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) 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; 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, 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.

22.1803 Contract clause.
Insert the clause at 52.222-54, Employment Eligibility Verification, in all solicitations and contracts that exceed the simplified acquisition threshold, except those that—
(a) Are only for work that will be performed outside the United States;
(b) Are for a period of performance of less than 120 days; or
(c) Are only for—
(1) Commercially available off-the-shelf items;
(2) Items that would be COTS items, but for minor modifications (as defined at paragraph (3)(ii) of the definition of “commercial item” at 2.101);
(3) Items that would be COTS items if they were not bulk cargo; or
(4) Commercial services that are—
(i) Part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications);
(ii) Performed by the COTS provider; and
(iii) Are normally provided for that COTS item.

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Sec.
23.000 Scope.
23.001 Definitions.
23.002 Policy.

Subpart 23.1—Sustainable Acquisition Policy
23.101 Definition.
23.102 Authorities.