

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF ADMINISTRATION

STATEMENT OF NEED FOR EMERGENCY ACTION

In accordance with the provision of subsection (b) of R.I. Gen. Laws §42-35-3, as amended, I have approved a regulation entitled “Emergency Regulation Re: Requirement to Register with and Utilize Federal E-Verify Program Pursuant to the March 27, 2008 Executive Order 08-01 (“Illegal Immigration Control Order).” That regulation has been promulgated pursuant to the authority contained in R.I. Gen. Laws § 37-2-9, as amended.

THIS REGULATION IS TO BECOME EFFECTIVE IMMEDIATELY UPON FILING WITH THE SECRETARY OF STATE’S OFFICE.

Such an effective date is necessary in light of a finding by the Chief Purchasing Officer that any substantial delay might imperil the public health, safety, and welfare and is consistent with the decision of Judge Pfeiffer on September 15 , 2008 in the matter of Rhode Island Coalition Against Domestic Violence et al vs. Donald L. Carcieri, in his capacity a Governor of the State of Rhode Island, et al (C.A. No. 08-5696). That finding is based upon the following:

Executive Order 08-01 provides in relevant part as follows:

“... Most Rhode Islanders and most Americans are descendants of immigrants from all regions of the world and Rhode Island continues to welcome new immigrants who legally seek the opportunities that the state, its economy, and its resources offer; and

.....Congress and the President have been unable to resolve the problem of illegal immigration, leaving the states to deal with the consequences of 11 to 20 million illegal immigrants residing in the United States, the number in Rhode Island being between 20,000 and 40,000, more than the population of 32 of Rhode Island’s 39 cities and towns; and

.....[T]he presence of significant numbers of people illegally residing in the State of Rhode Island creates a burden on the resources of state and local human services, law enforcement agencies, educational institutions and other governmental institutions and diminishes opportunities for citizens and legal immigrants in Rhode Island; and

.....[I]n 1996 Congress amended the Immigration and Nationality Act, 8 U.S.C. §1373(c), to allow government entities or officials to send to or receive

from the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual and the federal government established the E-Verify program to help employers electronically verify the employment eligibility of new hires and the validity of their Social Security numbers;”

The E-Verify program is an internet based program developed by the federal government that allows employers to verify that newly hired employees are eligible to work in the United States. Paragraph 2 of Executive Order 08-01 requires vendors that are doing business with the state to register and use the services of the E-Verify program. Specifically, that paragraph of the Executive Order provides as follows:

“2. The Department of Administration shall require that all persons and businesses, including grantees, contractors and their subcontractors and vendors doing business with the State of Rhode Island also register with and utilize the services of the E-Verify program to ensure compliance with federal and state law.”

The proposed rules and regulations attached hereto are intended to carry out the mandate of the above cited paragraph 2 of Executive Order 08-01.

The facts and circumstances which lead to the filing of the attached emergency regulation constitute an imminent peril to the public health, safety and welfare necessitating the enactment of emergency regulations in accordance with R.I. Gen. laws 42-35-3(b).

Recently more than thirty (30) alleged undocumented foreign workers providing janitorial services in state courthouses under the terms of contracts entered into between two (2) vendors and the State of Rhode Island were taken into custody by the Rhode Island State Police. That brought to light and highlighted a serious lack of safeguards in place to assure that persons and businesses, including contractors and vendors doing business with the State of Rhode Island – many with access to sensitive and/or confidential documents and work areas - are eligible to work in the United States. As a result of the above referenced arrests, the Department of Administration conducted an internal investigation and determined that the two (2) vendors could not provide supporting documentation that their employees were eligible to work in the United States. (One of the vendors acknowledged that he had not even been satisfying the I-9 requirements law. Thereafter, on or about September 15, 2008 that vendor was charged by the U.S. Attorneys Office with engaging in a pattern and practice of hiring aliens for employment, knowing that those aliens were not authorized for employment in the United States. It now has been reported that that vendor has agreed to plead guilty to that charge.) The State determined that it was necessary to suspend both vendors from bidding on future state work and to terminate approximately fifty (50) janitorial contracts between the state and two (2) vendors. With respect to both vendors the Acting Purchasing Agent found that the contractors’ “..... action and lack of action present a clear and immediate danger to the public interest within the meaning ofSection 8.8.3.8....” of the Purchasing Regulations. The need to terminate those contracts

resulted in the need to re-bid all of those contracts causing significant interruption in the cleaning and routine maintenance of approximately fifty (50) state buildings during that process.

The above-described experience with two (2) existing entities that had been doing business with the State of Rhode Island for a number of years, made it clear that unless the State took immediate action to enforce the requirement that persons and businesses doing business with (or seeking to do business with) the State of Rhode Island register and utilize the E-Verify program (or similar federally approved program), it would not be able to ensure compliance with federal and state law and there would continue to be a very real, imminent peril to the public health, safety, and welfare.

