

contractor, engages in, or uses labor recruiters, brokers, or other agents who engage in—” and cls. (i) to (iv) for “without penalty, if the grantee or any subgrantee, or the contractor or any subcontractor (i) engages in severe forms of trafficking in persons or has procured a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect, or (ii) uses forced labor in the performance of the grant, contract, or cooperative agreement.”

Subsec. (j). Pub. L. 113–4 added subsec. (j).

2008—Subsec. (i). Pub. L. 110–457 added subsec. (i).

2006—Subsec. (g). Pub. L. 109–164, §201(b), struck out designation and heading of par. (1) before “The President shall”, “described in paragraph (2)” after “under which funds”, and heading and text of par. (2). Text of par. (2) read as follows: “Funds referred to in paragraph (1) are funds made available to carry out any program, project, or activity abroad funded under major functional budget category 150 (relating to international affairs).”

Subsec. (h). Pub. L. 109–164, §101(a), added subsec. (h).
2003—Subsecs. (c) to (f). Pub. L. 108–193, §3(a), added subsecs. (c) to (e), redesignated former subsec. (c) as (f), and in subsec. (f) substituted “initiatives and programs described in subsections (a) through (e)” for “initiatives described in subsections (a) and (b)”.

Subsec. (g). Pub. L. 108–193, §3(b), added subsec. (g).

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2013 AMENDMENT

Requirements of amendment by Pub. L. 112–239 applicable to grants, contracts, and cooperative agreements entered into on or after the date that is 270 days after Jan. 2, 2013, and to task and delivery orders awarded on or after Jan. 2, 2013, pursuant to contracts entered before, on, or after such date, see section 7104d(c)(1)(B) of this title.

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see section 5 of Ex. Ord. No. 13257, Feb. 13, 2002, 67 F.R. 7259, as amended, set out as a note under section 7103 of this title.

§ 7104a. Compliance plan and certification requirement

(a) Requirement

The head of an executive agency may not provide or enter into a grant, contract, or cooperative agreement if the estimated value of the services required to be performed under the grant, contract, or cooperative agreement outside the United States exceeds \$500,000, unless a duly designated representative of the recipient of such grant, contract, or cooperative agreement certifies to the contracting or grant officer prior to receiving an award and on an annual basis thereafter, after having conducted due diligence, that—

(1) the recipient has implemented a plan to prevent the activities described in section 7104(g) of this title, as amended by section 1702, and is in compliance with that plan;

(2) the recipient has implemented procedures to prevent any activities described in such section 7104(g) of this title and to monitor, detect, and terminate any subcontractor, subgrantee, or employee of the recipient engaging in any activities described in such section; and

(3) to the best of the representative’s knowledge, neither the recipient, nor any subcontractor or subgrantee of the recipient or any agent of the recipient or of such a subcontractor or subgrantee, is engaged in any of the activities described in such section.

(b) Limitation

Any plan or procedures implemented pursuant to subsection (a) shall be appropriate to the size and complexity of the grant, contract, or cooperative agreement and to the nature and scope of its activities, including the number of non-United States citizens expected to be employed.

(c) Disclosure

The recipient shall provide a copy of the plan to the contracting or grant officer upon request, and as appropriate, shall post the useful and relevant contents of the plan or related materials on its website and at the workplace.

(d) Guidance

The President, in consultation with the Secretary of State, the Attorney General, the Secretary of Defense, the Secretary of Labor, the Secretary of Homeland Security, the Administrator for the United States Agency for International Development, and the heads of such other executive agencies as the President deems appropriate, shall establish minimum requirements for contractor plans and procedures to be implemented pursuant to this section.

(Pub. L. 112–239, div. A, title XVII, §1703, Jan. 2, 2013, 126 Stat. 2094.)

REFERENCES IN TEXT

Section 7104(g) of this title, as amended by section 1702, referred to in subsec. (a)(1), means section 7104(g) of this title, as amended by section 1702 of Pub. L. 112–239.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2013, and not as part of the Trafficking Victims Protection Act of 2000 which comprises this chapter.

EFFECTIVE DATE

Requirements of section applicable to grants, contracts, and cooperative agreements entered into on or after the date that is 270 days after Jan. 2, 2013, and to task and delivery orders awarded on or after Jan. 2, 2013, pursuant to contracts entered before, on, or after such date, see section 7104d(c)(1)(B) of this title.

DEFINITIONS

Pub. L. 112–239, div. A, title XVII, §1701, Jan. 2, 2013, 126 Stat. 2092, provided that: “In this title [title XVII (§§1701–1708) of div. A of Pub. L. 112–239, enacting this section and sections 7104b to 7104d of this title, amending sections 7103 and 7104 of this title, section 1351 of Title 18, Crimes and Criminal Procedure, and section 2313 of Title 41, Public Contracts, and enacting provisions set out as a note under section 1101 of Title 8, Aliens and Nationality]:

“(1) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning given the term in section 133 of title 41, United States Code.

