

Do I E-Verify?

October 2009

Overview

Starting on September 8, 2009, businesses seeking funds from the American Recovery and Reinvestment Act of 2009 (ARRA) are subject to the E-Verify provisions within the Federal Acquisition Regulation (FAR). FAR requires participating vendors (and some sub-contractors) to sign-up for E-Verify -- a free, electronic employment eligibility verification system. The regulation is not limited to the ARRA funds, but rather all appropriations contracts issued by the federal government, with very limited exceptions. U.S. companies who have existing federal contracts for goods or services (including construction) will most likely see those contracts revised to require E-Verify.

The U.S. Citizenship & Immigration Service (USCIS) has indicated that it is reviewing E-Verify data to determine employer compliance failures. If the USCIS discovers non-compliance with E-Verify by a registered employer, the Immigration & Customs Enforcement (ICE) division may complete an inspection/audit of the employer.

Who does this impact?

The FAR applies to entities with a qualifying federal contract that include the E-Verify clause. General provisions include the following:

- Contract awarded on or after 9/8/09 and includes the FAR E-Verify clause
- Contract has a period of performance that is more than 120 days
- Contract's value exceeds \$100,000
- Some portion of the work under the contract is completed in the United States
- Subcontracts for more than \$3000 for services or construction

U.S. companies with existing federal contracts for goods or services (including construction) meeting the above criteria will most likely see the contract revised to require E-Verify. A prime contractor may be subject to fines/penalties if it knowingly works with a subcontractor who is in violation of the FAR E-Verify provisions.

Some entities awarded a government contract qualify for an exception. They include: state and local governments; institutions of higher education; governments of federally recognized Native American tribes; and sureties performing under a takeover agreement entered into with a federal agency under a performance bond. These entities are only required to use E-Verify for new hires and existing employees who work directly under a covered contract.

If your company has an existing Indefinite-Delivery/Indefinite-Quantity (IDIQ) contract, it may be modified by your government contracting official to include the FAR E-Verify clause for future orders. This may apply when the remaining period of the performance continues for at least six (6) months after 9/8/09, or if the amount of work remaining is substantial. If your contract is modified, your company must enroll in E-Verify within 30 days from the modification date.

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Your federal contract is exempt from the FAR E-Verify provisions if it does not meet the five points outlined above, and if your contract includes only commercially available off-the-shelf (COTS) items and related services. Furthermore, work completed outside the U.S. is not included.

Who do we submit to E-Verify?

Federal contractors subject to the FAR E-Verify provisions must use E-Verify to confirm the employment eligibility for all individuals hired during the term of the contract, and for all current employees who perform work in the U.S. under the contract. Federal contractors also have the option of verifying their entire workforce. However, if your company is registered with E-Verify, but is not a federal contractor, or if your federal contract does not contain the E-Verify clause, you may only use E-Verify for new employees.

Some employees are exempt from E-Verify.

- Employees who were hired before November 6, 1986
- Employees previously verified in E-Verify
- Employees who have an active, confidential, secret, or top secret security clearance in accordance with the National Industrial Security Program Manual (NISPOM) or Homeland Security Presidential Directive-12 (HSPD-12) credential
- Existing employees whose work is unrelated to the federal contract

When do we need to enroll in E-Verify?

Companies awarded government contracts are required to enroll in E-Verify within 30 days of the contract award date. Those contractors will have to use E-Verify to confirm all new hires and employees directly working on federal contracts are authorized to legally work in the U.S.

If your company is not yet enrolled in E-Verify, you must complete the enrollment process within 30 days of the award date of the contract that contains the FAR E-Verify clause. Then, within 90 days, you must begin verifying all newly hired employees, unless the employee qualifies for an exemption.

Those employers affected by the FAR who are already enrolled in E-Verify must continue to submit verification of newly hired employees within three business days from their start date of employment. However, you must also update your company profile within E-Verify to designate your company as a federal contractor within 30 days from the award date of the contract that contains the FAR E-Verify clause, or within 30 days from receiving a modified contract containing the FAR E-Verify clause.

Employers then have 90 days from the effective award date of the contract to begin submitting verification of existing employees who perform work on the existing federal contract. If you choose to verify the employment eligibility of your entire workforce, that process must be initiated within 180 days from the enrollment date.

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Once your company has enrolled in E-Verify for 90 days or more, and has been designated as a federal contractor, you must continue to verify all new hires within 3 business days from the start date of employment.

If your government contract does not include the FAR E-Verify clause, then you are not required to enroll in E-Verify.

Please contact Karen A. McAmmond, Immigration Services Business Manager, at 734.668.8990 or mcammond@millercanfield.com if you'd like further information.