in prohibited activities identified in Section I of this Compliance Plan and Paragraph (b) of FAR Clause at 52.222-50;
- Utilized due diligence to confirm that
 - To the best of CA Technologies knowledge and belief, CA Technologies, its proposed agents, subcontractors or subcontractors' agents have not engaged in any of the nine types of prohibited activities identified in Section I of this Compliance Plan and Paragraph (b) of FAR Clause at 52.222-50, **OR**
 - If CA Technologies discovered any abuses relating to any of the nine types of prohibited activities identified in Section I of this Compliance Plan and Paragraph (b) of FAR Clause at 52.222-50, CA Technologies or the identified subcontractor has taken appropriate remedial and referral actions.

Each certification must be reviewed and reaffirmed on an annual basis. Therefore, for each non-COTS contract, for supplies or services acquired or performed outside the United States respectively with an estimated value exceeding \$500,000.00, each subcontractor must agree to allow CA Technologies to conduct additional due diligence.

Due Diligence Red Flags / Risk Factors

As part of CA Technologies and its subcontractors' due diligence, the following risk factors must be taken into consideration. The following industry sectors and activities are considered to have above average risks of trafficking in persons:

- Agriculture
- Construction
- Electronics and Electrical Parts Manufacturing
- Extraction/Mining and Basic Metal Production
- Fishing and Aquaculture (farm fishing)
- Forestry
- Healthcare
- Hospitality (foodservice, hotel and tourism)
- Housekeeping / Facilities Operations (janitorial, laundry, guarding/security)

- Textile and Apparel Manufacturing
- Transportation and Warehousing

CA Technologies contracts involving these industries, which involve supplies or services produced or delivered overseas require additional scrutiny during the due diligence review before a Trafficking in Persons Certification is submitted. Additional questions that could result in red flags during CA Technologies due diligence review include:

- Does the performance of the contract involve hazardous/undesirable work?
- Is the workforce comprised of vulnerable, low-skilled, easily replaced individuals?
- Is the workforce comprised of migrant workers?
- Does the labor supply chain involve labor contractors, recruiters, agents or other middlemen?
- Are the product supply chains long, complex or non-transparent?
- Are countries that are high-risk for trafficking in persons involved in the sourcing or subcontracting activities?

Minimum Requirements of the Compliance Plan

This Compliance Plan, in conjunction with periodic training of CA Technologies employees is intended to meet or exceed the minimum requirements of the compliance plans required by FAR Clause 52.222-50(h), specifically:

- This document describes the awareness program that notifies affected individuals (CA Technologies employees, agents, subcontractors, subcontractor employees) of the government's prohibition on trafficking in persons, the prohibited activities and the potential consequences these individuals and CA Technologies might face in the event of a violation of the government's policy;
- This document explains the reporting processes through which CA Technologies employees can report potential violations without a fear of retaliation;
- This document identifies the key risk factors for trafficking in persons that must be examined as part of CA Technologies due diligence;
- To the extent CA Technologies uses recruiting companies, CA Technologies will only retain recruitment companies with properly trained employees. No recruitment fees may be charged to a prospective CA Technologies employee or prospective subcontractor employee, and all wages must meet applicable host-country legal requirements, or explain any variance; and
- To the extent CA Technologies or its subcontractors use a housing plan, that plan must demonstrate that it meets host-country housing safety standards.

Additional information about trafficking in persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

A copy of a sample checklist used by the Defense Contract Management Agency, Afghanistan to audit contractor compliance with the government's trafficking in persons policy can be viewed at http://www.acq.osd.mil/dpap/dars/pgi/docs/CTIPs_Audit_Checklist_10_May_2011.docx

Contract-Specific Compliance Plan Requirements

Not all contracts and subcontracts involve the same level of risk or potential for trafficking in persons. FAR Clause 52.222-50(h)(2) requires that CA Technologies maintain a compliance plan during the performance of the applicable contracts appropriate to the size and complexity of such contracts.

When determining whether additional measures beyond those contained in this Compliance Plan are required, CA Technologies will take into account:

- The nature and scope of the activities to be performed for the government;
- The number of non-United States citizens expected to be employed; and
- The risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

Posting of Compliance Plans

CA Technologies shall post this Compliance Plan on its intranet and shall provide employees with email or other written notice of this Compliance Plan.

IV. Policy/Process Owner(s)

Joel Katz, SVP and Chief Ethics & Compliance Officer

(Business Practices & Compliance Program, including Code of Conduct, Helpline and Weblines, Code of Conduct Attestation and Conflict of Interest Disclosure, and Enforcement of the Code of Conduct)

Pamela Liou, VP and Managing Senior Counsel U.S. Public Sector Legal Group

(Inclusion of this topic in U.S. Public Sector Training Program)