



STATE OF ALABAMA
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Office of the State Comptroller

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MEMORANDUM

TO: All State Agencies

FROM: Thomas L. White, Jr.
State Comptroller 

DATE: January 6, 2012

RE: **IMPORTANT ACTION REQUIRED – ALABAMA IMMIGRATION LAW** Compliance Guidelines For Sections 9(a) and (b) of Act 2011-535, Affecting Payments on Contracts, Grants and Incentives Awarded January 1, 2012, And Thereafter

When processing payment vouchers, this office is charged with determining the legality of the payment. Legality includes compliance with the conditions to payment that are established by law.

Act 2011-535, entitled the "Beason-Hammon Alabama Taxpayer and Citizen Protection Act" and codified at §31-13-1 et seq. of the Code of Alabama, 1975, as amended ("the Act" or "the immigration law") imposes conditions on the award of State contracts, grants and incentives which must be satisfied before payment can be made on those transactions.

§31-13-9 establishes specific conditions for certain contracts. This section is effective as of January 1, 2012. It applies to contracts, grants or incentives of the state, any political subdivision of the state or any state-funded where the co-party is a "business entity or employer". (See §31-13-3 for the meaning of these terms as defined for the purpose of this law.)

§31-13-9(a) requires: "[a]s a condition for the **award** (emphasis provided) of any contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity to a business entity or employer... the business entity or employer shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien and shall attest to such, by sworn affidavit signed before a notary." (Emphasis added.)

§31-13-9(b) conditions the award of a contract, grant or incentive to a business entity or employer upon that entity being enrolled in the E-Verify program maintained by The United States Department of Homeland Security. (E-Verify enrollment is available at the website of DHS or at the E-Verify portal available through <http://immigration.alabama.gov> maintained by the Alabama Department of Homeland Security.)

For the purposes of this law, "award" is understood to be the action taken as the result of a formal procurement process that results in an "award", such as an Invitation To Bid or a Request For Proposals.

Awarded Contracts

Effective immediately, when a contract is submitted to this office for approval there must be §31-13-9(a) and (b) compliance established by including with the contract documents the following additional documents:

(1) a copy of the affidavit required by §31-13-9(a) that has been provided by the contractor, using the form prescribed by the Alabama Secretary of State (a copy of this affidavit form is attached to this memorandum); and

(2) a complete copy of the E-Verify Memorandum of Understanding (MOU), which is generated when the business entity or employer enrolls in that program, bearing the number assigned to that MOU by Homeland Security. These two documents are in addition to other documents required by this office, including the forms prescribed by the Contract Review Permanent Legislative Oversight Committee if the contract is for professional or personal services.

Payments On Grants or Incentives

Effective immediately, before a warrant for payment due under a grant or incentive can be issued by this office there must be §31-13-9(a) and (b) compliance established by including a certification on the payment voucher submitted to this office that certifies the following documents have been obtained and are on file with the agency:

(1) the affidavit required by §31-13-9(a) has been provided by the contractor, using the form prescribed by the Alabama Secretary of State (a copy of this affidavit form is attached to this memorandum); and

(2) a completed copy of the E-Verify Memorandum of Understanding (MOU), which is generated when the business entity or employer enrolls in that program, bearing the number assigned to that MOU by Homeland Security.

The required certification must be as follows:

The undersigned hereby certifies that the transaction under which this payment is requested is subject to the requirements of §31-13-9(a) and (b), Code of Alabama, 1975, as amended and the proper documentation is on file in the agency.

Payments to Governmental Entities

Intergovernmental Agreements are not subject to Code Sections 31-13-9(a) and (b), as they are not awarded. These agreements are limited to agreements between departments, agencies, instrumentalities of the State, or other governmental entities.

Payments For Goods or Services Not Procured Under Awarded Contract, Grant or Incentive, By Purchase Order or Interagency Agreements

Payments for goods and/or services not covered by a written contract or purchase order are typically purchases of less than \$500. As long as the transaction is not the result of a formal procurement process that results in an "award", § 9(a) and (b) requirements do not apply. Therefore the § 9(a) affidavit and the (b) E-Verify MOU do not have to be submitted with the payment voucher.

However, the payment voucher must include the following certification by the agency:

The undersigned hereby certifies that the transaction under which this payment is requested is not subject to the requirements of §31-13-9(a) and (b), Code of Alabama, 1975, as amended.

If you have any questions or need further guidance on the contract requirements, please contact Pam Harris at 334-242-4225. For all other payment types, please contact Kathleen Baxter, at 334-242-4857.

For your convenience, Act 2011-535 is posted on this office's website, www.comptroller.alabama.gov.

TLWjr/dt

CC: Mr. Bill Newton, Assistant Finance Director, Alabama Department of Finance
Mr. Richard Cater, Chief Legal Counsel, Alabama Department of Finance
Ms. Janice A. Hamm, Deputy State Comptroller, Alabama Department of Finance
Ms. Kathleen D. Baxter, Accounting Director I, Administrative Accounting Section
Ms. Pamela Harris, Accounting Manager, Fiscal Management Section

FORM FOR SECTIONS 9 (a) and (b) BEASON-HAMMON ALABAMA TAXPAYER AND
CITIZEN PROTECTION ACT; CODE OF ALABAMA, SECTIONS 31-13-9 (a) and (b)
AFFIDAVIT FOR BUSINESS ENTITY/EMPLOYER/CONTRACTOR

(To be completed as a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees)

State of _____

County of _____

Before me, a notary public, personally appeared _____ (print name) who, being duly sworn, says as follows:

As a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, I hereby attest that in my capacity as _____ (state position) for _____ (state business entity/employer/contractor name) that said business entity/employer/contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien.

I further attest that said business entity/employer/contractor is enrolled in the E-Verify program.
(ATTACH DOCUMENTATION ESTABLISHING THAT BUSINESS ENTITY/EMPLOYER/CONTRACTOR IS ENROLLED IN THE E-VERIFY PROGRAM)

Signature of Affiant

Sworn to and subscribed before me this _____ day of _____, 2_____.

I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.

Signature and Seal of Notary Public

Author: Jean Brown

Statutory Authority: Code of Alabama, sections 31-13-9 (a) and (b); Section 31-13-9 (h).