



# RESPONSIBLE SOURCING TOOL

Construction  
Industry |  
Tool 9

## PROTECTIONS AGAINST TRAFFICKING IN PERSONS

### Monitoring the Performance of Labor Agents in the Construction Industry

*The risks of human trafficking, including forced labor,<sup>1</sup> in construction industry supply chains can be controlled by properly designed and implemented processes for the recruitment, selection, and hiring of workers. Those risks are greater and more difficult to control when recruitment, selection, and hiring are outsourced to third-party labor agents. The risk increases when these responsibilities are passed to informal labor agents who gather workers through social and familial networks. Therefore, whenever possible, construction companies should recruit, hire, and employ workers directly.*

*When direct recruitment is not possible, companies must exercise careful due diligence in the selection of labor agents to minimize the risk of human trafficking as a result of fraudulent or misleading recruitment practices (refer to Tool 7, Criteria for Screening and Evaluating Labor Recruitment Candidates).*

*Once a company has engaged a labor agent, regular monitoring of the agent's performance against the company's Code of Conduct, contract terms and conditions, and legal requirements is essential to help ensure ongoing compliance. This is true not only for the construction company's agents, but also those of the subcontractors and service providers on the jobsite.*

*The following sample tool recommends a general approach to monitoring labor agent performance but is not intended to ensure compliance with specific legal requirements, such as the U.S. Federal Acquisition Regulation (FAR): Combating Trafficking in Persons.<sup>2</sup>*

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<sup>1</sup> The United States recognizes two primary forms of trafficking in persons: forced labor and sex trafficking. For the purposes of this and other tools in the set, several terms are used such as "trafficking in persons," "human trafficking," and "forced labor." In relation to these tools, they refer to a crime whereby traffickers exploit and profit at the expense of adults or children by compelling them to perform labor.

<sup>2</sup> For guidance on complying with the Federal Acquisition Regulation (FAR): Combating Trafficking in Persons, please review Tool 12, RST's Sample Compliance Plan Guide.

## INTRODUCTION

The purpose of a labor agent performance assessment is to verify whether the labor agent is performing according to legal requirements, fundamental international human rights, and to the social responsibility requirements that the company or its customer has defined. Because labor agents sometimes manage or supervise the work of migrant workers at the worksite, many of the criteria below go beyond assessing labor recruiter performance during the recruitment period to a more comprehensive assessment of labor agent performance throughout the employment lifecycle.

Construction companies need visibility into how their labor agents operate, both in recruiting and hiring, as well as in their role as the employer at the worksite, if applicable. A way to measure labor agent performance against legal requirements, service agreement terms and conditions, and human rights benchmarks must also be established. Performance assessment is especially critical where the protection of migrant workers against forced labor is concerned. Note that in some cases the labor agent may also act as the supervisor or employer at the worksite.

Having an assessment procedure gives construction companies an objective basis for management decisions and helps protect against hidden abuses. It also helps labor agents improve their performance and conformance with both business and social responsibility requirements.

Where recruitment and hiring of workers is outsourced, an assessment of the labor agent should be conducted soon after workers arrive at the work site. Assessments should also be conducted prior to contract renewal or in advance of a subsequent deployment of workers. Labor agents responsible for aspects of on-site management of workers should be assessed regularly, and issues that have been identified should be promptly addressed. Also, a construction company's contracts with its subcontractors and suppliers should require them to similarly evaluate and manage the performance of their recruitment agents.

As discussed in Tool 7 on screening and evaluating recruitment and labor agents, participation in certification programs allows labor agents to demonstrate their commitment to fair practices and increased transparency and oversight. Selecting agents who are certified, or pursuing certification, will reduce the amount of due diligence required by the construction company.

