

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 22, and 52**

[FAC 2005–29; FAR Case 2007–013; Docket 2008–0001; Sequence 1]

RIN 9000–AK91

**Federal Acquisition Regulation; FAR
Case 2007–013, Employment Eligibility
Verification****AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).**ACTION:** Final rule.**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.**DATES:** *Effective Date:* January 15, 2009.*Applicability Date:* Contracting Officers should modify, on a bilateral basis, existing indefinite-delivery/indefinite-quantity contracts in accordance with FAR 1.108(d)(3) to include the clause for future orders if the remaining period of performance extends at least six months after the final rule effective date, and the amount of work or number of orders expected under the remaining performance period is substantial.**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–29, FAR case 2007–013.**SUPPLEMENTARY INFORMATION:****A. Background and Purpose***Employment Eligibility Verification
Requirements*

As explained more fully in the proposed rule, the Federal Property and Administrative Services Act of 1949 (FPASA), authorizes the President to “prescribe policies and directives”

governing procurement policy “that the President considers necessary to carry out” that Act and that are “consistent” with the Act’s purpose of “provid[ing] the Federal Government with an economical and efficient” procurement system. 40 U.S.C. 101, 121. On June 6, 2008, the President exercised this authority and the authority vested in him under section 301 of Title 3 of the United States Code in issuing Executive Order 13465 “Economy and Efficiency in Government Procurement through Compliance with Certain Immigration and Nationality Act Provisions and the Use of an Electronic Employment Eligibility Verification System.” 73 FR 33285, Jun. 11, 2008, amending Executive Order 12989 (signed February 13, 1996, published February 15, 1996 at 61 FR 6091), previously amended by Executive Order 13286 (signed February 28, 2003, published March 5, 2003 at 68 FR 10619). As amended, Executive Order 12989 now provides, at Section 5.(a), that “Executive departments and agencies that enter into contracts shall require, as a condition of each contract, that the contractor agree to use an electronic employment eligibility verification system designated by the Secretary of Homeland Security to verify the employment of: (i) All persons hired during the contract term by the contractor to perform employment duties within the United States; and (ii) all persons assigned by the contractor to perform work within the United States on the Federal contract.” The Executive Order also requires, at Section 5.(c), that the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration “amend the Federal Acquisition Regulation to the extent necessary and appropriate to implement the * * * employment eligibility verification responsibility * * * assigned to heads of departments and agencies under this order.”

On June 9, 2008, the Secretary of Homeland Security designated the “E-Verify system, modified as necessary and appropriate to accommodate the policy set forth in the Executive Order * * * as the electronic employment eligibility verification system to be used by Federal contractors.” (See 73 FR 33837, Jun. 13, 2008.)

This final rule responds to these requirements, and the Secretary’s designation, by amending the FAR to require certain Federal contractors and subcontractors to use the E-Verify system (E-Verify) administered by the Department of Homeland Security (DHS), U.S. Citizenship and

Immigration Services (USCIS) as the means of verifying that certain of their employees are authorized to work in the United States.

E-Verify Program

The E-Verify system, formerly known as the Basic Pilot/Employment Eligibility Verification Program, is an Internet-based system operated by DHS USCIS, in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees. E-Verify represents the best means currently available for employers to verify the work authorization of their employees.

Before an employer can use the E-Verify system, the employer must enroll in the program and agree to the E-Verify Memorandum of Understanding (MOU) required for program participants. The terms of the MOU are established by USCIS and are not negotiated with each participant. In consenting to the MOU, employers agree to abide by current legal hiring procedures and to ensure that no employee will be unfairly discriminated against in the use of the E-Verify program. Violation of the terms of the MOU by the employer is grounds for termination of the employer’s participation in the E-Verify program.

Current law (8 U.S.C. 1324a(b)) requires all employers in the United States to complete an Employment Eligibility Verification Form (Form I–9) for each newly hired employee to verify each employee’s identity and employment eligibility. Under this final rule, Federal contractors will additionally enter the worker’s identity and employment eligibility information into the E-Verify system, which checks that information against information contained in SSA, USCIS and other Government databases.

SSA first verifies that the name, social security number (SSN), and date of birth are correct and, if the employee has stated that he or she is a U.S. citizen, confirms U.S. citizen status through its databases. If the system confirms identity and U.S. citizenship, and there are no other indicators that the information is not correct, SSA confirms employment-eligibility. USCIS also verifies through database checks that any non-U.S. citizen employee is in an employment-authorized immigration status.

If the information provided by the worker matches the information in the SSA and USCIS records, no further action will be required. E-Verify procedures require only that the employer record on the Form I–9 the