

Title 13. Contracts
Chapter 10. Contracts for Public Works
Article 3. Federal Work Authorization Program
O.C.G.A. § 13-10-91. Registration and participation of contractors; forms, rules, and regulations

(a) Every public employer, including, but not limited to, every municipality and county, shall register and participate in the federal work authorization program to verify employment eligibility of all newly hired employees. Upon federal authorization, a public employer shall permanently post the employer's federally issued user identification number and date of authorization, as established by the agreement for authorization, on the employer's website; provided, however, that if a local public employer does not maintain a website, then the local government shall submit such information to the Carl Vinson Institute of Government of the University of Georgia to be posted by the institute on the website created for local government audit and budget reporting. The Carl Vinson Institute of Government of the University of Georgia shall maintain the information submitted and provide instructions and submission guidelines for local governments. State departments, agencies, or instrumentalities may satisfy the requirement of this Code section by posting information required by this Code section on one website maintained and operated by the state.

(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 will 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.

An affidavit required by this subsection shall be considered an open public record once a public employer has entered into a contract for physical performance of services; provided, however, that any information protected from public disclosure by federal law or by Article 4 of Chapter 18 of Title 50 shall be redacted. Affidavits shall be maintained by the public employer for five years from the date of receipt.

(2) A contractor shall not enter into any contract with a public employer for the physical performance of services unless the contractor registers and participates in the federal work authorization program.

(3) A subcontractor shall not enter into any contract with a contractor unless such subcontractor registers and participates in the federal work authorization program. A subcontractor shall submit, at the time of such contract, an affidavit to the contractor in the same manner and with the same information required in paragraph (1) of this subsection. It shall be the duty of any subcontractor receiving an affidavit from a sub-subcontractor to forward notice to the contractor of the receipt, within five business days of receipt, of such affidavit. It shall be the duty of a subcontractor receiving notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor.

(4) A sub-subcontractor shall not enter into any contract with a subcontractor or sub-subcontractor unless such sub-subcontractor registers and participates in the federal work authorization program. A sub-subcontractor shall submit, at the time of such contract, an affidavit to the subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract, in the same manner and with the same information required in paragraph (1) of this subsection. It shall be the duty of any sub-subcontractor to forward notice of receipt of any affidavit from a sub-subcontractor to the subcontractor or sub-subcontractor with whom such receiving sub-subcontractor has privity of contract.

(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 such contracting party and a copy of the state issued driver's license or identification card of each independent contractor utilized in the satisfaction of part or all of the original contract with a public employer. 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. Not later than July 1, 2011, the Attorney General shall provide a list of the states that verify immigration status prior to the issuance of a driver's license or identification card and that only issue licenses or identification cards to persons lawfully present in the United States. The list of verified state drivers' licenses and identification cards shall be posted on the website of the State Law Department and updated annually thereafter. 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.

(6) It shall be the duty of the contractor to submit copies of all affidavits, drivers' licenses, and identification cards required pursuant to this subsection to the public employer within five business days of receipt. No later than August 1, 2011, the Departments of Audits and Accounts shall create and post on its website form affidavits for the federal work authorization program. The affidavits shall require fields for the following information: the name of the project, the name of the contractor, subcontractor, or sub-subcontractor, the name of the public employer, and the employment eligibility information required pursuant to this subsection.

(7)(A) Public employers subject to the requirements of this subsection shall provide an annual report to the Department of Audits and Accounts pursuant to Code Section 50-36-4 as proof of compliance with this subsection. Subject to available funding, the state auditor shall conduct annual compliance audits on a minimum of at least one-half of the reporting agencies and publish the results of such audits annually on the Department of Audits and Accounts' website on or before September 30.

(B) If the state auditor finds a political subdivision to be in violation of this subsection, such political subdivision shall be provided 30 days to demonstrate to the state auditor that such political subdivision has corrected all deficiencies and is in compliance with this subsection. If, after 30 days, the political subdivision has failed to correct all deficiencies, such political subdivision shall be excluded from the list of qualified local governments under Chapter 8 of Title 50 until such time as the political subdivision demonstrates to the state auditor that such political subdivision has corrected all deficiencies and is in compliance with this subsection.