Similar to screening potential agents before contracting, each company will have its own specific criteria when monitoring a labor agent's performance. To determine criteria, a company should undertake a careful review of the following documents and guidance:

- Legal requirements in the origin country, transit country, and country of operation (Tool 4);
- Any other applicable legal requirements, including international labor standards;
- Recruitment agent service agreement (contract) terms and conditions;
- Company Code of Conduct or other high-level policy;
- Client Code of Conduct or other high-level policy; and
- Fair recruitment standards and certification schemes such as:
  - International Organization for Migration, IRIS Recruitment Standard: [iris.iom.int/](https://iris.iom.int/)
  - International Labor Organization, General Principles and Operational Guidelines for Fair Recruitment: [www.ilo.org/global/topics/fair-recruitment/WCMS\\_536755/lang-en/index.htm](http://www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang-en/index.htm)
  - On the Level, Core Principles and Standards of Ethical Recruitment: [www.fair-hiring.org/core-principles-and-standards](http://www.fair-hiring.org/core-principles-and-standards).
  - Clearview Responsible Recruitment Certification Scheme: [responsiblerecruitmenttoolkit.org/clearview/](https://responsiblerecruitmenttoolkit.org/clearview/).

The performance assessment itself requires a process of triangulation – gathering and analyzing information from several sources. Ultimately, the most valuable information will come from the workers themselves. For more information on conducting worker interviews, refer to Tool 10. It is beneficial to gather information from all the following sources, where possible and relevant:

- Worker interviews, including a sample of workers with representation from different genders, nationalities, languages, job assignments, and labor agent used;
- Recruitment agency management and staff;
- External stakeholders, such as government agencies accrediting labor agents, unions, and local civil society organizations, including worker centers;
- Internet search for evidence of engagement in illegal or unethical activities;
- Labor agent documents including:
  - Business records - license, registration, certifications, etc.
  - Service agreements with employers showing how much the employer pays the agent for its services

- Records of payment for visas, work permits, medical testing and other legally-required fees and expenses
  - Records of payment for worker transportation and lodging expenses
  - Payroll records – with attention to any records of fees or wage deductions
  - Discipline records
  - Records from any applicable grievance mechanisms (grievance reports and their resolution)
  - Records of audits and assessments performed by other clients and certification organizations
- Visual observation of worker living and dining facilities provided by or managed by the labor agent; and
  - Visual observation of the offices of the recruitment agency.

#### **ASSESSMENT AREA: RECRUITMENT FEES**

There is a risk that a labor agent has charged jobseekers recruitment fees or other expenses for its services. In such cases, workers may have borrowed money to pay the recruiter which increases the likelihood that they could be in a situation of debt bondage before they even set foot at the work site.

It is therefore important that construction companies clearly communicate to their labor agents that jobseekers cannot be charged recruitment fees, and that the employer must pay for their recruitment. This “employer pays” principle should be included in a construction company’s Supplier Code of Conduct, and service agreements with all recruitment agents and labor providers. Ongoing oversight must also be in place to ensure that the labor agent abides by this requirement.

Note: when performing regular audits of on-site subcontractors, be sure to verify that the subcontractor’s service agreements with recruitment agents also contain the “employer pays” principle and interview subcontractor workers about their recruitment experience.

Finding hard evidence of violations to the “employer pays” principle is difficult as fee-charge violations rarely have a paper trail, or the paper trail is falsified to hide fee payments. Workers are often the only source of information regarding violations of this standard. Workers must have a safe means for reporting violations directly to the company, and a credible and well-communicated procedure must be in place to

investigate and respond to such reports, including making sure that the practice is stopped, and workers are reimbursed for any fees paid.

