

ARTICLE 17.5

ILLEGAL ALIENS - PUBLIC CONTRACTS FOR SERVICES

8-17.5-101. Definitions.

As used in this article, unless the context otherwise requires:

(1) (Deleted by amendment, L. 2008, p. 736, § 1, effective May 13, 2008.)

(2) "Contractor" means a person having a public contract for services with a state agency or political subdivision of the state.

(3) "Department" means the department of labor and employment.

(3.3) "Department program" means the employment verification program established pursuant to section 8-17.5-102 (5) (c).

(3.7) "E-verify program" means the electronic employment verification program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended, and jointly administered by the United States department of homeland security and the social security administration, or its successor program.

(4) "Executive director" means the executive director of the department of labor and employment.

(4.5) "Newly hired for employment" means hired to work in the United States since the effective date of the public contract for services.

(5) "Political subdivision" means any city, county, city and county, town, special district, school district, local improvement district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

(6) (a) "Public contract for services" means any type of agreement, regardless of what the agreement may be called, between a state agency or political subdivision and a contractor for the procurement of services.

(b) "Public contract for services" does not include:

(I) Agreements relating to the offer, issuance, or sale of securities, including but not limited to agreements pertaining to:

(A) Underwriting, marketing, remarketing, paying, transferring, rating, or registering securities; or

(B) The provision of credit enhancement, liquidity support, interest rate exchanges, or trustee or financial consulting services in connection with securities;

(II) Agreements for investment advisory services or fund management services;

(III) Any grant, award, or contract funded by any federal or private entity for any research or sponsored project activity of an institution of higher education or an affiliate of an institution of higher education that is funded from moneys that are restricted by the entity under the grant, award, or contract. For purposes of this subparagraph (III), "sponsored project" means an agreement between an institution of higher education and another party that provides restricted funding and requires oversight responsibilities for research and development or other specified programmatic activities that are sponsored by federal or private agencies and organizations.

(IV) Intergovernmental agreements; or

(V) Agreements for information technology services or products and services.

(7) "Services" means the furnishing of labor, time, or effort by a contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

(8) "State agency" means any department, commission, council, board, bureau, committee, institution of higher education, agency, or other governmental unit of the executive, legislative, or judicial branch of state government.

Source: L. 2006: Entire article added, p. 1694, § 1, effective August 7. **L. 2008:** (1), (5) and (6) amended and (3.3), (3.7), and (4.5) added, p. 736, § 1, effective May 13.

8-17.5-102. Illegal aliens - prohibition - public contracts for services - rules.

(1) A state agency or political subdivision shall not enter into or renew a public contract for services with a contractor who knowingly employs or contracts with an illegal alien to perform work under the contract or who knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract. Prior to executing a public contract for services, each prospective contractor shall certify that, at the time of the certification, it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services.

(2) (a) Each public contract for services shall include a provision that the contractor shall not:

(I) Knowingly employ or contract with an illegal alien to perform work under the public contract for services; or

(II) Enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.

(b) Each public contract for services shall also include the following provisions:

(I) A provision stating that the contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the department program;

(II) A provision that prohibits the contractor from using either the e-verify program or the department program procedures to undertake preemployment screening of job applicants while the public contract for services is being performed;

(III) A provision that, if the contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:

(A) Notify the subcontractor and the contracting state agency or political subdivision within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(B) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph (A) of this subparagraph (III) the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien;

(IV) A provision that requires the contractor to comply with any reasonable request by the department made in the course of an investigation that the department is undertaking pursuant to the authority established in subsection (5) of this section.

(3) If a contractor violates a provision of the public contract for services required pursuant to subsection (2) of this section, the state agency or political subdivision may terminate the contract for a breach of the contract. If the contract is so terminated, the contractor shall be liable for actual and consequential damages to the state agency or political subdivision.

(4) A state agency or political subdivision shall notify the office of the secretary of state if a contractor violates a provision of a public contract for services required pursuant to subsection (2) of this section and the state agency or political subdivision terminates the contract for such breach. Based on this notification, the secretary of state shall maintain a list that includes the name of the contractor, the state agency or political subdivision that terminated the public contract for services, and the date of the termination. A contractor shall be removed from the list if two years have passed since the date the contract was terminated, or if a court of competent jurisdiction determines that there has not been a violation of the provision of the public contract for services required pursuant to subsection (2) of this section. A state agency or political subdivision shall notify the office of the secretary of state if a court has made such a determination. The list shall be available for public inspection at the office of the secretary of state and shall be published on the internet on the web site maintained by the office of the secretary of state.

(5) (a) The department may investigate whether a contractor is complying with the provisions of a public contract for services required pursuant to subsection (2) of this section. The department may conduct on-site inspections where a public contract for services is being performed within the state of Colorado, request and review documentation that proves the citizenship of any person performing work on a public contract for services, or take any other reasonable steps that are necessary to determine whether a contractor is complying with the provisions of a public contract for services required pursuant to subsection (2) of this section. The department shall receive complaints of suspected violations of a provision of a public contract for services required pursuant to subsection (2) of this section and shall have discretion to determine which complaints, if any, are to be investigated. The results of any investigation shall not constitute final agency action. The department is authorized to promulgate rules in accordance with article 4 of title 24, C.R.S., to implement the provisions of this subsection (5).

(b) The executive director shall notify a state agency or political subdivision if he or she suspects that there has been a breach of a provision in a public contract for services required pursuant to subsection (2) of this section.

(c) (I) There is hereby created the department program. Any contractor who participates in the department program shall notify the department and the contracting state agency or political subdivision of such participation. A participating contractor shall comply with the provisions of subparagraph (II) of this paragraph (c) and shall consent to department audits conducted in accordance with subparagraph (III) of this paragraph (c). Failure to meet either of these obligations shall constitute a violation of the department program. The executive director shall notify a contracting state agency or political subdivision of such violation.

(II) A participating contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under the public contract for services, affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. sec. 1324a, and not altered or falsified the identification documents for such employees. The contractor shall provide a written, notarized copy of the affirmation to the contracting state agency or political subdivision.

(III) The department may conduct random audits of state agencies or political subdivisions to review the affidavits and of contractors to review copies of the documents required by subparagraph (II) of this paragraph (c). Audits shall not violate federal law.

(6) Nothing in this section shall be construed as requiring a contractor to violate any terms of participation in the e-verify program.

Source: L. 2006: Entire article added, p. 1695, § 1, effective August 7. **L. 2007:** (1) and (2)(b)(I) amended, p. 119, § 1, effective August 3. **L. 2008:** (1), (2)(b)(I), (2)(b)(II), and (5)(a) amended and (5)(c) and (6) added, pp. 737, 738, 739, §§ 2, 3, 4, effective May 13.