“(2) SUBCONTRACTOR.—The term ‘subcontractor’ means a recipient of a contract at any tier under a grant, contract, or cooperative agreement.

“(3) SUBGRANTEE.—The term ‘subgrantee’ means a recipient of a grant at any tier under a grant or cooperative agreement.

“(4) UNITED STATES.—The term ‘United States’ has the meaning provided in section 103(12) [now (13)] of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(12) [now (13)]).”

§ 7104b. Monitoring and investigation of trafficking in persons

(a) Referral and investigation

(1) Referral

If the contracting or grant officer of an executive agency for a grant, contract, or cooperative agreement receives credible information that a recipient of the grant, contract, or cooperative agreement; any subgrantee or subcontractor of the recipient; or any agent of the recipient or of such a subgrantee or subcontractor, has engaged in an activity described in section 7104(g) of this title, as amended by section 1702, including a report from a contracting officer representative, an auditor, an alleged victim or victim’s representative, or any other credible source, the contracting or grant officer shall promptly refer the matter to the agency’s Office of Inspector General for investigation. The contracting officer may also direct the contractor to take specific steps to abate an alleged violation or enforce the requirements of a compliance plan implemented pursuant to section 7104a of this title.

(2) Investigation

An Inspector General who receives a referral under paragraph (1) or otherwise receives credible information that a recipient of the grant, contract, or cooperative agreement; any subgrantee or subcontractor of the recipient; or any agent of the recipient or of such a subgrantee or subcontractor, has engaged in an activity described in section 7104(g) of this title, as amended by section 1702, shall promptly review the referral or information and determine whether to initiate an investigation of the matter. In the event that an Inspector General does not initiate an investigation, the Inspector General shall document the rationale for the decision not to investigate.

(3) Criminal investigation

If the matter is referred to the Department of Justice for criminal prosecution, the Inspector General may suspend any investigation under this subsection pending the outcome of the criminal prosecution. The Inspector General shall notify the head of the executive agency that awarded the contract, grant, or cooperative agreement of an indictment, information, or criminal complaint against the recipient of a contract, grant, or cooperative agreement; any subgrantee or subcontractor of the recipient; or any agent of the recipient or of a subgrantee or subcontractor. If the criminal investigation results in a decision not to prosecute, the Inspector General shall promptly determine whether to resume any investigation that was suspended pursuant to this paragraph. In the event that an Inspector General does not resume an investigation, the Inspector General shall document the rationale for the decision.

(b) Report

Upon completion of an investigation under subsection (a), the Inspector General shall submit a report on the investigation to the head of the executive agency that awarded the contract, grant, or cooperative agreement. The report shall include the Inspector General’s conclusions regarding whether or not any allegations that the recipient of a grant, contract, or cooperative agreement; any subcontractor or subgrantee of the recipient; or any agent of the recipient or of such a subcontractor or subgrantee, engaged in any of the activities described in section 7104(g) of this title, as amended by section 1702, are substantiated.

(c) Remedial actions

(1) In general

Upon receipt of an Inspector General’s report substantiating an allegation that the recipient of a contract, grant, or cooperative agreement; any subgrantee or subcontractor of the recipient; or any agent of the recipient or of a subgrantee or subcontractor, engaged in any of the activities described in section 7104(g) of this title, as amended by section 1702, or notification of an indictment, information, or criminal complaint for an offense under subsection (a)(3), the head of agency shall consider taking one or more of the following remedial actions:

(A) Requiring the recipient to remove an employee from the performance of work under the grant, contract, or cooperative agreement.

(B) Requiring the recipient to terminate a subcontract or subgrant.

(C) Suspending payments under the grant, contract, or cooperative agreement until such time as the recipient of the grant, contract, or cooperative agreement has taken appropriate remedial action.

(D) Withholding award fees, consistent with the award fee plan, for the performance period in which the agency determined the contractor or subcontractor engaged in any of the activities described in such section 7104(g) of this title.

(E) Declining to exercise available options under the contract.

(F) Terminating the contract for default or cause, in accordance with the termination clause for the contract.

(G) Referring the matter to the agency suspension and debarment official.

(2) Savings clause

Nothing in this subsection shall be construed as limiting the scope of applicable remedies available to the Federal Government.

(3) Mitigating factor

Where applicable, the head of an executive agency may consider whether the contractor or grantee had a plan in place under section 7104a of this title, and was in compliance with that plan at the time of the violation, as a mitigating factor in determining which remedies, if any, should apply.

(4) Aggravating factor

Where applicable, the head of an executive agency may consider the failure of a contrac-