



## DOT ACQUISITION POLICY LETTER

This Acquisition Policy Letter is issued under the authority of the Senior Procurement Executive of the Department of Transportation

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**Subject:** Employment Eligibility Verification

### **References:**

Federal Acquisition Circular (FAC) 2005-29, Employment Eligibility Verification  
FAR Subpart 22.18

### **When is this Acquisition Policy Letter (APL) Effective?**

This APL is effective February 20, 2009.

### **When Does This APL Expire?**

This APL remains in effect until superseded or canceled.

### **Who is the Point of Contact?**

Contact Rhonda LaBron of the Office of the Senior Procurement Executive, (202) 366-6689 or by email at [rhonda.labron@dot.gov](mailto:rhonda.labron@dot.gov).

Visit our website at <http://www.dot.gov/ost/m60/> for additional information on DOT Acquisition Policy Letters and other policy issues.

### **What is the Purpose of this Acquisition Policy Letter?**

This APL serves to inform the acquisition workforce of the impending FAR change that requires federal contractors and subcontractors to use the Employment Eligibility Verification (E-Verify) system, an Internet-based system, operated by the Department of Homeland Security that allows employers to verify that their employees are eligible to work in the United States.

### **What is the Background?**

In response to the vast number of illegal immigrants in the country, Federal Acquisition Circular (FAC) 2005-29 requires most contractors with contracts exceeding the simplified acquisition threshold (\$100,000) to verify that all of their employees working on the contract in the United States, and all of their newly-hired employees (regardless of whether they are working on the contract or not), are authorized to work in the United States. Executive Order 12989, Section 5(a), provides that 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.

The Department of Homeland Security designated **E-Verify system** as the electronic employment verification system to be used by Federal contractors (<http://www.dhs.gov/e-verify>), to verify 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.

In addition, Executive Order 12989, Section 5.(c), proposes an amendment to Federal Acquisition Regulation (FAR) to implement the employment eligibility verification responsibility assigned to heads of executive departments and agencies.

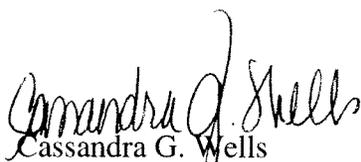
## What is the Guidance?

FAC 2005-29 ([www.regulations.gov](http://www.regulations.gov)) implements E-Verify by adding **FAR** Subpart 22.18 and the accompanying contract clause **FAR 52.222-54**, both titled "Employment Eligibility Verification."

1. The effective date of FAC-2005-29, the final rule amending 48 CFR Parts 2, 22, and 52, published in the Federal Register on November 14, 2008, at 73 FR 67650, is delayed January 15, 2009, until January 19, 2009.
2. The applicability date of FAC-2005-29 is delayed until February 20, 2009.
3. Contracting Officers shall not include the new clause at 52.222-54 in any solicitation or contract prior to the applicability date of February 20, 2009.

On or after February 20, 2009, contracting officers--

4. Shall include the new clause in solicitations in accordance with the clause prescription at 22.1803; and
5. 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.



Cassandra G. Wells

Acting Deputy Director  
Office of the Senior Procurement Executive