

Many Federal Contractors Will Have To Comply With E-Verify

September 9, 2009

Yesterday, a new federal rule took effect, which requires many federal contractors to use the E-Verify system to determine their employees' eligibility to work in the United States. E-Verify is a free web-based system operated by the Department of Homeland Security, in partnership with the Social Security Administration. The system compares employee information from the Employment Eligibility Verification Forms (I-9) against federal government databases in order to verify workers' employment eligibility. Under the new rule, many companies which are awarded a federal contract after September 8, 2009 will be required to enroll in E-Verify within 30 days of the contract award date. The contractor will need to use the system to verify employment eligibility for all new hires, regardless of whether the employee will work on the federal contract, and also for all existing employees who perform work on the contracts.

The new rule generally will apply to prime federal contracts with a period of performance longer than 120 days and a value of more than \$100,000, excluding contracts for commercially available off-the-shelf items. The rule also covers subcontractors on a prime contract, which expressly includes the E-Verify requirement, or on subcontracts for services or construction with a value of over \$3000.

This new rule has been and continues to be the subject of litigation. Although the requirement had been proposed last year by the Bush administration, business groups challenged the rule in federal court on the grounds that it violated the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The litigation was stayed in order to give the Obama administration an opportunity to evaluate the issue, and in July 2009, the administration announced that it would move ahead with the E-Verify requirement for federal contractors. Recently, the federal court held that the proposed rule was not unlawful under the IIRIRA, allowing the rule to go into effect yesterday. However, business groups have appealed the decision, and it is possible that the Obama administration will delay the new rule until the appeal is resolved. We will update you if this occurs.

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