



## **Guidance on FAR 52.222-54: E-Verify Optional Clause**

### **1) The Clause:**

FAR Clause 52.222-54 may be included in federal solicitations or contracts awarded on or after September 8, 2009. It applies to contracts that are valued at \$100,000 or greater; have a period of performance of 120 days or greater; for services to be performed in the United States. The clause requires the RF to use the E-Verify system to verify employment eligibility of all new hires entering its workforce as well as all existing employees assigned by the contractor to perform work on the specific federal contract.

When the applicability of the FAR clause is cited in any contract or solicitation, pre-award staff and negotiators should make early efforts to inform any collaborative contractor, subcontractor, or independent consultant of the same so that registration into the E-Verify system can be completed expeditiously by those contractors who are not currently enrolled. In addition, your HR and AP/PR departments must be made aware of E-Verify applicability since both have responsibilities under the Clause to ensure compliance. Note 2) and 3) below.

### **2) Flow-Down Applicability to Subcontractors, Independent Contractors and the use of Purchase Orders:**

In addition to RF registration and use of E-Verify, the FAR 52.222-54 must flow down to any procurement agreement entered into *for services or construction* performed in the United States with a value greater than \$3,000.00. Along with traditional subcontracts, the FAR defines such contractual agreements to include certain independent contractors as well as purchase orders used to procure such services or construction.

The term “services contract” is defined in FAR 37.101 as any agreement the purpose of which is to directly engage the time and effort of a contractor “whose purpose is to perform an identifiable task rather than to furnish an end item of supply.” Therefore the E-Verify clause exempts contracts for services that are offered as part of the purchase of a commercially available off-the-shelf (COTS) item, performed by the COTS provider, and are normally provided for that COTS item.

Furthermore, per the November 14, 2008 final rule: “If the subcontractor does not have any subcontract running longer than 30 days, the subcontract term would end before the subcontractor would be required to register with E-Verify. However, if the subcontract period runs beyond 30 days, the subcontractor would be required to enroll in E-Verify.”

Registration and use of the E-Verify system is required of any Independent Contractor (IC) that must comply with I-9 provisions (i.e. has employees). If the IC is a sole

proprietor with no employees he/she is not required to enroll in E-Verify. If at any time the IC hires employees it must notify Foundation and provisions of the FAR would apply.

Basic RF Purchase Orders are also required to include FAR 52.222-54 for any commercial or non-commercial services or construction that fit the eligibility requirements described above.

### **3) Actions Required:**

#### **A. Pre-Award Staff**

1. Pre-award administrators must review solicitations, contracts and federal flow-through subcontracts to see if the documents contain FAR Clause 52.222-54. Be sure to follow the following steps before accepting the clause in a solicitation.
2. If the clause is included, the administrator should:
  - a) Be certain the clause is applicable to the contract according to the eligibility requirements above. If the clause is being inserted without meeting these eligibility criteria, negotiate for its exclusion.
  - b) Assure the clause is not inserted in grants, cooperative agreements, and subcontracts not covered by the FAR.
  - c) Notify applicable HR offices of verification obligations to advise them of all employees (RF and SUNY) assigned to perform work on the pending FAR-based contract.
  - d) Notify appropriate Accounts Payable Staff when subcontracts, independent contractors or purchase orders are envisioned to be used to procure services as defined above.
3. Flow-down the clause to subcontractors.

#### **B. Post-Award Staff (APPO)**

1. When the clause is included the post-award administrator should:
  - a) Include optional clause 52.222-54 in appropriate IC agreements and affix the same as a rider to the RF Purchase Order that meets the requirements of the clause.
  - b) Communicate the requirements to enroll and use E-Verify to the contractor and the need to submit evidence of enrollment for it and any third-tier procurements that satisfy the flow-down provisions as prescribed in 2) above.

**4. Supplemental Resources:**

[E-Verify Optional Clause](#)

[E-Verify Guidance Memo G. Sanders September 11, 2009](#)

[E-Verify Presentation to UCRC November 9, 2009](#)

[Supplemental Guidance from USCIS](#)

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