

E-Verify and SAVE

What the Recent Changes Mean for State Agencies

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* Not the opinions of the Georgia Attorney
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E-Verify

O.C.G.A. 13-10-91(b)(1)

(b)(1) A public employer shall not enter into a contract for the physical performance of services unless the contractor registers and participates in the federal work authorization program. Before a bid for any such service is considered by a public employer, the bid shall include a signed, notarized affidavit from the contractor attesting to the following:

- (A) The affiant has registered with, is authorized to use, and uses the federal work authorization program;
- (B) The user identification number and date of authorization for the affiant;
- (C) The affiant will continue to use the federal work authorization program throughout the contract period; and
- (D) The affiant with contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the same information required by subparagraphs (A), (B), and (C) of this paragraph.

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O.C.G.A. 13-10-90(4)

“Physical Performance of Services”

means any performance of services for a public employer using a bidding process or by contract wherein the labor or services exceed \$2,499.99; provided, however, that such term shall not include any contract between a public employer and an individual who is licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing when such contract is for services to be rendered by such individual.

The “Old” Definition of Physical Performance of Services

the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to public real property within this state, including the construction, reconstruction, or maintenance of all or part of a public road, or any other performance of labor for a public employer within this state under a contract or other bidding process.

What Exactly has Changed?

- Expanded to services beyond public works
- Expanded to non-bid contracts exceeding \$2,499.99
- Exception for individuals licensed pursuant to Title 26 or 43 or by the State Bar of Georgia

Breaking it down...

- “Physical performance of services” means any performance of services for a public employer using a bidding process or by contract wherein the labor or services exceed \$2,499.99...

What about “hybrid” contracts?

- Contracts for goods and services – e.g. printer and maintenance services.
- If contract includes services and is bid or exceeds \$2,499.99, affidavit may be required.
- Will depend on the facts and the terms of the agreement.
- Seek specific legal advice if necessary.

Exception for Licensed Professionals

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When is the Affidavit Due?

- Bid Contracts:
 - Before the bid is considered
- Non-Bid Contracts Exceeding \$2,499.99:
 - Before entering into the contract

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What is in the Affidavit?

- Contractor is using E-Verify
- Contractor's user ID and date of authorization
- Contractor will use E-Verify throughout the contract period
- Subcontractor(s) will present affidavit(s)

Contracting with Individuals

O.C.G.A. 13-10-91(b)(5)

In lieu of the affidavit required by this subsection, a contractor, subcontractor, or sub-subcontractor who has no employees and does not hire or intend to hire employees for purposes of satisfying or completing the terms and conditions of any part or all of the original contract with the public employer shall instead provide a copy of the state issued driver's license or state issued identification card of each independent contractor utilized in the satisfaction of part or all of the original contract with a public employer...

Contracting with an Individual: How does it work?

OCGA 13-10-91(b)(5) continued...

A driver's license or identification card shall only be accepted in lieu of an affidavit if it is issued by a state within the United States and such state verifies lawful immigration status prior to issuing a driver's license or identification card.

For purposes of satisfying the requirements of this subsection, copies of such driver's license or identification card shall be forwarded to the public employer, contractor, subcontractor, or sub-subcontractor in the same manner as an affidavit and notice of receipt of an affidavit as required by paragraphs (1), (3), and (4) of this subsection.

Contracting with an Individual: What if he or she hires employees?

OCGA 13-10-91(b)(5) continued...

In the event that a contractor, subcontractor, or sub-subcontractor later determines that he or she will need to hire employees to satisfy or complete the physical performance of services under an applicable contract, then he or she shall first be required to comply with the affidavit requirements of this subsection.

SAVE

Systematic Alien Verification for
Entitlements program

OCGA 50-36-1(b)

“Except as provided in subsection (d) of this Code Section or where exempted by federal law, every agency or political subdivision shall verify the lawful presence in the United States under federal immigration law of any applicant for public benefits.”

What is a Public Benefit?

- O.C.G.A. 50-36-1(a)(4) defines “public benefit” as a federal, a state, or local benefit, as listed in the statute.
- O.C.G.A. 50-36-1(d) lists situations for which verification of lawful presence is not required.

How to Comply

O.C.G.A. 50-36-1(f)(1)

Except as provided in subsection (g) of this Code section, an agency or political subdivision providing or administering a public benefit shall require every applicant for such benefit to:

(A) Provide at least one secure and verifiable document, as defined in Code Section 50-36-2, or a copy or facsimile of such document. Any document required by this subparagraph may be submitted by or on behalf of the applicant at any time within nine months prior to the date of application so long as the document remains valid through the licensing or approval period or such other period for which the applicant is applying to receive a public benefit.

How to Comply

O.C.G.A. 50-36-1(f)(1) continued...

(B) Execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States under federal immigration law; provided, however, that if the applicant is younger than 18 years of age at the time of the application, he or she shall execute the affidavit required by this subparagraph within 30 days of his or her eighteenth birthday. Such affidavit shall affirm that:

- (i) The applicant is a United States citizen or legal permanent resident 18 years of age or older; or
- (ii) The applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title 8 U.S.C., 18 years of age or older lawfully present in the United States and provide the applicant's alien number...

O.C.G.A. 50-26-2(3)(A)

“Secure and Verifiable Document”

Means a document issued by a state or federal jurisdiction or recognized by the United States government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies and shall include:

- (i) An original or certified birth certificate issued by a state, county, municipal authority, or territory of the United States bearing an official seal;
- (ii) A certification of report of birth issued by the United States Department of State;
- (iii) A certification of birth abroad issued by the United States Department of State; or
- (iv) A consular report of birth abroad issued by the United States Department of State.

How to Submit Documents

O.C.G.A. 50-36-2(f)(3)

Documents and copies of documents required by this subsection may be submitted in person, by mail, or electronically, provide the submission complies with Chapter 12 of Title 10...

Successive Applications

O.C.G.A. 50-36-1(f)(4)

The requirements of this subsection shall not apply to any applicant applying for or renewing an application for a public benefit within the same agency or political subdivision if the applicant has previously complied with the requirements of this subsection by submission of a secure and verifiable document, as defined in Code Section 50-36-2, and a signed and sworn affidavit affirming that such applicant is a United States citizen.

Reporting Requirements

O.C.G.A. 50-36-4(b)

Each agency or political subdivision subject to any of the requirements provided in Code Sections 13-10-91, 36-60-6, and 50-36-1 shall submit an annual immigration compliance report to the department [of Audits and Accounts] by December 31 that includes the information required under subsection (d) of this Code section for the annual reporting period...

Questions?