



The E-Verify Federal Contractor rule will take **effect January 15, 2009**. This is a final rule. It is my understanding that because this is going into effect before the new Administration is sworn in, then in order for it to be overturned it must go through the arduous public notice and comment period. Plus, putting on my immigration hat...I'm not sure it would be in President Obama's interest to overturn an Executive Order that relates to federal contractors having a secure workforce and immigration enforcement lest he be perceived from the start as "weak on immigration enforcement". Moreover, his predecessor, President Clinton was the first to have an EO which found that unauthorized workers in federal contractors workforce made it less stable and reliable. Note too that many former Clintonites are advising President-elect Obama. More than 1,600 public comments were received .

### **Summary**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require certain contractors and subcontractors to use the E-Verify system administered by the Department of Homeland Security, U.S. Citizenship and Immigration Services, as the means of verifying that certain of their employees are eligible to work in the United States. Executive Order 12989, as amended, specifically directs the agency heads of DoD, GSA and NASA to implement this policy through amendments to the FAR. Under the final rule, Departments and agencies should, in accordance with FAR 1.108(d)(3), amend existing indefinite-delivery / indefinite quantity (IDIQ) contracts to include the clause for future orders if the remaining period of performance extends at least six months after the effective date of the final rule and the amount of work or number of orders expected under the remaining performance period is substantial.

### **Process**

The rule inserts a clause into Federal contracts committing Government contractors to use the USCIS E-Verify program to verify that all of the contractors' new hires, and all employees (existing and new) directly performing work under Federal contracts, are authorized to work in the United States. The final rule:

1. Exempts contracts that are for:
  - Commercially available off-the-shelf (COTS) items; and
  - Items that would be COTS items but for minor modifications.
2. Requires inclusion of the clause in subcontracts over \$3,000 for services or for construction.
3. Requires contractors and subcontractors to use E-Verify to confirm the employment eligibility of all existing employees who are directly performing work under the covered contract (THIS MEANS REVERIFICATION OF EXISTING EMPLOYEES which is not currently allowed under E-Verify)

4. Applies to solicitations issued and contracts awarded after the effective date of the final rule in accordance with FAR 1.108(d). Under the final rule, Departments and agencies should, in accordance with FAR 17.108(d)(3), amend—on a bilateral basis—existing indefinite delivery/indefinite-quantity contracts to include the clause for future orders if the remaining period of performance extends at least six months after the effective date of the final rule.

5. In exceptional circumstances, allows a head of the contracting activity to waive the requirement to include the clause. This authority is not delegable.

Note, as with any rule that there are exceptions to the above rule that federal contactors use E-Verify. For instance, exempted are prime contracts with performance terms of less than 120 days, the final rule exempts employees who hold an active security clearance of confidential, secret or top secret from the verification requirements, and certain administrative staff may be exempt too. And, swinging the net widely, for those contractors who choose to, they will have the option of verifying all employees, including any existing employees not currently assigned to a Government contract. A contractor that chooses to exercise this option must notify DHS and must initiate verifications for the contractor's entire workforce within 180 days of such notice to DHS.

Below is a link to the final rule...all 274 pages of it.

[http://federalregister.gov/OFRUpload/OFRData/2008-26904\\_PI.pdf](http://federalregister.gov/OFRUpload/OFRData/2008-26904_PI.pdf)

Regards,

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