Alert

FAR Council’s Modified E-Verify/Basic Pilot Mandate Suspended

On January 9, 2009, we reported that the litigants in the court challenge to the FAR Council’s regulations, mandating a modified version of the E-Verify/Basic Pilot program, reached an accord in which the government agreed to suspend applicability of the rule until February 20, 2009. Today, the litigants agreed to extend the applicability date to May 21, 2009, and ask the court to stay the proceedings to allow President Barrack Obama’s Administration an opportunity to review the rule.

On January 20, 2009, Rahm Emanuel, President Barrack Obama’s Chief of Staff, issued a memorandum to the heads of all executive departments and agencies governing issuance and possible suspension of regulations. The memorandum stated that agencies should “[c]onsider extending for 60 days the effective date of regulations that have been published in the Federal Register but not yet taken effect.” The U.S. Chamber of Commerce requested from the Office of Management and Budget that the memorandum be applied to this regulation and counsel in the litigation made the same request from government’s counsel.

Under the new applicability date, which is expected to appear in Friday’s Federal Register, any solicitations that occur prior to May 21, 2009, would not contain the contract clauses that the rule would impose. As previously reported, the rule mandates on most federal contractors and subcontractors a modified version of the E-Verify/Basic Pilot program—requiring reverification of the workforce and creating vicarious liability for subcontractors.

Three areas that the Chamber successfully fought for during the 110th Congress included opposing vicarious liability for subcontractors, opposing the reverification of the workforce, and supporting a phased-in mandatory electronic employment verification program.

The Chamber wants to acknowledge and thank its friends and partners in the business community that joined in this fight, particularly the Society for Human Resource Management, the Associated Builders and Contractors, the HR Policy Association, and the American Council on International Personnel.

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