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Client Alert



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President Amends Executive Order to Require All Federal Contractors to Enroll in E-Verify System

President Bush has amended Executive Order 12989 to require all federal contractors and subcontractors, as a condition of each future federal contract, to agree to use an electronic employment eligibility verification system to verify the work authorization of all persons hired during the contract term and all persons performing work within the U.S. on the federal contract. "E-Verify", the highly publicized (and often criticized) federal system, has been designated by the Department of Homeland Security (DHS) as the system that all federal contractors must use.

E-Verify is a free Internet-based system that allows enrolled employers to confirm the legal status of new hires, usually within seconds. DHS reports that more than 69,000 employers currently rely on E-Verify to determine that their new hires are authorized to work in the U.S., and those numbers have continued to increase in the last several months, mainly as a result of various state laws that have been put in place to require employers to register with E-Verify.



A proposed rule has been issued and is expected to become final following a 60-day comment period. The new rule will apply to most government prime contracts that include work in the U.S. and all subcontracts for over \$3,000 for services or construction. **The rule will apply to solicitations issued and contracts awarded after the effective date of the final rule.** Contractors and subcontractors will be required to enroll in the E-verify program within **30 days** of a contract award, to begin verifying the employment eligibility of all new employees of the contractor or subcontractor that are hired after enrollment in E-Verify, and to continue to use E-Verify for the life of the contract.

Federal contractors and businesses who subcontract for them should take steps now to ensure their hiring practices are in compliance with federal immigration and employment laws. Enrollment in the E-Verify program requires the employer to enter into a Memorandum of Understanding (MOU) with DHS, which includes an agreement to abide by current legal hiring procedures and to provide DHS access to audit the contractor's hiring records and I-9 files. Violation of the terms of the MOU by the employer is grounds for immediate termination of its participation in the program, and it may result in termination of the contract and debarment of the contractor from future federal contracts.

If you need assistance in reviewing registration requirements, employer obligations when registering with the E-Verify program, or if you would like assistance with an internal compliance audit in advance of the registration requirements, please contact Carol Armstrong at (205) 633-0268 or carmstrong@tannerguin.com.

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