**Information to Collect:**

- A description of how the labor agent ensures compliance with the “employer pays” principle (e.g., the policy is included in recruitment agency service agreements and worker employment contracts, and sanctions are in place for noncompliance)
- A list of fees and costs paid by the employer or labor agent, such as: labor agent service fees, recruitment or placement fees in both origin and destination countries, airfare or cost for other modes of transportation from the worker’s home to the employment location, cost for passport and visa, work permits, residency permits, skills tests, medical exams, pre-departure training, arrival training, security deposits or bonds, government-required fees, etc. Records demonstrating that the employer paid all recruitment related fees and expenses directly or to the recruitment agency
- Mechanisms that begin at the point of recruitment for jobseekers to report violations of company policy on recruitment fees
- Procedures for investigating reports of worker-paid fees, refunding workers for paid fees and expenses and records of worker reimbursement
- Worker reports of paying fees, based on worker interviews and supporting receipts provided by workers, if available

**Common Risks and Red Flags:**

- No written commitment by the recruitment agent to adhere to the “employer-pays” principle
- No records showing that fees were paid by the labor agent or employer rather than the worker
- Lack of an effective and safe procedure for workers to report ethical violations by company staff, subcontractors, or labor agents of the “employer-pays” principle (e.g., workers are coached to lie about fees and expenses)
- Jobseekers are charged fees for items such as mandatory skills training, document processing, uniforms, tools, or reservation fee and/or deposits
- Jobseekers are charged fees beyond market rates for labor agent-owned or -operated accommodations

**ASSESSMENT AREA: CONTRACTS, ORIENTATION, TRAINING AND GRIEVANCE**

By assessing contracts, orientation, training, and grievance management, companies will understand how workers are informed about their legal rights and responsibilities, company policies, and employment conditions; how the company ensures workers clearly understand the policies and conditions; whether these policies and conditions are explained and provided to workers in a language they understand, and whether workers have a means of raising concerns and accessing remedy during the recruitment process or employment in the case where the agency manages workers on-site.

Companies also need to check if the information provided to the workers during pre-departure training is the same as they receive prior to the start of work at the place of employment. It is particularly important to know whether the terms and conditions the workers originally agreed to are consistent with those offered at the time of hiring, and if these terms and conditions are consistent with actual practice.

Workers should have signed a contract in a language that they understand in their country of origin which was likely approved by their origin country authority. In most cases, these contracts are patterned after standard government contracts to expedite worker deployment abroad.

However, upon arrival in the destination country, some companies ask workers to sign supplemental agreements. These agreements may contain additional terms and conditions that can be unfavorable to workers, and newly arrived workers are typically not in a position to negotiate terms or refuse to sign supplemental agreements.

Companies must be aware of who provides worker training, whether the training meets legal and Code of Conduct requirements, and whether it is effective, meaning workers demonstrate the desired level of knowledge.

Workers must have no-barrier access to effective grievance mechanisms that protect them from negative consequences if they complain.

**Information to Collect:**

- Copies of all employment contracts, including any blank origin country contracts, contract amendments, and a random sampling of signed worker contracts (ensure that sampling includes representation of workers from all countries of origin, languages spoken, job assignment, etc.)
- Evidence of worker understanding of contract terms and conditions
- Description and content of training programs provided by the labor agent, the employer or the company controlling the worksite

- Pre-departure and arrival training, documentation, and training materials
- Records of training attendance and knowledge measurement (verification of worker understanding)
- List of languages spoken by workers
- Evidence of worker understanding of training content
- Trainer qualifications
- Language capability of trainers
- Whether the training is conducted by company staff or is outsourced
- How workers are guaranteed a safe and effective means of raising grievances

#### **Common Risks and Red Flags:**

- No clear procedures for conducting pre-departure and arrival training of new hires
- Information provided to workers is not consistent with employment contracts, applicable legal requirements, and company policies and procedures
- Contracts are not in a language the worker understands
- Contracts are not provided to migrant workers for review and signature prior to departing for the destination country
- Contracts provided by workers and employers are inconsistent
- Contracts do not contain all details required by law or company policy
- Training is conducted by the labor agent or subcontractor, which may result in inconsistent messaging and insufficient information
- Training is conducted in a language that workers do not understand
- Labor agents charge training fees to workers
- Workers are required to post a training bond (can result in workers being unable to terminate their contract freely)
- Workers have no access to, or are not informed about, how to raise a grievance, including assurance of non-reprisal

