

E-Verify and the False Claims Act: An emerging tool in immigration enforcement

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On September 18, 2025, the Department of Justice ("DOJ") announced a civil False Claims Act ("FCA") settlement against a New Jersey shipbuilder to resolve allegations that it improperly employed unauthorized workers to work on Navy ships.

The settlement (<https://bit.ly/43cR3tz>), which exceeded \$4 million, is the second this year involving government contractors alleged to have employed unauthorized workers in violation of FAR 52.222-54, Employment Eligibility Verification.

DOJ has announced two civil FCA settlements to resolve allegations that contractors billed for labor provided by workers who were not eligible to work in the United States.

With immigration enforcement squarely at the center of the current administration's domestic agenda, government contractors should be mindful of this enforcement theory and take appropriate steps to ensure compliance and protect themselves from a costly FCA claim.

FAR 52.222-54, Employment Eligibility Verification

FAR 52.222-54, Employment Eligibility Verification, requires contractors and subcontractors to verify their employees' employment eligibility in the federal E-Verify database.

E-Verify is an internet-based system that compares information entered by an employer from an employee's Form I-9, Employment Eligibility Verification, to records available to the U.S. Department of Homeland Security and the Social Security Administration to confirm employment eligibility.

When included in a government contract or subcontract, FAR 52.222-54 creates a general obligation for contractors and subcontractors to use E-Verify to confirm the employment eligibility of (1) all new employees working within the United States (regardless of whether they are assigned to the relevant government contracts) and (2) any employee who will be

assigned to the relevant government contracts (new hire or otherwise).

As an alternative to requirement (2), the contractor may elect to verify all existing employees rather than just those employees assigned to the government contract.

FAR 52.222-54 must be included in all government contracts that exceed \$150,000, except those that are (1) only for work that will be performed outside the United States; (2) for a period of less than 120 days; or (3) only for commercially available off-the-shelf ("COTS") items, COTS items with minor modifications, items that would be COTS if they were not bulk cargo, or commercial services associated with COTS items. FAR 22.1803.

Although it remains to be seen whether these actions are the beginning of a larger trend, contractors can be taking steps now to mitigate their potential FCA risks.

When FAR 52.222-54 is included in a prime contract, contractors are often required to flow down the requirements to subcontractors. Specifically, the requirements in FAR 52.222-54 must be included in all subcontracts for non-COTS services or construction that (1) have a value of more than \$3,500 and (2) include work performed in the United States. This same flow down requirement and criteria also apply to subcontractors with regard to their lower-tier contracts.

The 2025 FCA settlements

In the year to date, DOJ has announced two civil FCA settlements to resolve allegations that contractors billed for labor provided by workers who were not eligible to work in the United States. Both cases involved shipbuilders and highlighted the growing risks facing contractors who rely on labor based in the United States to perform their government contracts.

First, on January 16, 2025, DOJ announced (<https://bit.ly/478bARp>) a roughly \$1 million settlement, half of which was restitution, with a Louisiana-based shipyard to resolve allegations that it had knowingly billed the Coast Guard for labor performed by employees that were ineligible to work in the United States.

DOJ alleged that even though the shipbuilder was contractually required to confirm that its employees were eligible to work in the United States (via FAR 52.222-54), the shipbuilder failed to comply with the requirement and instead “knowingly employed ineligible workers” to perform the contract.

Contractors should be especially diligent about entering into E-Verify any employees that the contractor assigns to a government contract.

Second, on September 18, 2025, DOJ announced (<https://bit.ly/47nEoqe>) an over \$4 million settlement, again half of which was restitution, with a New Jersey-based drydock and ship repair company to resolve allegations that it used multiple subcontractors that employed individuals who were not authorized to work in the United States.

DOJ alleged that the company Risk Manager owned and/or controlled the subcontractors and was aware that they were employing unauthorized workers who performed work on United States ships in violation of the E-Verify requirements. The company Risk Manager separately pled guilty to a criminal charge of knowingly hiring and continuing to employ unauthorized workers in the United States.

Practical guidance for government contractors

Although it remains to be seen whether these actions are the beginning of a larger trend, contractors can be taking steps now to mitigate their potential FCA risks.

First, contractors should understand whether — and to what extent — E-Verify requirements apply to their workforce.

As a general matter, FAR 52.222-54 applies broadly to non-COTS U.S. Government contractors, subcontractors, and lower-tier contracts performing work inside the United States. For government contractors who perform covered work at any tier, these resolutions highlight the importance of identifying contracts that are subject to E-Verify requirements and ensuring familiarity with those provisions.

Second, contractors bound by FAR 52.222-54 should ensure that they are enrolled in E-Verify and actively maintaining their registrations.

Although contractors should take seriously their obligation to verify all new employees (whether those employees are working on government contracts or not), the above-referenced resolutions involved unauthorized workers who actually worked on government contracts.

Accordingly, contractors should be especially diligent about entering into E-Verify any employees that the contractor assigns to a government contract, both at the outset of the contract and throughout performance.

Third, impacted contractors should take precautions to enforce the requirements with subcontractors and lower-tier contractors.

Flowing down FAR 52.222-54 is essential, but not always sufficient. Companies may face liability for the violations of their subcontractors if they ignore obvious red flags about their subcontractors’ compliance with these requirements.

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