

IMMIGRATION LAW COMPLIANCE ISSUES FOR MUNICIPALITIES

C. MICHAEL MCINNISH
CHRISTINA A. THORNTON
CITY OF MONTGOMERY, AL

ATTACHMENTS

- POLICE TRAINING MATERIALS
- IMMIGRATION IDENTIFICATION
- HUNTSVILLE POLICE SOP
- LEAGUE ARTICLE ON CHANGES
- STATUTE
- BUSINESS LICENSE APPLICATION
- PURCHASING PACKAGE
- REVENUE MEMO

BEASON-HAMMON ACT

- BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT

ALABAMA CONSTITUTION

- SECTION 30
- IMMIGRATION, EMIGRATION AND EXILE
- THAT IMMIGRATION SHALL BE ENCOURAGED;
EMIGRATION SHALL NOT BE PROHIBITED, AND
NO CITIZEN SHALL BE EXILED.

THE ACT

- PASSED IN 2011
- COURT CASES STARTED
- NO AG OPINIONS
- LEAGUE DEVELOPED WORK GROUP
- AMENDED IN 2012
- STILL WAITING ON HELP FROM HOMELAND SECURITY ***ALERT: JUST GOT CLEARANCE, INFO FROM LEAGUE THIS WEEK***

THE I-9 PROCESS

- ALL I-9'S RECOMMENDED REVIEW, REVISIONS
- HOMELAND SECURITY AUDITS
- SEVERE PENALTIES FOR MISTAKES
- I-9 FOLLOWUP IS THE EVERIFY PROCESS
- NEW I-9 FORM IS OUT
- I-9 AUDIT AND USE OF NEW FORM

EVERIFY

- ALL BUSINESSES MUST REGISTER
- PROOF OF COMPLIANCE REQUIRED FOR CONTRACTS WITH CITY
- OTHER ISSUES RELATING TO BUSINESS LICENSES

SECTION 9

- CONDITION FOR AWARD OF ANY CONTRACT, GRANT OR INCENTIVE
- BUSINESS ENTITY EMPLOYS ONE OR MORE
- WITHIN THE STATE OF ALABAMA
- (DELETED AFFIDAVIT AND LIMITS TO WITHIN STATE OF ALABAMA)
- NO AFFIDAVIT, BUT
- VERIFY E-VERIFY

BUSINESS ENTITY

- PERSON OR GROUP OF PERSONS
- PERFORMING OR ENGAGING IN ANY
 - ACTIVITY
 - ENTERPRISE
 - PROFESSION
 - OCCUPATION
 - FOR GAIN, ADVANTAGE OR LIVELIHOOD
 - FOR PROFIT OR NOT FOR PROFIT

EMPLOYEE

- DOES NOT INCLUDE ANY INMATE IN CITY, COUNTY OR STATE

EMPLOYER

- ENTITY EMPLOYING ANY PERSON FOR HIRE IN ALABAMA

ALSO INCLUDES

- SELF EMPLOYED, CORPORATIONS, PARTNERSHIPS, LIMITED PARTNERSHIPS, LIMITED LIABILITY COMPANIES, AND ANY BUSINESS ENTITY THAT REGISTERS WITH SECRETARY OF STATE.
- ANY BUSINESS POSSESSING BUSINESS LICENSE, PERMIT, CERTIFICATE, APPROVAL, REGISTRATION, ETC

AND FURTHER INCLUDES

- ANY BUSINESS ENTITY EXEMPT BY LAW FROM OBTAINING BUSINESS LICENSE, AND
- ANY BUSINESS ENTITY OPERATING **UNLAWFULLY** WITHOUT BUSINESS LICENSE

LAWFULLY PRESENT

- PART OF I-9 VERIFICATION
- NEW LAW ADDS VALID UNIFORMED SERVICES PRIVILEGES AND IDENTIFICATION CARD

CONTRACTOR

- ONE WHO ENTERS AGREEMENT TO PERFORM ANY SERVICE, WORK OR PROVIDE A PRODUCT IN EXCHANGE FOR VALUABLE CONSIDERATION
- INCLUDES: GEN. CONTRACTOR, SUB, INDEPENDENT CONTRACTOR, CONTRACT EMPLOYEE, ETC.

