

## Collins CIV Cathy

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**From:** Collins CIV Cathy  
**Sent:** Friday, August 28, 2009 6:12 AM  
**To:** M\_HQMC\_MCFCS\_Civilian; M\_HQMC\_MCFCS\_Directors/Deputies;  
M\_HQMC\_MCFCS\_Enlisted; M\_HQMC\_MCFCS\_Officer  
**Cc:** M\_HQMC\_LB  
**Subject:** APM 09-19 DoD Implementation of E-Verify for Employment

All,

**BACKGROUND:** FAR Case 2007-013 resulted in the publication of a final rule in the Federal Register as FAC 2005-29 on 14 November 2008. This rule amended the FAR to incorporate the use of the E-Verify system for Contractor Employment Eligibility Verification. This new rule amplifies the requirements from Executive Order 12989 that Federal Contractors electronically verify that their employees are eligible to work in the United States. The Executive Order reinforces the policy that the Federal Government does business with companies that have a legal workforce, and the rule establishes E-Verify as the means to electronically confirm employment eligibility.

This rule had an effective date of 15 January 2009, however due to pending litigation, Amendment 1 to the FAC was published on 14 January 2009, changing the effective date of this rule to 19 January 2009 and the applicability date to 20 February 2009. In order to permit the new Administration an adequate opportunity to review the rule, several additional amendments were published, extending the applicability date first to 21 May 2009, then to 30 June 2009. Amendment 4 further extends the applicability date to 8 September 2009, pursuant to the attached DPAP memorandum of 9 June 2009.

**POLICY:** Effective 8 September 2009, in all solicitations and contracts that exceed the simplified acquisition threshold, Contracting Officers shall include FAR clause 52.222-54, Employment Eligibility Verification (Jan 2009), unless one of the exceptions in FAR 22.1803 applies. The clause requires certain Contractors and subcontractors to use the E-Verify system to check their employees' eligibility to work in the United States.

**PROCEDURES:**

- a. Contracting Officers should make a bilateral modification to existing indefinite-delivery/indefinite-quantity contracts and existing BPAs in accordance with FAR 1.108(d)(3), to include clause 52.222-54 for future orders if the remaining period of performance extends beyond 8 March 2010, and the amount of the work or number of orders expected under the remaining period of performance is substantial.
- b. According to the final rule cited in FAC 2005-09, the ADC I&L, without power of redelegation, is authorized to waive the requirement to include clause FAR 52.222-54 in exceptional circumstances. In the event the Contracting Officer determines an exceptional circumstance exists, a waiver shall be prepared documenting the rationale for excluding FAR 52.222-54 from the solicitation and contract. Waivers must be signed by the CCO and submitted to HQMC, I&L (Contracts), Field Support Branch, for approval by the ADC, I&L.

R/ cc

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