Furthermore, it is imperative to the public health, safety, and welfare of the people of the State of Rhode Island that vital, confidential and/or sensitive information and work areas in all state buildings be secure and that the state have a high degree of confidence that persons and businesses providing goods and services to the citizens of the State of Rhode Island are complying with state and federal laws thereby increasing the probability that there is no threat to their health, safety, and welfare. The State determined that the optimum manner in which to achieve compliance with not only the purposes and mandates of the above cited paragraph 2 of the Executive Order 08-01, to maximize compliance with state and federal law by those doing business with the state and protect the health, safety, and welfare of its citizens was to have the Department of Administration obtain appropriate certifications from persons and businesses doing business with it.

In addition to all of the above, the State of Rhode Island is currently in the midst of a fiscal and economic crisis. As a result, it currently has a significant unemployment rate. The State is the largest employer in Rhode Island. Now more than ever, it is imperative for the economic welfare of the State and its citizens that those who are legally eligible to work here are not precluded from doing so. It is critical to their health, safety, and welfare that they be able to seek the opportunities that the State, its economy and its resources have to offer and that opportunities for them are not diminished as a result of the employment of those not eligible to be employed. The health, safety, and welfare of those eligible to be employed requires that the integrity of the work force (i.e. the wages, hours and working conditions) be protected so unfair advantage is not taken by employers having the opportunity and inclination to do so. In addition, the presence of unauthorized workers on an employer's payroll renders that employer's workforce less stable and reliable than the workforce of an employer who does not employ individuals who are not eligible to be so employed. The use of the E-Verify program will promptly discourage the hiring of ineligible employees.

By requiring that persons and businesses who do business with – or seek to do business with - the State of Rhode Island provide required certifications that they have registered with and are utilizing the E-Verify program, the State increases employment opportunities for those citizens who are eligible to work here while decreasing the probability that individuals who are circumventing state and federal law and not eligible to work here will take away those very opportunities. Thus, enacting the proposed regulations on an emergency basis is necessary to avoid the imminent threat to the economic welfare of both the State and its citizens.

To carry out the mandate of Executive Order 08-01, and for the reasons stated above, these regulations are being promulgated on an emergency basis and will become effective immediately upon filing with the Secretary of State's Office. At the same time that these emergency regulations are filed, the Department of Administration is simultaneously proposing the promulgation of permanent regulations in accordance with the standard notice and commenting process provided for in the Administrative Procedures Act, R.I. Gen. Laws §42-35-3. Comments are welcome and may be sent by December 3, 2008 to the Rhode Island Department of Administration, One Capitol Hill, Providence RI 02908, Attention: Rhode Island Division of Purchases.

Signed,

Jerome F. Williams, Director

Date

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
Department of Administration, Division of Purchases**

**Emergency Regulations Re: Requirement to Register With and
Utilize Federal E-Verify Program
Pursuant to the March 27, 2008 Executive Order 08-01**

(Emergency Adoption Filed October 17, 2008)

I. AUTHORITY

Pursuant to Executive Order 08-01, issued on March 27, 2008 by Governor Donald L. Carcieri, and pursuant to the provisions of Section 37-2-9 and Chapters 42-11 and 42-35 of the Rhode Island General Laws, the Rhode Island Department of Administration, Division of Purchases hereby adopts and establishes the following rules and regulations regarding new employee verification through the federal E-Verify program or its successor.

These rules and regulations shall be read and interpreted in conjunction and consistent with applicable state and federal laws and regulations, including “State Procurement Regulations.”

II. PURPOSE

The purpose of these rules and regulations is to provide standard procedures for the implementation of the provisions of Executive Order 08-01 applicable to the Department of Administration. Those provisions state:

All Executive Branch departments, agencies and personnel shall require that any and all persons and businesses, including but not limited to grant recipients, contractors and their subcontractors, and vendors, doing business with or proposing to engage in a business relationship with an Executive Branch department or agency of the State of Rhode Island certify that said person or business has registered with and is utilizing a federally approved work authorization program/service, such as “E-Verify,” to ensure that newly hired employees of said person or business have complied with all applicable federal immigration laws.

III. DEFINITIONS

The following terms and phrases, as used in these rules and regulations, are defined as follows:

- A. “Contract” shall mean all types of agreements including, but not limited to, State grants; orders for the purchase or disposal of supplies, services, construction, or any other

item; awards; contracts of a fixed-price, cost, or incentive type; contracts providing for the issuance of job or task orders; letter contracts; purchase orders; Master Price Agreements; Agency Price Agreements; and, construction management contracts.