SUBCONTRACTOR

- PERSON, BUSINESS ENTITY, OR EMPLOYER WHO IS AWARDED A PORTION OF AN EXISTING CONTRACT BY A CONTRACTOR, REGARDLESS OF ITS TIER.

EXCLUSION

- FINANCE DEPARTMENT MEMO:
- IF TRANSACTION ENTERED INTO BY A STATE AGENCY DOES NOT REQUIRE COMPETITIVE BIDDING: PURCHASE ORDERS LESS THAN BID LIMIT)
- WHAT ABOUT THE CITY?

HOWEVER

- IF WE DO OR SHOULD DO AN RFP OR IF WE COMPETITIVELY BID, WE MIGHT REQUIRE THE MOU AND CERTIFICATION STATEMENT PRIOR TO AWARDING.
- SO WHAT IS COMPETITIVE BIDDING?

STATE FUNDED ENTITY

- ANY ENTITY THAT RECEIVES ANY MONIES FROM THE STATE OR A POLITICAL SUBDIVISION THEREOF;
- PROVIDED, HOWEVER: AN ENTITY THAT MERELY PROVIDES A SERVICE OR A PRODUCT TO ANY GOVERNMENTAL ENTITY AND RECEIVES COMPENSATION FOR THE SAME SHALL NOT BE A STATE FUNDED ENTITY.

AWARD OF CONTRACT

- EMPLOYER SHALL PROVIDE DOCUMENTATION OF ENROLLMENT IN E-VERIFY.
- DURING CONTRACT: SHALL CONTINUE TO VERIFY AS PER FEDERAL RULES. I.E. NEW EMPLOYEES.
- SHALL GET VERIFICATION FROM SUB CONTRACTORS

VIOLATIONS

- CONTRACT TERMINATED
- DUE PROCESS REQUIRED
- AG CAN BRING ACTION
- DA CAN GET INVOLVED

BREACH AND VIOLATION

- A CONTRACTING PARTY FOUND TO BE IN VIOLATION OF THIS PROVISION SHALL BE DEEMED IN BREACH OF THE AGREEMENT AND SHALL BE RESPONSIBLE FOR ALL DAMAGES RESULTING THEREFROM

SUGGESTIONS FOR BIDDING

- AFFIDAVIT TO BE SUPPLIED WITH BID OR CONTRACT PROPOSAL BEFORE AWARDING CONTRACT
- ROUTING SHEET MUST HAVE AFFIDAVIT AND PROOF OF E-VERIFY ATTACHED

A CONTRACT?

- 31-13-9 (K)(1) A contract shall mean a contract *that was competitively bid...*
- BUT:
- (k): All contracts or agreements must contain certain language

CONTRACT EXCLUDED

- IF TRANSACTION ENTERED INTO BY A STATE AGENCY DOES NOT REQUIRE COMPETITIVE BIDDING: PURCHASE ORDERS LESS THAN BID LIMIT

THE LANGUAGE

- “BY SIGNING THIS CONTRACT, THE CONTRACTING PARTIES AFFIRM, FOR THE DURATION OF THE AGREEMENT, THAT THEY WILL NOT VIOLATE FEDERAL IMMIGRATION LAW OR KNOWINGLY EMPLOY, HIRE FOR EMPLOYMENT, OR CONTINUE TO EMPLOY AN UNAUTHORIZED ALIEN WITHIN THE STATE OF ALABAMA.”

AND MORE

- FURTHERMORE A CONTRACTING PARTY FOUND TO BE IN VIOLATION OF THIS PROVISION SHALL BE DEEMED IN BREACH OF THE AGREEMENT AND SHALL BE RESPONSIBLE FOR ALL DAMAGES RESULTING THEREFROM.

EXCLUSION

- THIS DOES NOT APPLY TO AGREEMENTS BY THE STATE, ANY POLITICAL SUBDIVISION, OR ANY STATE FUNDED ENTITY RELATING TO DEBT OBLIGATIONS OF SUCH ENTITIES.

