

**Q&A for Implementation of HB 06-1343**  
**Illegal Aliens and Personal Services Contracts**  
August 2, 2006 original; last updated November 8, 2006

**1. How will the State implement the provisions of HB 1343 regarding certification?**

To address the certification of HB 1343, the State Controller's Office and State Purchasing plan to do the following:

1. Adopt an Emergency Fiscal Rule to add Special Provision to be included in all state contracts that has certification language. The Contractor will sign the contract, which will include the certification, and this will meet the certification requirement of HB 1343
2. Add similar language to purchase order for services. The Contractor will not need to sign a separate certification statement
3. Obtain signed certification statements from all vendors for services with price agreements
4. Include a notice in BIDS and encourage the agencies to include a notice in all solicitations for services that the contractor will need to sign a certification statement regarding illegal aliens.

**2. What type of agreements are covered by HB 1343?**

Under CRS 8-17.5.5-101 (6), "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. So, this would include contracts for services and purchase orders for services.

**3. Does HB 1343 apply to inter-agency agreements and inter-governmental agreements?**

HB 1343 does not apply to inter-agency agreements (state agencies and institutions of higher education). Inter-agency agreements do not require the certification statement.

HB 1343 also does not apply to inter-governmental agreements.

**4. Does HB 1343 apply to grant agreements?**

HB 1343 would apply to grant agreements. The subrecipient will be subject to the HB 1343 just the same as a vendor providing personal services.

**5. How do we handle a contract for services?**

With the inclusion of special provision concerning illegal aliens, there is no additional piece of paper that needs to be obtained from the contractor. The special provision includes the certification, and by signing the contract, the contractor is agreeing to all items in the contract, including the certification statement.

**6. How do we handle a purchase order for services?**

We will include similar language to the special provision in a purchase order for services. There is no need to for the Contractor to sign a separate certification statement.

**7. Do Contractors/Vendors have to obtain a similar certification from their subcontractors?**

Yes, Contractors/Vendors do have to obtain a certification from their subcontractors and include the certification requirements in the contract between the vendor and the subcontractor. See CRS 8-17.5-102(2)(a)(II).

**8. Will Agencies need to obtain the certification statement from vendors for services that are included in price agreements?**

| Yes, an agency must obtain a certification from a vendor with a price agreement.

**9. Will Agencies need to obtain the certification statement from vendors that win the award through the RFP process?**

Yes. State Purchasing recommends that agencies include a notice in all solicitations for services, so that Contractors will be aware of the certification requirement that will be included in both the PO and contract.

**10. Why do we need to add a notice regarding the certification in all solicitation for services?**

With notice regarding the certification, it is possible that a contractor may decide to drop out of the competition. Also, it should make it easier to obtain the certification statement after the contractor wins the award because the contractor was previously aware of the certification statement requirement.

**11. How would we handle emergencies, where we need the contractor to begin work immediately?**

Follow the procedures in fiscal rule 2-2 for emergencies. There is no additional requirement for your agency to obtain a certification statement before work

begins. However, the requirements for certification, procurement and commitment vouchers still apply and must be complied with as soon as possible.

**12. If the contractor is overseas, whose laws determine illegal alien?**

If the contractor is overseas, the contractor will need to comply with US laws for hiring employees and using subcontractors in the US. The statute does not cover situations where the contractor performs the work overseas with individuals that are considered illegal aliens in the overseas country.

**13. When is this effective?**

HB 1343 is effective August 7, 2006. To ensure that we meet that timing, all contracts initiated after July 1, 2006 should include the additional special provision regarding illegal aliens. For all purchase orders issued after August 7, 2006, the agencies should include language that addresses HB 1343 requirements.

This statute does not apply to existing contracts and PO's in place as of July 1, 2006. There is no need to change existing contracts and PO's.

**14. Is there a dollar limit before HB 1343 applies?**

No; there is no dollar limit included in the statute. Any purchase for any amount for personal services would trigger HB 1343

**15. How does an agency handle situations where a contractor performs personal services, and the amount is below \$5,000 so a PO is not issued?**

The agency could use a certification form that the Contractor would sign in these situations. The SCO will provide an example certification form.

**16. What specific items are considered services under HB 1343?**

The following are considered services under HB 1343:

- a. Installation, initial set-up, and training to use equipment that is associated with the purchase of equipment
- b. Software and computer maintenance and ongoing software support
- c. Operating expenses in a building lease that are separate from rent

The following are **NOT** considered personal services under HB 1343:

- a. Contract for the purchase of goods only
- b. Hotels
- c. Building lease – which includes “rent” and maintenance – full service lease
- d. Custom printing
- d. Catering at a hotel
- e. Capital Construction

**17. What employees are covered?**

All employees of the Contractor who are working on the contract with the State agency are covered under HB 1343. Not all of the Contractor’s worldwide employees.

**18. The Basic Pilot Program covers only new employees, but HB 1343 includes all employees who are working on the contract with the State agency. How does the contractor check for all employees working on the State contract?**

The contractor will use the Basic Pilot Program to check the eligibility of all new employees who are working on the State contract. The Contractor can also use the Social Security Administration website to verify the eligibility of all employees working on the State contract. The State Controller’s Office will issue additional guidance on the using the Basic Pilot Program.

**19. Are sole proprietors covered under HB 1343?**

Yes; sole proprietors are covered under HB 1343 and are also covered under HB 06S-1023.

**20. How often does the Contractor have to certify?**

The Contractor must certify whenever the contract is renewed. There is not an annual requirement for certification.

**14. What about the notice provisions in HB 1343?**

The certification statement requires the contractor to comply with CRS 8-17.5-101 et Seq. There are many provisions in this act. The certification mentions most of them, but not all of them. Please read the statute, or you can also read the “long summary of HB 1343” below.

**Long Summary of HB 1343**  
**NOT A SUBSTITUTE FOR READING THE ENTIRE BILL**

ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES. CRS 8-17.5-101 and

Public Law 208, 104<sup>th</sup> Congress, as amended and expanded in Public Law 156, 108<sup>th</sup> Congress, as amended

Definitions:

“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.

“Basic Pilot Program” means the Basic Pilot Employment Verification Program created in Public Law 208, 104<sup>th</sup> Congress, as amended and expanded in Public Law 156, 108<sup>th</sup> Congress, as amended, that is administered by the United States Department of Homeland Security.

“Contractor” means a person having a public contract for services with a state agency or political subdivision of the state.

“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.

For public contracts for services, the Contractor shall not:

1. Knowingly employ or contract with an illegal alien to perform work under the public contract for services; or
2. 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.

The Contractor has verified or attempted to verify through participation in the Basic Pilot Program that the Contractor does not employ any illegal aliens and, if the Contractor is not accepted into the Basic Pilot Program prior to entering into a public contract for services, that the Contractor shall apply to participate in the Basic Pilot Program every three months until the Contractor is accepted or the public contract for services has been completed, whichever is earlier. These requirements will not be

effective in a public contract for services if the Basic Pilot Program is discontinued.

The Contractor is prohibited from using the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

If the Contractor obtains actual knowledge that the 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 subparagraph A, 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.

The Contractor is required to comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation by the Department.

If a Contractor violates a provision of the public contract for services required pursuant to CRS 8-17.5-101, 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.

The state agency or political subdivision shall notify the Office of the Secretary of State if the Contractor violates a provision of a public contract for services required pursuant to CRS 8-17.5-101 and the state agency or political subdivision terminates the contract for such breach.