



Important Legal References

Per O.C.G.A. §13-10-91 (a) – every public employer must register for and participate in the federal work authorization program to verify that new hires are eligible to work in the United States. (This is performed by the HR Department at the time a new hire is onboarded.)

Per O.C.G.A. §13-10-91 (b) – A public employer shall not enter into a contract for the physical performance of services unless the contractor registers for 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.

Per O.C.G.A. §13-10-90 (4) – “Physical performance of services” means any performance of labor or 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.

Per O.C.G.A. §13-10-90 (5) – “Public employer” means every department, agency, or instrumentality of this state or a political subdivision of this state.

In Summary

Contractors who provide services of \$2,500 or more to a public employer are required to register for and use the federal work authorization program (E-Verify) to confirm that they only hire people who are legally authorized to be in the United States.

Contractors must submit an affidavit to the governmental entity documenting they use E-Verify. The affidavit can be accessed from this link: [Contractor Affidavit - Updated December 2018 - Final.pdf](#) and should be obtained prior to awarding a contract.

If the contractor plans to use subcontractors for the job, the contractor must obtain affidavits from the subcontractor and provide them to the public employer.

What public employers are subject to these requirements?

Per O.C.G.A. §13-10-90 (5) – “Public employer” means every department, agency, or instrumentality of this state or a political subdivision of this state. Therefore, all governmental and quasi-governmental entities are required to comply with these provisions.

What constitutes “physical performance of services?”

Per O.C.G.A. §13-10-90 (4) – “Physical performance of services” means any performance of labor or 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.

Any service that a public employer receives would qualify as “physical performance of services.” This would include, but is not limited to, the following:

- Routine operation, repair, and maintenance of structures and office space;
- Services required for the normal operation of business, such as IT support services, janitorial services, equipment repair services, and others; and
- Professional and consulting services

Would any contractors be exempt from these laws?

There are certain exemptions to these provisions:

1. Contractors that have no employees are not eligible to obtain an E-Verify Number. Instead of obtaining an affidavit from the contractor, the public employer is required to still document they are eligible to be in the United States by ensuring they have a state issued driver’s license from a state that verifies immigration through the licensing/renewal process. Public employers can use other forms of ID such as a passport or military ID.
2. Public employers that hire a contractor that is licensed under Title 26 or 43 of the Official Code of Georgia or licensed by the State Bar of Georgia would not need to obtain an E-Verify affidavit because the individual has already verified their legal presence in the United States through their licensing process. This would only apply if you are hiring a contractor as an individual. If you are hiring a firm, this exemption does not apply.
3. Public employers do not need to obtain an affidavit if they are hiring another public employer within the State of Georgia to perform a service. This is because all public employers are required to have an E-Verify number and are required to use E-Verify when hiring a new employee.

What are the reporting requirements?

Per O.C.G.A. §50-36-4 (d) (2), every public employer must submit an annual report to the Department of Audits and Accounts which includes the legal name, address, and federal work authorization program user number of every contractor that has entered into a contract for the physical performance of services during the reporting period, which is December 1 – November 30. The report should also include the date of the contract.

For each contractor included on the report, the public employer must either provide the E-Verify number or note that the contractor was exempt from having a number. Contractors that meet this exemption requirement must also be included in the report submitted to DOAA.

The Report

Click this link [Georgia Department of Audits and Accounts](#) to access the collection system used by DOAA for annual reporting. All persons completing the report must have an account. If you already have an account, you can sign-in on the homepage. If you do not have an account, you may request credentials through this same page.

For guidance on accessing, completing, and submitting the report, please review the “Guidelines for Completing the Immigration Compliance Report” which can be found on the DOAA website.

The annual report is due to the Department of Audits and Accounts by December 31st of each year.

Final Comments

- A PO is considered a contract. The provisions of Chapter 10 of Title 13 expand beyond situations in which an employer has bid a project or signs a formal contract.
- If you contract with a vendor multiple times each year, you must obtain an affidavit for each new contract, and each contract must be reported separately on the report.
- The contractor is required to obtain the affidavits for any subcontractors hired for the project.
- If the vendor is on statewide contract, you can pull the E-Verify information from the supplier information maintained by DOAS. You will not need to request the affidavit from these vendors. However, you are required to include these vendors on the annual report.
- Err on the side of caution. If you are unsure whether an E-Verify form is required, it is okay to request one.
- If you do business with a foreign company, the company would not have an E-Verify number. You do not need to collect the information relating to Title 13 in this instance. However, if the company is entering the United States, you should verify they have received the required authorization to enter the United States. These contractors should still be included on the collection report.

Penalties for Noncompliance

O.C.G.A. §13-10-91 (b) (7) (B) specifies that “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.”

O.C.G.A. §13-10-91 (b) (7) (C) allows political subdivisions to seek administrative relief through the Office of State Administrative Hearings if they are in violation with the reporting requirements.

It should be noted that 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.

O.C.G.A. §13-10-91 (b) (7) (D) specifies that 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.

Penalties for Failure to Report

The Department of Audits and Accounts will also consider all entities that do not submit an annual report as noncompliant and would be subject to penalties noted above.

Do you need assistance?

The Department of Audits and Accounts' website includes resources to assist you in complying with the immigration laws and submitting your report. Click this link [Immigration - DOAA](#) to access these resources.

If you have questions relating to immigration compliance and/or reporting, please contact immhelp@audits.ga.gov.