

## 22.1802 Policy.

(a) Statutes and Executive orders require employers to abide by the immigration laws of the *United States* and to employ in the *United States* only individuals who are eligible to work in the *United States*. The E-Verify program provides an Internet-based means of verifying employment eligibility of workers employed in the *United States*, but is not a substitute for any other employment eligibility verification requirements.

(b) *Contracting officers shall* include in *solicitations* and contracts, as prescribed at 22.1803, requirements that Federal contractors *must*-

(1) Enroll as Federal contractors in E-Verify;

(2) Use E-Verify to verify employment eligibility of all new hires working in the *United States*, except that the contractor *may* choose to verify only new hires assigned to the contract if the contractor is-

(i) An institution of higher education (as defined at 20 U.S.C. 1001(a));

(ii) A State or local government or the government of a Federally recognized Indian tribe; or

(iii) A *surety* performing under a takeover agreement entered into with a *Federal agency* pursuant to a performance bond;

(3) Use E-Verify to verify employment eligibility of all employees assigned to the contract; and

(4) Include these requirements, as required by the clause at 52.222-54, in *subcontracts* for-

(i) Services, except for *commercial services* that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item; and

(ii) *Construction*.

(c) Contractors *may* elect to verify employment eligibility of all existing employees working in the *United States* who were hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands) instead of just those employees assigned to the contract. The contractor is not required to verify employment eligibility of-

(1) Employees who hold an active security clearance of confidential, secret, or top secret; or

(2) Employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD)-12.

(d) In exceptional cases, the *head of the contracting activity may* waive the E-Verify requirement for a contract or *subcontract* or a class of contracts or *subcontracts*, either temporarily or for the period of performance. This waiver authority *may* not be delegated.

(e) DHS and the Social Security Administration (SSA) *may* terminate a contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. If DHS or SSA terminates a contractor's MOU, the terminating agency *must* refer the contractor to a *suspension* or *debarment* official for possible *suspension* or *debarment* action. During the period between termination of the

MOU and a decision by the *suspension* or *debarment* official whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of the clause at 52.222-54. If the contractor is suspended or debarred as a result of the MOU termination, the contractor is not eligible to participate in E-Verify during the period of its *suspension* or *debarment*. If the *suspension* or *debarment* official determines not to suspend or debar the contractor, then the contractor *must* reenroll in E-Verify.

**Parent topic:** Subpart 22.18 - Employment Eligibility Verification