

## **Meeting Immigration Reform Laws in Your Public Works Contracts at the Local, State and Federal Levels**

*Guidelines affect contracts with owners and subcontractors*

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Immigration reform continues to be a hotly debated and politically volatile issue for our country. As a statewide association, the Georgia Branch, AGC has been at the forefront of Georgia's immigration reform debate and continues to work closely with AGC of America concerning federal legislation and a recently issued Executive Order on the topic.

*While the federal government has again postponed implementation of the E-Verify rule for federal contractors (Contracts and solicitations issued prior to September 8, 2009, will **NOT** contain the mandate), the Georgia Security and Immigration Compliance Act of 2006 ([SB 529](#)) **WILL** require compliance and participation in the federal E-Verify program for **ALL** Georgia state and local public government contractors, regardless of their respective employee threshold beginning July 1, 2009.*

### **Federal Contractor E-Verify Implementation Delayed Again**

On November 14, 2008, Federal Acquisition Regulation (FAR) Council issued a final rule to require certain contractors and subcontractors to use the U.S. Citizenship and Immigration Services' (USCIS) E-Verify system as the means of verifying their employees are eligible to work in the United States. The rule is a result of the issuance of Executive Order 12989 on June 6, 2008 by the Bush Administration.

### **Georgia's Security and Immigration Compliance Act of 2006**

During the 2006 legislative session, the Georgia Branch, AGC was in the middle of an immigration reform debate when [SB 529](#) was introduced in an effort to reasonably address immigration reform at the state level. Our Chapter served as a leader on behalf of the construction industry while the Georgia General Assembly worked with the business community to develop and ultimately pass the bill.

Congress's inability to adequately address this issue at the federal level has led to frustration across the country. Either state or local level legislation has been introduced in almost every state in response to no federal action. Many of these initiatives are now law and in many cases conflict with neighboring jurisdiction requirements. It is important to understand that Georgia Branch, AGC strongly supports hiring individuals who are in the United States LEGALLY. We adamantly believe our national immigration laws need comprehensive reform. Locally and on a national front, AGC supports securing our borders, creating a viable guest worker program to address workforce needs and creating a reliable employment verification system. Simply put, the system is broke and it needs to be fixed. Only Congress and our federal government are able to comprehensively address this issue by implementing these drastically needed solutions.

In 2007 Gwinnett County introduced and passed an immigration ordinance impacting public works contracts that was in conflict with federal law. Complying with both Gwinnett County's ordinance and our nation's federal laws was physically impossible. AGC brought this to the attention of Gwinnett County to no avail, and was required to join the Georgia Utility Contractors Association (GUCA) in filing a federal law suit to get their attention. Gwinnett County ultimately began working with us to revise their ordinance so contractors can comply without violating federal law.

The public contracts section of the Georgia Security and Immigration Compliance Act required a tiered implementation schedule based upon an employer's employee threshold. During the first year the law was in effect, only companies with 500 employees or more were required to participate in the Federal DHS E-Verify Program if they took part in state or local government contracts. By July 1, 2008 companies employing more than 100 were required to participate in E-Verify **and by July 1, 2009 ALL companies are required to participate in E-Verify.**

### **Georgia General Assembly Passes [HB 2](#) in 2009**

The overall theme of [HB 2](#) was to insure local government complies with [SB 529](#), immigration legislation that passed in 2006. SB 529 requires public employers and public contractors to participate in the Federal E-Verify program and local governments are required to determine legal immigration status prior to issuing a public benefit to individuals. Under HB 2, local governments who fail to meet these provisions are subject to having state or federal funds withheld.

There is a section of the legislation that also applies to state and local government public works contractors. Georgia Branch, AGC was approached by Senate leadership before the bill was amended seeking our input. Current law requires contractors and subcontractors to sign an affidavit at time of contract verifying their participation in the Federal E-Verify program. The General Assembly wanted to move the affidavit requirement from the time of contract to the time of bid for both general contractors and subcontractors.

AGC indicated this would not be a major hurdle for the prime contractor because of an owner's ability to prequalify, but this would create a problem at the subcontractor level. We explained that many times the actual low bid subcontractor is not known at time of bid because of the use of project alternates, or late sequenced work. The bill sponsors agreed to our requested amendment to remove the requirement for subcontractors to sign an affidavit at time of bid versus contract.

The Georgia Department of Labor (DOL) was identified in the law as the agency responsible for developing rules for compliance in the public owner/ public works section of the law (OCGA 13-10-91). These rules (300-10-1) require public owners, at both state and local levels, to include provisions in their public works contracts requiring the contractor to certify compliance with federal and state immigration law.

The rule also mandates including a provision to require the listing of the contractor's statutory employee-number categories of "500 or more employers," "100 or more employees" and "fewer than 100 employees" as identified in OCGA 13-10-91, [http://www.legis.state.ga.us/legis/2005\\_06/fulltext/sb529.htm](http://www.legis.state.ga.us/legis/2005_06/fulltext/sb529.htm)) with additional space provided for the contractor to check or initial or otherwise affirmatively indicate the employee-number category applicable to the contractor. The above requirements are also applicable to the contractor, which MUST also include similar provisions in their contract with subcontractors on public works contracts. The employee threshold provision may no longer be needed as of July 1, 2009 because ALL local and state public works contractors will now be required to participate in E-Verify. AGC has been in contact with our friends at the Georgia Department of Labor and local government indicating our desire to work together regarding the development of any Rule revisions that may be required to the existing Department of Labor Rule to implement the new legislative requirements of HB 2.

Georgia Branch, AGC encourages all contractors to visit [http://www.dol.state.ga.us/pdf/rules/300\\_10\\_1.pdf](http://www.dol.state.ga.us/pdf/rules/300_10_1.pdf) to view Georgia DOL's new rules for Chapter 300-10-1, *Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program*. On page 6 of the PDF file you'll find "300-10-1.08 – Subcontractor Affidavit." **All prime contractors performing Georgia public works projects now need to include this affidavit in their contracts with their subcontractors.**

Access the E-Verify registration page at: <https://e-verify.uscis.gov/enroll/>

### **Confusion over participation in E-Verify for Georgia public works contracts is on the decline, but it looks to be increasing with regard to federal requirements**

In summary, the tiered implementation schedule for public works contractors required by the Georgia Security and Immigration Compliance Act caused confusion within the industry. Much of this should abate on July 1, 2009 when **ALL** public works contractors and subcontractors in Georgia will be required to participate in the federal E-Verify program if they pursue state or local public works projects.

The federal contractor E-Verify requirements are entirely a different story. They have different requirements and timelines for implementation and are constantly changing. As America continues to struggle with the immigration reform debate, please look to AGC to be your resource for information on complying with all requirements at the state and federal levels. If you have any questions, please contact Mark Woodall at 678-298-4116 or [woodall@agcga.org](mailto:woodall@agcga.org).