



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

SEP 15 2009

PROCUREMENT MEMORANDUM 2009-15 (Amendment 1)

ACTION

MEMORANDUM FOR: SENIOR BUREAU PROCUREMENT OFFICIALS
HEADS OF CONTRACTING OFFICES

FROM: Helen Hurcombe, *Signed*
Senior Procurement Executive
and Director for Acquisition Management

SUBJECT: Implementation of Employment Eligibility Verification
(E-Verify)

Background

The final rule on FAR Case 2007-013, Employment Eligibility Verification (E-Verify) was published in the Federal Register on November 14, 2008, at 73 FR 67651, and included in Federal Acquisition Circular (FAC) 2005-29. The rule requires certain contractors and subcontractors to use the E-Verify System administered by the Department of Homeland Security, U.S. Citizenship and Immigration Services, to verify that all of the contractors' new hires, and all of the employees (existing and new) directly performing work under Federal contracts, are authorized to work in the United States.

The effective date of the final rule was January 19, 2009, but the applicability date has been delayed several times due to on-going litigation. On August 15, 2009, the U.S. District Court granted the Government's motion for summary judgment and rendered an opinion in the Government's favor on all counts in the litigation. Although the plaintiffs have filed a notice of intent to appeal, the FAR Council has decided not to further extend the applicability date for the FAR coverage on E-Verify (FAR Subpart 22.18 and 52.222.-54). Therefore, the FAR's E-Verify coverage will become effective on September 8, 2009.

Purpose

This guidance outlines the actions required to comply with the new regulation for verification of employees through E-Verify, FAR Subpart 22.18, and associated FAR clause 52-222.54.

Applicability

The requirements of FAR Subpart 22.18 are effective on September 8, 2009, and are applicable to awards above the simplified acquisition threshold made on or after the effective date including task orders or delivery orders against previously awarded contracts, except those for commercially available off-the-shelf items as described in FAR Subpart 22.1803; and all current contracts in excess of the simplified acquisition

threshold with a remaining period of performance in excess of 120 days, except those for commercially available off-the-shelf items as described in FAR Subpart 22.1803.

Please note that contractor employees are exempt from verification requirements if (a) the employee holds an active security clearance of confidential, secret, or top secret; or (b) the employee has received a credential issued pursuant to Homeland Security Presidential Directive 12 (HSPD-12).

Required Actions

Contracting officers shall carefully review the E-Verify requirements in FAR Subpart 22.18 and 52.222-54 and:

- **Existing Contracts:**

Contracting Officers shall:

- Conduct a review of existing contracts to determine the applicability of FAR Subpart 22.18 based on dollar amount; type of goods or services; remaining period of performance; and place of performance.
- Modify contracts and task orders to include FAR clause 52-222.54, as appropriate.

- **New Contracts**

Contracting Officers shall:

- Insert FAR clause 52-222.54 in all solicitations and contracts, as prescribed in FAR Subpart 22.1803.

Waivers

In exceptional cases, the Head of the Contracting Activity may waive the E-Verify requirement for a contract or subcontract or class or contracts or subcontracts, either temporarily or for the period of performance. This waiver authority may not be delegated. Bureau Procurement Officials shall submit waiver documentation to the Senior Procurement Executive for concurrence.

If you have questions regarding this Procurement Memorandum, please contact Lori Donovan at LDonovan@doc.gov or 202-482-1716.

cc: Acquisition Community
Acquisition Council