Friday,
November 14, 2008

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1, Parts 2, 22, and 52
Federal Acquisition Regulation; Final Rules and Small Entity Compliance Guide
**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

48 CFR Chapter 1

[Docket FAR 2006–0003, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–29; Introduction

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final rule.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–29. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at http://www.regulations.gov.

**RULE LISTED IN FAC 2005–29**

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**SUPPLEMENTARY INFORMATION:** A summary of the FAR rule follows. For the actual revisions and/or amendments to this FAR case, refer to FAR Case 2007–013.

FAC 2005–29 amends the FAR as specified below:

**Item I—Employment Eligibility Verification (FAR Case 2007–013)**

This final rule implements Executive Order 12989, as amended June 6, 2008, and the selection of the Secretary for Homeland Security of the E-Verify system as the electronic system to be used for certain contractors and subcontractors as the means of verifying that certain of their employees are eligible to work in the United States. This final rule inserts a clause into Federal contracts that are above the simplified acquisition threshold and have a performance period of at least 120 days, committing Government contractors to use the U.S. Citizenship and Immigration Services’ E-Verify system to verify that all of their employees are authorized to work in the United States.

Exemptions include contracts that are for commercially available off-the-shelf (COTS) items and items that would be COTS items but for minor modifications. The final rule requires prime contractors to include the clause in subcontracts over $3,000 for services or for construction.

In exceptional circumstances, a head of the contracting activity, without power of redelegation, is authorized to waive the requirement to include the clause.

In response to public comments, the final rule significantly extends the timelines for registering, beginning to use the system for new and existing employees, and using the program to initiate verification of new hires.

Applicability to certain entities was limited in the following ways:

- Institutions of higher education need only verify employees assigned to a covered Federal contract.
- State and local governments and Federally Recognized Indian Tribes need only verify employees assigned to a covered Federal contract.
- Sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond need only verify employees assigned to the covered Federal contract.

In addition, the final rule exempts from verification requirements (a) employees who hold an active security clearance of confidential, secret, or top secret and (b) employees for whom background investigations have been completed and credentials issued pursuant to Homeland Security Presidential Directive (HSPD)-12. Contractors concerned with costs associated with identifying and separating existing employees assigned to a Federal contract, for the purpose of E-Verify, are provided the option of verifying all employees of the contractor, including any existing employees not currently assigned to a Government contract.

**DATES:** For effective date, see the document following this notice.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–29, FAR Case 2007–013. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

Dated: November 6, 2008.

Al Matera,
Director, Office of Acquisition Policy.

Federal Acquisition Circular (FAC) 2005–29 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in the FAC 2005–29 is effective January 15, 2009.

Dated: November 5, 2008.

Linda W. Neilson,
Acting Deputy Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing (Defense Acquisition Regulations System).

David A. Drabkin,
Senior Procurement Executive & Deputy Chief Acquisition Officer, U.S. General Services Administration.

William P. McNally,
Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E8–26906 Filed 11–13–08; 8:45 am]

BILLING CODE 6820–EP–P
The Contractor shall initiate verification of employment eligibility of—

(i) All new employees.

(A) Enrolled 90 calendar-days or more.

(B) Enrolled less than 90 calendar days.

Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) Individuals previously verified. The Contractor shall not be required to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors.

Subcontracts. The Contractor shall include the requirements of this clause, including this paragraph (e), appropriately modified for identification of the parties, in each subcontract that—

(i) Is for—

(I) Commercial or noncommercial 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); or

(II) Construction;

(ii) Has a value of more than $3,000; and

(iii) Includes work performed in the United States.

(E) End of clause.

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DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2008–0003, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–29; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the
rule appearing in Federal Acquisition Circular (FAC) 2005–29 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005–29 which precedes this document. These documents are also available via the Internet at http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:
Laurieann Duarte, Regulatory Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

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Dated: November 6, 2008.

Al Matera,
Director, Office of Acquisition Policy.

[FR Doc. E8–26905 Filed 11–13–08; 8:45 am]

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