



THE KULLMAN FIRM

A PROFESSIONAL LAW CORPORATION

SPECIAL BULLETIN

E-Verify: Look Before You Leap!

A great deal of publicity surrounded the fact that on September 8th, federal government agencies were directed to begin adding the E-Verify Clause to most federal acquisition contracts, requiring impacted federal contractors to start using E-Verify within 30 days after the contract is awarded and to insert a similar clause into the contractor's subcontracts. While any current or potential federal contractor should be aware of this requirement and should plan now for implementation, contractors should also be aware that implementation, particularly for subcontractors, will not necessarily be immediate.

First, the rule requiring certain federal contractors to use E-Verify will only affect federal contractors who are awarded a new contract after September 8, 2009, that includes the E-Verify Clause (or who have a present contract that is specifically modified to include the Clause). In fact, federal contractors may NOT use E-Verify to verify current employees until they are awarded a contract that includes the E-Verify Clause. Any federal contractor awarded a contract after September 8th that includes the E-Verify Clause, however, will be required to enroll in E-Verify within 30 days of the contract award date.

Second, any company that simply furnishes supplies or services to the federal government (not pursuant to a written contract or subcontract), and is not deemed to be a "contractor" or "subcontractor" will not be impacted. Another big exception to the new E-Verify requirement is that contracts to supply "commercially available off-the-shelf" ("COTS") items are exempt from the Rule. For example, a company that supplies canned food items to the federal government in the same form and style available to other consumers in a grocery store will likely be exempt from E-Verify under the COTS exemption.

Third, it is incumbent upon each prime contractor that is awarded a contract that includes the E-Verify Clause to themselves include the Clause in any subcontracts that are over \$3,000 for services or construction. Including the Clause in its covered subcontracts is the prime contractor's responsibility, not the government's responsibility. A prime contractor's failure to include the Clause when it is required may subject the contractor to penalties (including debarment from future federal contracts). The subcontractor will not be subject to penalties in that situation.

In sum, federal contractors and subcontractors should be aware of and be ready for E-Verify, and should prepare to enroll within 30 days if and when they are awarded a federal contract or subcontract that includes the E-Verify Clause, but should not leap before looking!

The Kullman Firm regularly counsels employers regarding labor and employment issues such as the challenges provided by the federal government's new E-Verify requirements. If you have any questions regarding E-Verify, please contact the Kullman attorney with whom you customarily work.