B. "Contractor" shall mean any person having a contract with any Executive Branch entity as defined below.

C. "Executive Branch" shall mean any department, commission, council, board, bureau, committee, institution, agency, authority or other entity, together with their respective officers and employees, under the supervision or control of the Chief Executive of the State government, including the Board of Governors for Higher Education and Board of Regents-Elementary and Secondary Education.

D. "Federally approved work authorization program" or "E-Verify" shall mean any federal electronic verification of work authorization program or service operated by the United States Department of Homeland Security ("USDHS"), or any equivalent electronic federal work authorization program or service operated by the USDHS, whose purpose is to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603. Any other electronic federal work authorization program operated by the USDHS or any equivalent federal electronic work authorization program recognized by the USDHS to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, as such work authorization programs become available, may be used in the alternative, subject to review and approval by the Chief Purchasing Officer. The "Federally approved work authorization program" or "E-Verify" began as the "Basic Pilot Program," an electronic program which compares employer-provided U.S. Citizenship and Immigration Services Form 1-9 information with Social Security Administration and USDHS databases to verify the employment authorization of newly hired employees. This database can be accessed from the USDHS, U.S. Citizenship and Immigration Services, internet website at: <http://www.uscis.gov/portal/site/uscis>.

E. "Doing business with or proposing to engage in a business relationship with an Executive Branch department or agency of the State of Rhode Island" shall mean registration with the Rhode Island Vendor Information Program ("RIVIP"), the submission of a bid offering, the response to a "Request for Proposals," "Request for Quotations," "Request for Information or LOI," receipt of a monetary grant; or the entering into, renewal or extension of a contract to provide goods or services to an Executive Branch department or agency which has resulted in or is expected to result in the issuance of a Purchase Order.

F. "Subcontractor" shall mean any person or business, at any tier, who provides goods and or services required to be supplied or performed by a Contractor under a Contract with the Executive Branch.

IV. EXCEPTIONS

A. These rules and regulations shall not apply to any labor contracts between the State of Rhode Island and collective bargaining agents for employees of State agencies or contracts for the purchase, sale, lease or license of real estate.

V. RESPONSIBILITIES OF STATE PURCHASING AGENT

A. The State Purchasing Agent shall be responsible for assuring all persons and businesses doing business with the Executive Branch register and utilize the services of the E-Verify program in accordance with the provisions of these regulations to ensure compliance with federal and state law.

B. The Executive Branch shall not do business with or award a contract to any person or business unless the contractor, and its subcontractors, registers with and participates in the E-Verify program to ascertain the work eligibility information of all new employees and so certifies its compliance to the Executive Branch in accordance with the provisions of these rules and regulations. Purchase Orders or other similar contracts shall not be entered into, extended or renewed by the Executive Branch unless the person or business doing business with the State complies with this section.

C. The Purchasing Agent may utilize factors such as financial capability, reputation, management, (and, as to Executive Branch contracts, registration with and utilization of the E-Verify program), etc., to evaluate the responsibility and qualifications of potential suppliers in order to develop a list of prospective bidders qualified to be sent invitations to bid.

D. The Purchasing Agent or his/her designee shall be responsible for reviewing complaints alleging non-compliance in accordance with "State Procurement Regulations."

VI. RESPONSIBILITIES OF BIDDERS AND OFFERORS

A. Any person or business doing business with the Executive Branch, shall certify compliance with the requirement to register and utilize E-Verify on a form acceptable to the Purchasing Agent. Completion of such certifications shall be a material term and condition of any contract with the Executive Branch.

B. Subcontractors – No person or business doing business with the Executive Branch shall enter into a subcontract directly related to the delivery of goods or services to the Executive Branch unless the subcontractor has registered with and utilized the E-Verify program to verify the work eligibility information of all new employees and so certifies in accordance with the provisions of these regulations.

C. The Rhode Island Vendor Information Program (“RIVIP”) certification form, which is submitted with a bid or proposal to do business with the Executive Branch, shall include a provision that represents express agreement from a vendor to register and utilize E-Verify, and to certify that subcontractors of the vendor also comply with the requirements of this regulation. Failure to certify E-Verify registration and use on the RIVIP form shall result in the vendor’s bid or proposal being considered non-responsive. Any non-responsive bid or proposal shall be rejected from consideration. The terms and conditions included in the RIVIP certification form are general terms and conditions of the agreement with the Executive Branch.

D. All persons and businesses doing business with the Executive Branch shall maintain any and all documents relating to participation in the E-Verify program for not less than three (3) years after ceasing to do business with the Executive Branch or as required by law, which ever period is longer. Any such records shall be available upon request by the Rhode Island Department of Administration. The Department of Administration reserves the right to conduct random audits of contractor records to confirm compliance with the requirement of these regulations.