#### **ASSESSMENT AREA: COMPENSATION AND BENEFITS**

Compensation and benefits can be a factor in the risk of human trafficking, as workers can be held in the job due to a labor agent's wage practices. Specific practices that may indicate risk include underpayment of wages, delayed payment or withholding of

wages, and unauthorized deductions. An assessment will help companies determine if workers are paid the wage rate that was promised; if the promised rate was at least the legal minimum; if their wages are paid in the manner to which the workers agreed; and if workers are able to terminate their employment without sacrificing pay for hours previously worked or other financial penalties. If deductions or withholdings are made from workers' pay, an assessment will help companies determine if the deductions are required or allowed by law, and, if not, whether the practice could result in human trafficking, including forced labor.

**Information to Collect:**

- Copies of payroll documents, time cards, pay slips, including those of any workers who are paid on a piece rate or quota basis
- Legal minimum wage or collective bargaining agreement wage applicable to the facility
- Legal requirements on wages and benefits, including overtime pay, holidays, leave, and social insurance
- Pay practices:
  - Method of paying wages
  - Forms of wage payments (e.g., cash, deposit in worker's bank account)
  - List of who has access to workers' bank accounts
  - Details of payroll period and cycle
  - Pay dates (number of days lapsed from last day of payroll period to pay day)
- Pay structure:
  - Basic pay rate
  - Overtime rates and other non-regular rates (holiday, rest day, etc.)
  - Whether cash allowances or advances given
  - Whether piece-rates or quota systems used and their terms
  - Objective basis for determining piece rates or quotas.
  - Structure and terms of any bonus system
- Pay deductions:
  - Legally mandated deductions (e.g., social insurance premiums)



- List of all wage deductions (disciplinary penalties and fines, meals, housing, uniforms, tools, personal protective equipment, etc.)
- Whether pay deductions are recorded in pay slips
- Details of any savings programs
- Benefits provided
- Evidence of worker understanding of wage and benefit structure

#### **Common Risks and Red Flags:**

- Underpayment or delayed payment of wages
- Evidence that workers paid on a piece rate or quota basis do not earn at least the legal minimum wage during normal working hours
- Labor agents can access workers' bank accounts for withdrawals
- Evidence of forced savings programs
- Evidence of illegal deductions
- Workers are uninformed or misinformed about wage rates and deductions
- No pay slips are provided
- Pay slips are inaccurate or do not contain critical information about how wages are calculated
- Pay slips are not provided in a language that workers understand
- Workers' pay slips do not correspond to records provided by the employer or labor agent
- Workers have not signed to acknowledge receipt of earnings

#### **ASSESSMENT AREA: DEBTS and DEPOSITS**

To have a clear picture of the vulnerability of the workforce to forced labor, companies will want a full accounting of all debts, bonds, and deposits to which migrant workers are subject. To determine worker vulnerability, companies must understand the purpose, legality, and methods of levy for each of the fees and deposits. In addition, companies will need to know how workers repay these fees, and whether repayment schemes restrict workers' ability to terminate their employment.

#### **Information to Collect:**

- Whether workers owe money to the labor agent or their recruitment business partners (e.g., origin country recruiter, sub-agents)

- Items for which workers take loans or advances
- Any interest for which the worker might be responsible for on loans or advances
- Whether there is a security bond or deposit
- Labor agent-managed savings
  - Where savings are kept or deposited and who has access
  - How workers give consent for savings programs
  - Whether workers have unrestricted access to their savings
  - Terms for returning savings to workers
- Workers' copy of proof of payment for any payments made

**Common Risks and Red Flags:**

- Workers are charged fees by labor agent for on-site services and management
- Workers are induced or encouraged to take loans or advances from the labor agent at excessive interest rates or unreasonable terms of payment
- Workers are required to pay deposits before taking up employment and during employment
- Workers are provided with cash advances, for which repayment is deducted from their pay at high interest
- Workers are in debt to the labor agent or employer for any reason
- Workers are ill-informed about the terms or the full amount of loans and other payments
- Automatic deductions for loan payments are made against workers' salary without the worker's free and formal consent
- Workers do not have access to earnings or bank account
- Worker do not give informed consent for any savings program

**ASSESSMENT AREA: ACCOMMODATION**

Companies will want to know the full details of the housing provided to migrant workers, especially if these workers have no choice but to rely on the labor agent to secure their housing.

