

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket FAR 2008-0003, Sequence 4]

**Federal Acquisition Regulation; Federal Acquisition Circular 2005-29; Introduction**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final rule.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005-29. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

**DATES:** For effective date, see the document following this notice.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005-29, FAR Case 2007-013. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

**RULE LISTED IN FAC 2005-29**

| Item    | Subject                                   | FAR case | Analyst |
|---------|---|----------|---------|
| I ..... | Employment Eligibility Verification ..... | 2007-013 | Murphy. |

**SUPPLEMENTARY INFORMATION:** A summary of the FAR rule follows. For the actual revisions and/or amendments to this FAR case, refer to FAR Case 2007-013.

FAC 2005-29 amends the FAR as specified below:

**Item I—Employment Eligibility Verification (FAR Case 2007-013)**

This final rule implements Executive Order 12989, as amended June 6, 2008, and the selection of the Secretary for Homeland Security of the E-Verify system as the electronic system to be used for certain contractors and subcontractors as the means of verifying that certain of their employees are eligible to work in the United States. This final rule inserts a clause into Federal contracts that are above the simplified acquisition threshold and have a performance period of at least 120 days, committing Government contractors to use the U.S. Citizenship and Immigration Services' E-Verify system 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.

Exemptions include contracts that are for commercially available off-the-shelf (COTS) items and items that would be COTS items but for minor modifications. The final rule requires prime contractors to include the clause in subcontracts over \$3,000 for services or for construction.

In exceptional circumstances, a head of the contracting activity, without power of redelegation, is authorized to

waive the requirement to include the clause.

In response to public comments, the final rule significantly extends the timelines for registering, beginning to use the system for new and existing employees, and using the program to initiate verification of new hires.

Applicability to certain entities was limited in the following ways:

- Institutions of higher education need only verify employees assigned to a covered Federal contract.
- State and local governments and Federally Recognized Indian Tribes need only verify employees assigned to a covered Federal contract.
- Sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond need only verify employees assigned to the covered Federal contract.

In addition, the final rule exempts from verification requirements (a) employees who hold an active security clearance of confidential, secret, or top secret and (b) employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD)-12. Contractors concerned with costs associated with identifying and separating existing employees assigned to a Federal contract, for the purpose of E-Verify, are provided the option of verifying all employees of the contractor, including any existing employees not currently assigned to a Government contract.

Dated: November 6, 2008.

**Al Matera,**  
*Director, Office of Acquisition Policy.*

Federal Acquisition Circular (FAC) 2005-29 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in the FAC 2005-29 is effective January 15, 2009.

Dated: November 5, 2008.

**Linda W. Neilson,**  
*Acting Deputy Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing (Defense Acquisition Regulations System).*

**David A. Drabkin,**  
*Senior Procurement Executive & Deputy Chief Acquisition Officer, U.S. General Services Administration.*

Dated: November 5, 2008.

**William P. McNally,**  
*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

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