E. The requirements of this section shall not be used for purposes other than to verify the eligibility of individuals legally qualified to work in the State of Rhode Island in accordance with federal laws and regulations relating thereto. Any discrimination or abuse of these requirements directed at individuals legally entitled to work in the United States shall not be tolerated by the Rhode Island Department of Administration and shall be subject to sanctions in accordance with the provisions of these regulations, state and federal laws and the State Purchasing Act at the discretion of the Chief Purchasing Officer.

F. These regulations are in addition to and not a substitute for any other employment requirements required by state and/or federal law, or specific requirements included in a solicitation issued by the Executive Branch.

G. All requirements of the E-Verify Program consistent with this regulation shall be considered additional requirements of these regulations.

VII. VENDOR DISQUALIFICATION

A. Failure to meet the requirements of these regulations that mandate vendors to register and utilize the E-Verify program is grounds for vendor disqualification from Executive Branch contracts and the other sanctions mentioned above.

B. Rights and responsibilities of the State Purchasing Agent and vendors in cases of vendor disqualification are governed by the applicable provisions of the “State Procurement Regulations.”

VIII. REJECTION AND REMOVAL

A. A vendor's offer for a specific procurement may be rejected for any of the causes described for suspension, or where, in the judgment of the Purchasing Agent, the vendor does not possess the capacity, capability, or integrity requisite for the procurement, or, as to Executive Branch contracts, fails to meet the requirements of these regulations mandating the registration with and utilization of the E-Verify program and certification related thereto.

B. Rights and responsibilities of the State Purchasing Agent and vendors in cases of rejection and/or removal are governed by the applicable provisions of the "State Procurement Regulations."

IX. DEBARMENT AND SUSPENSION

A. As to Executive Branch contracts, failure to register and utilize E-Verify as required in the provisions of these regulations is grounds for suspension or debarment. The severity of the sanction will be determined by the Purchasing Agent or his/her designee in accordance with the provisions below in this section. Just cause for debarment or suspension shall include, but is not limited to:

1. Failure to certify to register and utilize the E-Verify system in accordance with the provisions of these regulations.
2. False certification of registering and utilizing the E-Verify system in accordance with the provisions of these regulations.

B. Rights and responsibilities of the State Purchasing Agent and vendors in cases of debarment and/or suspension are governed by the applicable provisions of the "State Procurement Regulations."

X. TERMINATION OF CONTRACT

A. The Purchasing Agent shall cancel or terminate a contract for any of the following reasons:

1. Failure to register and utilize E-Verify as required in the provisions of these regulations is grounds for suspension or debarment of persons and businesses doing business with the Executive Branch. The severity of the sanction will be determined by the Purchasing Agent or his/her designee in accordance with the provisions contained in the "State Procurement Regulations."
2. Failure to certify to register and utilize the E-Verify system in accordance with the provisions of these regulations.

3. False certification of registering and utilizing the E-Verify system in accordance with the provisions of these regulations.

4. Persons and businesses failing to submit the required certifications from subcontractors shall not be allowed to continue to do business with the State of Rhode Island.

B. Rights and responsibilities of the State Purchasing Agent and vendors in cases of contract termination are governed by the applicable provisions of the “State Procurement Regulations.”

XII. EMERGENCY PROCUREMENTS

A. In the event of an emergency procurement in accordance with R.I. Gen. Laws 37-2-21(b) and State Procurement Regulation section 9.6, the Purchasing Agent may waive the E-Verify requirements for the Executive Branch to any extent practicable with the understanding that any ongoing relationship that occurs after the emergency has ceased shall require compliance.

XIII. GENERAL TERMS AND CONDITIONS OF PURCHASE

A. The following language will be added as a condition to all “State of Rhode Island General Conditions of Purchase”:

“38. New Employee Verification Requirement through E-Verify – Pursuant to Executive Order 08-01 and Procurement Regulation 1.12, all persons and businesses, including grantees, contractors and their subcontractors and vendors doing business with the Executive Branch of the State of Rhode Island are required to register with and utilize the services of the E-Verify program, or any successor thereto, to ensure compliance with federal and state law, and in accordance with the provisions of section 1.12 of the Purchasing Regulations. This requirement represents a condition of contract with the State. Failure to comply may result in sanctions with the Procurement Regulations and in accordance with Section 14, Suspension and Debarment, and/or Section 34, Default and Cancellation of the general terms and conditions. E-Verify Certification forms are available on the Division of Purchases’ website at www.purchasing.ri.gov.”

XIV. SEVERABILITY

These rules and regulations are hereby declared to be severable. If any portion of these rules and regulations shall at any time be declared to be unenforceable or illegal, no other portion of such rules and regulations shall be affected thereby.