(C)(i) At any time after the state auditor finds a political subdivision to be in violation of this subsection, such political subdivision may seek administrative relief through the Office of State Administrative Hearings. If a political subdivision seeks administrative relief, the time for correcting deficiencies shall be tolled, and any action to exclude the political subdivision from the list of qualified governments under Chapter 8 of Title 50 shall be suspended until such time as a final ruling upholding the findings of the state auditor is issued.

(ii) A new compliance report submitted to the state auditor by the political subdivision shall be deemed satisfactory and shall correct the prior deficient compliance report so long as the new report fully complies with this subsection.

(iii) No political subdivision of this state shall be found to be in violation of this subsection by the state auditor as a result of any actions of a county constitutional officer.

(D) If the state auditor finds any political subdivision which is a state department or agency to be in violation of the provisions of this subsection twice in a five-year period, the funds appropriated to such state department or agency for the fiscal year following the year in which the agency was found to be in violation for the second time shall be not greater than 90 percent of the amount so appropriated in the second year of such noncompliance. Any political subdivision found to be in violation of the provisions of this subsection shall be listed on www.open.georgia.gov or another official state website with an indication and explanation of each violation.

(8) Contingent upon appropriation or approval of necessary funding and in order to verify compliance with the provisions of this subsection, each year the Commissioner shall conduct no fewer than 100 random audits of public employers and contractors or may conduct such an audit upon reasonable grounds to suspect a violation of this subsection. The results of the audits shall be published on the www.open.georgia.gov website and on the Georgia Department of Labor's website no later than December 31 of each year. The Georgia Department of Labor shall seek funding from the United States Secretary of Labor to the extent such funding is available.

(9) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement in an affidavit submitted pursuant to this subsection shall be guilty of a violation of Code Section 16-10-20 and, upon conviction, shall be punished as provided in such Code section. Contractors, subcontractors, sub-subcontractors, and any person convicted for false statements based on a violation of this subsection shall be prohibited from bidding on or entering into any public contract for 12 months following such conviction. A contractor, subcontractor, or sub-subcontractor that has been found by the Commissioner to have violated this subsection shall be listed by the Department of Labor on www.open.georgia.gov or other official website of the state with public information regarding such violation, including the identity of the violator, the nature of the contract, and the date of conviction. A public employee, contractor, subcontractor, or sub-subcontractor shall not be held civilly liable or criminally responsible for unknowingly or unintentionally accepting a bid from or contracting with a contractor, subcontractor, or sub-subcontractor acting in violation of this subsection. Any contractor, subcontractor, or sub-subcontractor found by the Commissioner to have violated this subsection shall, on a second or subsequent violations, be prohibited from bidding on or entering into any public contract for 12 months following the date of such finding.

(10) There shall be a rebuttable presumption that a public employer, contractor, subcontractor, or sub-subcontractor receiving and acting upon an affidavit conforming to the content requirements of this subsection does so in good faith, and such public employer, contractor, subcontractor, or sub-subcontractor may rely upon such affidavit as being true and correct. The affidavit shall be admissible in any court of law for the purpose of establishing such presumption.

(11) Documents required by this Code section may be submitted electronically, provided the submission complies with Chapter 12 of Title 10.

(c) This Code section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(d) Except as provided in subsection (e) of this Code section, the Commissioner shall prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section and publish such rules and regulations on the Georgia Department of Labor's website.

(e) The commissioner of the Georgia Department of Transportation shall prescribe all forms and promulgate rules and regulations deemed necessary for the application of this Code section to any contract or agreement relating to public transportation and shall publish such rules and regulations on the Georgia Department of Transportation's website.

(f) No employer or agency or political subdivision, as such term is defined in Code Section 50-36-1, shall be subject to lawsuit or liability arising from any act to comply with the requirements of this Code section.

Current through 2017 Regular Session

Minor, M.A. & Georgia Public Library Service. (2013). *Legal issues in Georgia's public libraries* (2nd ed.). pp. 28-30. (Available in Directors' Knowledge Base for Georgia Public Library System Directors).

Newman, M.J. & Duong H. (2007). The Georgia Security and Immigration Compliance Act: Comprehensive immigration reform in Georgia—think globally . . . act locally. *Georgia Bar Journal* (13)4.