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## FAR Case 2015-017: Combating Trafficking in Persons – Definition of “Recruitment Fees”

### Written comments to the Regulatory Secretariat

28 June 2016

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Founded in 2009, the Institute for Human Rights and Business (IHRB) is the leading international think tank on business and human rights. IHRB’s mission is to shape policy, advance practice and strengthen accountability in order to make respect for human rights part of everyday business.

IHRB is deeply engaged in research, multi-stakeholder engagement and advocacy on the risks migrant workers face within labour supply chains. As the single largest purchaser of goods and services on the planet, the US Government has a great deal of power to shape the behaviour of companies involved in federal supply chains. As such, IHRB welcomes the decision to include a definition of “Recruitment Fees” in the proposed amendments to the US Federal Acquisition Regulation and offers the following comments and recommendations in support.

There is a need for clarity in the definition and application of the term “Recruitment Fees”. As convenors of the Leadership Group for Responsible Recruitment, IHRB works closely with leading companies to embed the “Employer Pays Principle”.<sup>i</sup> This principle affirms that no worker should pay for a job and that the costs of recruitment should be borne not by the worker, but by the employer.

Therefore, any definition of “Recruitment Fees” should be broad enough to ensure that recruiting parties do not have the scope to ‘reallocates’ fees charged to elements of the recruitment process that fall outside of the definition.

With reference to the issues highlighted for public comments, we support a definition that does not vary based on salary, skill-level or location of the job. The limitations of the definition are clear and the illustrative list is helpful, although we suggest expansion of the illustrative list in line with the comments below.

The consultation requests suggestions that may be helpful in adding to the illustrative list of a recruitment fee from a specific list in Section II(C). Of the suggested language, we submit that the following items should be added:

- i. labor broker services, both one-time and recurring;
- ii. exit clearance and security clearances associated with visas;
- iii. transportation and subsistence costs while in transit;
- iv. sending, transit and receiving country government-mandated fees, levies and insurance;
- v. an employer’s recruiters, agents or attorneys or other notary or legal fees; and
- vi. any associated insurance costs over and above those mandated by governments.

With regard to these suggested additions, labor brokers are significant actors in the recruitment process of migrant workers into the countries of the Gulf Cooperation Council (GCC). Therefore, specifically referring to labor brokers adds clarity.

It is also important in a GCC context to specify the inclusion of costs associated with exit clearances. There is a danger that the proposed FAR definition could encourage, for example, recruiters to apply fees to costs relating to government-mandated fees, notary or legal fees or insurance where that is not explicitly provided for. As such, we recommend including these examples in the illustrative list.

We also note the definition of recruitment fees of the Electronics Industry Citizenship Coalition (EICC).<sup>ii</sup> The EICC’s Validated Audit Process Guidance on Recruitment Fees<sup>iii</sup> includes as costs not to be paid by a Foreign Migrant Worker their temporary work or residence permits, including renewals. We would support the inclusion of this cost in the FAR definition.

We would be happy to discuss the points made in this submission in more detail should it be useful.

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#### END NOTES

<sup>i</sup> See: <http://www.ihrb.org/news-events/news-events/the-leadership-group-responsible-recruitment>

<sup>ii</sup> See: <http://www.eiccoalition.org/news-and-events/news/electronics-industry-leads-the-way-in-combating-forced-labor/>

<sup>iii</sup> See: <http://www.eiccoalition.org/media/docs/Definition%20of%20Fees%20Final%20Approved%20Aug%202015.pdf>