

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release
2008

June 9,

EXECUTIVE ORDER

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AMENDING EXECUTIVE ORDER 12989, AS AMENDED

By the authority vested in me as President by the Constitution and the laws of the United States of America, including subsection 121(a) of title 40 and section 301 of title 3, United States Code, and in order to take further steps to promote economy and efficiency in Federal Government procurement, it is hereby ordered as follows:

Section 1. Executive Order 12989 of February 13, 1996, as amended, is further amended:

(a) by striking the title and inserting in lieu thereof "Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Nationality Act Provisions and Use of an Electronic Employment Eligibility Verification System"; and

(b) by striking the material that follows the title and precedes section 1 of the order and inserting in lieu thereof the following:

"This order is designed to promote economy and efficiency in Federal Government procurement. Stability and dependability are important elements of economy and efficiency. A contractor whose workforce is less stable will be less likely to produce goods and services economically and efficiently than a contractor whose

workforce is more stable. It is the policy of the executive branch to enforce fully the immigration laws of the United States, including the detection and removal of illegal aliens and the imposition of legal sanctions against employers that hire illegal aliens. Because of the worksite enforcement policy of the United States and the underlying obligation of the executive branch to enforce the immigration laws, contractors that employ illegal aliens cannot rely on the continuing availability and service of those illegal workers, and such contractors inevitably will have a less stable and less dependable workforce than contractors that do not employ such persons. Where a contractor assigns illegal aliens to work on Federal contracts, the enforcement of Federal immigration laws imposes a direct risk of disruption, delay, and increased expense in Federal contracting. Such contractors are less dependable procurement sources, even if they do not knowingly hire or knowingly continue to employ unauthorized workers.

"Contractors that adopt rigorous employment eligibility confirmation policies are much less likely to face immigration enforcement actions, because they are less likely to employ unauthorized workers, and they are therefore generally more efficient and dependable procurement sources than contractors that do not employ the best available measures to verify the work eligibility of their workforce. It is the policy of the executive branch to use an electronic employment verification system because, among other reasons, it provides the best available means to confirm the identity and work eligibility of all employees that join the Federal workforce. Private employers that choose to contract with the Federal Government should meet the same standard.

"I find, therefore, that adherence to the general policy of contracting only with providers that do not knowingly employ unauthorized alien workers and that have agreed to utilize an electronic employment verification system designated by the Secretary of Homeland Security to confirm the employment eligibility of their workforce will promote economy and efficiency in Federal procurement.

"NOW, THEREFORE, to ensure the economical and efficient administration and completion of Federal Government contracts, and by the authority vested in me as President by the Constitution and the laws of the United

States of America, including subsection 121(a) of title 40 and section 301 of title 3, United States Code, it is hereby ordered as follows:".

Sec. 2. Section 1 of Executive Order 12989, as amended, is further amended by:

(a) striking the last sentence in subsection 1(a);
and

(b) striking subsection (b) and inserting in lieu thereof the following new subsections:

"(b) It is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of Federal Government contracts, contracting agencies may not enter into contracts with employers that do not use the best available means to confirm the work authorization of their workforce.

"(c) It is the policy of the executive branch to enforce fully the antidiscrimination provisions of the INA. Nothing in this order relieves employers of antidiscrimination obligations under section 274B of the INA (8 U.S.C. 1324b) or any other law.

"(d) All discretion under this order shall be exercised consistent with the policies set forth in this section."

Sec. 3. Section 5 of Executive Order 12989, as amended, is further amended to read as follows:

"Sec. 5. (a) Executive departments and agencies that enter into contracts shall require, as a condition of each contract, that the contractor agree to use an electronic employment eligibility verification system designated by the Secretary of Homeland Security to verify the employment eligibility of: (i) all persons hired during the contract term by the contractor to perform employment duties within the United States; and (ii) all persons assigned by the contractor to perform work within the United States on the Federal contract.

"(b) The Secretary of Homeland Security:

"(i) shall administer, maintain, and modify as necessary and appropriate the electronic employment eligibility verification system designated by the Secretary under subsection (a) of this section; and

"(ii) may establish with respect to such electronic employment verification system:

"(A) terms and conditions for use of the system; and

"(B) procedures for monitoring the use, failure to use, or improper use of the system.

"(c) The Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration shall amend the Federal Acquisition Regulation to the extent necessary and appropriate to implement the debarment responsibility, the employment eligibility verification responsibility, and other related responsibilities assigned to heads of departments and agencies under this order.

"(d) Except to the extent otherwise specified by law or this order, the Secretary of Homeland Security and the Attorney General:

"(i) shall administer and enforce this order; and

"(ii) may, after consultation to the extent appropriate with the Secretary of Defense, the Secretary of Labor, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, the Administrator for Federal Procurement Policy, and the heads of such other departments or agencies as may be appropriate, issue such rules,

regulations, or orders, or establish such requirements, as may be necessary and appropriate to implement this order."

Sec. 4. Section 7 of Executive Order 12989, as amended, is amended by striking "respective agencies" and inserting in lieu thereof "respective departments or agencies".

Sec. 5. Section 8 of Executive Order 12989, as amended, is amended to read as follows:

"Sec. 8. (a) This order shall be implemented in a manner intended to minimize the burden on participants in the Federal procurement process.

"(b) This order shall be implemented in a manner consistent with the protection of intelligence and law enforcement sources, methods, and activities from unauthorized disclosure."

Sec. 6. Section 9 of Executive Order 12989, as amended, is amended to read as follows:

"Sec. 9. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

"(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

"(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person."

Sec. 7. This order is not intended to, and does not, create any right or benefit, substantive or procedural,

enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH

THE WHITE HOUSE,
June 6, 2008.