

WELCOME

Thank you for reviewing the latest AHC Client Alert. This edition focuses on the impact of a Georgia's new illegal immigration law on public contractors and their subcontractors and sub-subcontractors. The article is intended to provide a brief overview of some of the more relevant provisions. Please send all non-confidential questions and comments to our construction law group at law@ahclaw.com.

IMPACT OF THE 2011 ILLEGAL IMMIGRATION LAW ON PUBLIC WORKS CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

In the 2011 Regular Session, the Georgia General Assembly enacted the Illegal Immigration Reform and Enforcement Act of 2011. The purpose of the Act was to increase compliance -- and punish non-compliance -- with the federal E-Verify program. While the most notorious portion of the Act requires certain employers to confirm the legal immigration and employment status of employees, it specifically addresses public works construction.

A prior AHC Construction Law Alert discussed the 2010 and 2006 revisions to Georgia law governing employment verification. The Act clarifies existing rules and establishes new rules governing public contractors, and their subcontractors, that contract with public owners for the "physical performance of services."

Impact on Public Contractors and Subcontractors

The Act continues the prohibition against contracting with a public owner unless the contractor registers and participates in the E-Verify program. The Act now imposes a similar prohibition on subcontractors and sub-subcontractors from contracting with public contractors or subcontractors unless they register and participate in the E-Verify program.

The Act still prohibits public owners from considering a contractor's bid unless the bid contains a signed, notarized affidavit confirming the contractor's participation and continued compliance with the E-Verify program. Now, the Act requires that the affidavit state that the contractor will only subcontract with subcontractors that present a similar affidavit to the contractor. In addition, subcontractors and sub-subcontractors in the line of privity with public contractors are now required to submit a similar affidavit.

The Act further addresses public contractors and subcontractors that hire independent contractors, as opposed to employees. Many argued that the pre-existing law contained a loophole for contractors and subcontractors that hired independent contractors, as opposed to employees. The Act attempted to close this "1099 loophole" by requiring contracting parties to provide state-issued driver's licenses or other state-issued identification cards for themselves and their independent contractors. The Act only permits copies of state-issued driver's licenses and identification cards from states that verify legal immigration status before issuing them.

Every contracting party is required to forward the affidavits, driver's licenses, and identification cards up the chain of privity within five days of receipt. Ultimately, the documents work their way to the public owner, which is required to retain the documents for five years.

It is worth noting that even employers that are not public contractors or subcontractors are subject to the E-Verify mandate. The Act requires compliance with the E-Verify program for certain employers over staggered effective dates, beginning as early as January 1, 2012 for employers with 500 or more employees. And local governmental units generally may not issue or renew business licenses unless the applicant provides evidence that it complies with the E-Verify program.

Impact of Non-Compliance

The existing law imposed a 12-month debarment for public contractors that have been convicted of violating certain provisions. This debarment rule now applies to public contractors and their subcontractors and sub-subcontractors. The names of the violating party may be posted on a public website.

In addition to debarment, the Act increases civil and criminal penalties for non-compliance. For instance, any person who knowingly and willfully makes a false, fictitious, or fraudulent statement in an affidavit under the Act may be found guilty of a felony. This crime is punishable by a fine of not more than \$1,000 and imprisonment for one to five years.

The Act establishes the new crime of "aggravated identity fraud" for willfully and fraudulently using counterfeit or fictitious identifying information with the intent to use such information for the purpose of obtaining employment. This crime is punishable by imprisonment between one and fifteen years and a fine not to exceed \$250,000.

Conclusion

Public contractors and subcontractors must address the existing rules and additional requirements established by the Act. Those who do not may face stiff criminal and civil penalties, and possibly even debarment. As a result, public contractors and subcontractors should immediately begin working to comply with the Act.

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ANNOUNCEMENTS

David R. Cook Elected to AHC Partnership

AHC is pleased to announce that David R. Cook has become a partner in the firm effective July 1, 2011. David is an outstanding lawyer who shares AHC's commitment to providing the highest quality legal services at affordable rates.

David will continue to provide exceptional service in AHC's construction, energy, and tax law groups. Read David's bio on our website at www.ahclaw.com.

AHC Debuts Construction Law Blog

AHC announces the development of the AHC Construction Law Blog at www.ahclaw.com/construction. AHC attorneys David R. Cook and Mark V. Hanrahan will regularly post pertinent and current information on the latest laws, rulings, and developments affecting the construction industry.

We hope the AHC Construction Law Blog will be your source for the latest construction law and industry news. AHC's construction lawyers have represented every player in the construction industry, including owners, developers, contractors, subcontractors, and architects/engineers. We hope you enjoy the blog and will return there often for new insights on managing construction risks.