WORKING WITH THE MOU

- MOU IS THE MEMORANDUM OF UNDERSTANDING WITH THE EVERIFY DIVISION.
- BIDDERS MUST HAVE MOU (REGISTERED WITH EVERIFY)
- CITY ALSO HAS TO SUPPLY EVERIFY MOU INFORMATION WHEN THEY DO BUSINESS WITH ANOTHER CITY/ENTITY.

WHAT ABOUT THE MOU?

- BEST PRACTICES:
- MOU NUMBER WITH BID?
- AFFIDAVIT FROM OUT OF STATE COMPANIES THAT THEY HIRE NO EMPLOYEES IN ALABAMA
- COMPLETE MOU IF CONTRACT AWARDED (PRIOR TO AWARD)
- PUT CITY MOU ON WEBSITE !!

PROCEDURES

- ATTACH AFFIDAVIT TO OUTSIDE OF PACKAGE?
- REQUIRE AFFIDAVIT BEFORE BID IS REVIEWED?
- OUT-OF-STATE CONTRACTORS AND VENDORS?
- COMPLIANCE REVIEWS

BUSINESS LICENSES: 31-13-29

- STATUS OF SAVE PROGRAM??
- NO LONGER A BUSINESS TRANSACTION, BUT IS NOW “PUBLIC RECORDS TRANSACTION”
- COMMERCIAL LICENSE, PROFESSIONAL LICENSE, BUSINESS LICENSE

PROVING ELIGIBILITY

- LAWFUL PRESENCE
- MAY BE VERIFIED BY SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE)
- ONCE CITIZEN VERIFIED, NO FURTHER REQUIREMENT TO DEMONSTRATE CITIZENSHIP
- IF ALIEN: IF PERMANENT RESIDENT, NO FURTHER VERIFICATION REQUIRED

VIOLATION

- CLASS C FELONY

CITIZENSHIP PROOF

- DEMONSTRATED BY OR CONFIRMED BY ORIGINAL, PHOTOCOPY, OR DIGITAL/ELECTRONIC FORMAT
- LIST FOUND IN (G)
- AL.VERIFY
- DRIVER'S LICENSE MUST BE FROM STATE REQUIRING PROOF OF LAWFUL PRESENCE.

BUSINESS LICENSE ISSUES

- NO HELP FROM HOMELAND SECURITY
- CAN'T REGISTER FOR SAVE PROGRAM
- REQUIRE PROOF OF CITIZENSHIP
- FORMS HAD TO BE REVISED, SENT TO BUSINESSES
- DUE PROCESS ISSUES

POLICE MATTERS

- STOP AND ASK?
- THEN WHAT?
- DETENTION?
- FOR HOW LONG?
- COURT DECISIONS

WHAT'S NEXT?

- MORE COURT DECISIONS
- LEGISLATIVE AMENDMENTS
- FEDERAL LAW ISSUES
- SAVE PROGRAM: EQUAL PROTECTION
- ARREST/DETENTION CASES
- REFUSAL OF FEDERAL AGENCIES TO COOPERATE

50/50 RULE

- ANYTIME YOU HAVE A 50-50 CHANCE OF GETTING SOMETHING RIGHT,
- THERE'S A 90% PROBABILITY OF GETTING IT WRONG

CONCLUSION

- BEST EFFORTS TO COMPLY WITH STATE LAW
- WE CAN'T VIOLATE FEDERAL LAW
- LEAGUE HAS BEEN INSTRUMENTAL IN TRYING TO KEEP US UNIFORM
- MORE GUIDANCE IS COMING
- DON'T BE SURPRISED BY THE CHANGES THAT MAY HAVE TO BE MADE TO CURRENT PRACTICES

AND LASTLY

- LET'S TRY TO ACT IN UNITY THROUGH THE LEAGUE OF MUNICIPALITIES
- LET'S KEEP UP WITH THE LAW
- LET'S COMMUNICATE
- LET'S SHARE OUR "BEST PRACTICES"
- AND ASK QUESTIONS !!!!!