Companies should check if the labor agent has implemented a housing plan; that the housing provided to workers meets local housing and safety standards, is comfortable,

safe, and secure; and whether workers can freely enter or leave the premises. Companies need to check the housing rules and regulations, and whether there are unreasonable restrictions on workers' freedom of movement.

The assessment should also include who is managing accommodations, what their specific functional tasks are, and if they are properly trained or equipped to fulfill the task. Any related expenses, if the accommodations are not provided for free, should also be examined. Companies need to know how much is charged, how payments are collected, and whether these are reasonable rates. The charge to workers for employer-provided or arranged housing should not exceed the rate for similar housing in the local area.

**Information to Collect:**

- Name of the housing manager
- Who bears the overhead expenses of the accommodation
- Rules for leaving and entering housing facilities
- Other housing security procedures
- Rules while in labor agent provided or arranged housing
- Number of workers per sleeping room
- Amount of space per worker
- Availability of individual locked storage for identity documents and other personal valuables
- Adequacy of exit facilities
- Smoke and heat detection, fire alarms, and emergency lighting
- Adequacy of light, heat, and ventilation
- Description of toilet and shower facilities
- Structural integrity
- Housekeeping and maintenance practices
- Emergency preparedness procedures, including regular evacuation drills
- Whether workers feel safe and secure in provided housing
- Cost of provided housing to workers
- Market rate of similar housing in area

**Common Risks and Red Flags:**

- Workers do not have a choice in accommodation

- Labor agents require workers to stay in labor agent-controlled housing facilities when it is not required by law
- Curfews are implemented in provided housing and workers are unable to enter or leave the premises freely
- Accommodations are visibly decrepit, poorly maintained, dangerous, or unsanitary
- Workers report unsafe, unsanitary, or dangerous conditions
- Workers cannot get adequate sleep to safely perform their jobs due to poor conditions
- Any gates are closed/locked at designated times
- Security personnel are instructed to restrict workers from leaving or entering the housing
- Costs of provided housing are above prevailing market rates for similar accommodation
- Costs of provided housing contribute to worker debt

#### **ASSESSMENT AREA: PERSONAL IDENTITY DOCUMENTATION**

It is critical to determine whether the labor agent holds workers' original personal identity or immigration documents, such as passports. Without access to such documents, workers are effectively bound to the worksite. These documents should be held only if required by law and, in such cases, workers should have unfettered access to them. Workers should be in possession of their own documents and be provided with individual locked storage space to which workers should always have unencumbered access.

The key question to consider is whether practices around worker documentation retention create situations where the workers' freedom of movement, or ability to terminate a contract for reasonable cause, are restricted.

#### **Information to Collect:**

- Document requirements communicated to the job applicant when applying for the job
- Location of all documents (whether locked and secure)
- Personnel with access to documents
- Process for gathering and returning worker identification documents for renewal of visas and work permits

- Process to ensure that workers who are assigned to work at different worksite locations during their work week always have ready access to their personal documents
- If the employer or labor agent is required by law to keep worker travel and work documents, and process for workers to access documents

**Common Risks and Red Flags:**

- Workers are required to surrender their passports and other key documents to the labor agent or employer.
- Passports are taken from workers for safekeeping, and workers are made to sign a waiver indicating their consent.
- There are procedures in place that limit the ability of workers to readily access their documents (e.g., completion of an access request form, waiting period).
- Workers are required to post a bond or pay a deposit to retrieve passports.
- Workers are misinformed about their right to secure their own documents.
- Workers are not provided means to secure their own documents.
- Workers do not have any access to personal documents.
- Workers report that their ability to move freely or terminate their employment has been limited by their inability to access their documents in a timely fashion.