

WELCOME

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NEW CHANGES FOR GEORGIA PUBLIC WORKS CONTRACTS

How Do the Changes Affect Contractors and Subcontractors?

Employment Verification

Effective July 1, 2010, the statutory scheme applicable to Contracts for Public Works in Georgia¹ imposes new requirements on contractors and subcontractors that perform construction-related work for public employers such as municipalities, counties, and the state. The new requirements (the "2010 Revisions") expand the existing employment-verification requirements initially established by the 2006 Georgia Security and Immigration Compliance Act (the "2006 Act").²

The 2006 Act prohibits a contractor from entering into a contract with a public employer unless the contractor utilizes the federal work authorization program (E-Verify) to verify legal employment status for all newly hired employees and subcontractors. The 2010 Revisions expand this existing rule by requiring all employees, contractors, and subcontractors of contractors or subcontractors to register and use E-Verify for all new hires. As a result, the burden to verify employment status no longer rests solely with the contractor; the new requirements impose the burden on all contractors and subcontractors of any tier.

The 2010 Revisions also expand the reporting requirements of the 2006 Act. Before submitting a bid, contractors are required to provide an affidavit of their compliance with the E-Verify program. Contractors and subcontractors must also provide notice to public employers within five business days upon entering into a subcontract for public work. This notice must identify any and all subcontractors and must include an affidavit from each subcontractor attesting to the subcontractor's name, address, user identification number and date of authorization to use the E-Verify program. The public employer must maintain affidavits for five years from the date of receipt.

Importantly, the 2010 Revisions impose specific criminal penalties on any contractor or subcontractor that willfully and knowingly makes a false, fictitious or fraudulent statement in the affidavits mentioned above. In addition to criminal penalties (up to \$1,000 and/or imprisonment for one to five years), the 2010 Revisions also prohibit a contractor from bidding on or contracting for a public project for twelve months following a conviction for such offense.

Reciprocal In-State Preference

Georgia-resident contractors voiced objections to the Georgia Legislature that they were disadvantaged in bidding work against non-resident contractors (and minimal-resident contractors) whose home state applied an in-state preference adverse to Georgia-resident contractors. The 2010 Revisions neutralized this inequity by establishing a reciprocal in-state preference favoring Georgia-resident contractors.³ Under the new rule, if a non-resident contractor's home state applied

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an in-state preference, public employers bidding work in Georgia will apply a similar in-state preference. The in-state preference does not, however, apply to federally funded projects.

The 2010 Revisions also set a higher standard to determine whether a contractor is a Georgia resident. To qualify as a Georgia resident, an existing contractor must regularly maintain a place from which business is physically conducted for at least one year prior to any bid. And with respect to new businesses domiciled in Georgia, the contractor must regularly maintain a place from which business is physically conducted. In no event does a post office box, site trailer, or temporary structure qualify as a place of business.

What Should Contractors and Subcontractors Do?

Contractors and subcontractors should take steps to comply with the 2010 Act's employment verification rules and review their status under the reciprocal in-state preference criteria.

- If you have not done so already, immediately enroll in the Federal E-Verify program and implement its employment verification requirements and procedures;
- Adopt and publish written company-wide employment policies for public works projects that adopt the requirements of E-Verify;
- Implement employee training programs for human resources employees and others that hire workers to familiarize these employees with the requirements of E-verify, including document preparation and record-keeping requirements;
- Include provisions in your subcontract agreements for public works projects that require and warrant compliance with the revised requirements of the Georgia Security and Immigration Compliance Act;
- Under your subcontract agreements for public works projects, as a condition precedent to payment, require subcontractors to provide a copy of their Memorandum of Understanding with the federal Citizenship and Immigration Services department;
- Under your subcontract agreements for public works projects, include as part of the subcontractor's payment application, and as a condition precedent to payment, a written certification that the subcontractor in compliance with revised requirements of the Georgia Security and Immigration Compliance Act; and
- Review your residency status under the reciprocal in-state preference rules.

1 - O.C.G.A. § 13-10-1 et seq.

2 - O.C.G.A. § 13-10-91.

3 - O.C.G.A. § 13-10-3.