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Colorado Division of Labor Standards and Statistics

FREQUENTLY ASKED QUESTIONS

The 80% Colorado Labor Requirement

The Keep Jobs in Colorado Act, § 8-17-101, et. seq., C.R.S.

August 2016

Overview: The Keep Jobs in Colorado Act (§ 8-17-101, et. seq., C.R.S.) requires that contractors who work on a public works project financed in whole or in part by the state, counties, school districts, or municipalities of Colorado, meet the 80% Colorado labor requirement on that public works project, as defined in § 8-19-102(2), C.R.S. The Keep Jobs in Colorado Act applies to new contracts for which invitations for bids or the request for proposals were issued on or after January 1, 2014.

The Colorado Department of Personnel and Administration (DPA) enforces the following separate provisions of the Keep Jobs in Colorado Act, which are not addressed by this guidance:

- Non-resident bidder requirements;
- Competitive sealed bidding requirements;
- Contract performance outside of United States or Colorado;
- Foreign goods reporting.

For additional information regarding those provisions, visit https://www.colorado.gov/pacific/osc/procurement-resources

1. What are the core requirements of the law?

Whenever any public works project financed in whole or in part by funds of the state, counties, school districts, or municipalities of the State of Colorado are undertaken in this state, Colorado labor shall be employed to perform at least 80% of the work. (§ 8-17-101(1), C.R.S.).

2. Who is covered under the law?

The law applies to contractors who are working on public works projects funded in whole or in part by counties, school districts, or municipalities of the State of Colorado, and the project is undertaken in the State of Colorado. (§ 8-17-101(1), C.R.S.).

The Division does not have authority to assist you on the following issues:

i. The project is not a public works project;
ii. The public works project is financed with any amount of federal money;
iii. A waiver of the 80% Colorado labor requirement was granted by the governmental body overseeing the public works project;
iv. The public works project was bid on and/or completed before January 1, 2014; or
v. The public works project was completed more than 90 days prior to filing the complaint.

3. How does a contractor meet the 80% Colorado labor requirement?

Compliance shall be calculated on the total taxable wages and fringe benefits paid to workers employed directly on the site of the project and who satisfy the definition of Colorado labor, as defined in § 8-17-101(2)(a). (§ 8-17-105, C.R.S.).

In order for a contractor to be found in compliance, 80% of total taxable wages plus fringe benefits must be paid to workers who satisfy the definition of Colorado labor and are employed directly on the site of the public works project.

4. How are the following terms defined: "public works project", "Colorado labor", "site of the project", and "worker"?

"Public works project" shall have the same meaning as "public project" as defined in § 8-19-102(2). (§ 8-17-101(2)(b)). In accordance with § 8-19-102(2), C.R.S., and § 24-92-102(8), C.R.S., "**public works project**" is defined as:

i. any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, or safety and any maintenance programs for the upkeep of such projects, including any such project awarded by any county, including any home rule county, municipality, as defined in § 31-1-101(6), C.R.S., school district, special district, or other political subdivision of the state for which appropriation or expenditures of moneys in the aggregate fiscal year may be reasonably expected to exceed $500,000.

ii. any project under the supervision of the Colorado Department of Transportation (CDOT) for which appropriation or expenditures of moneys in the aggregate fiscal year may be reasonably expected to exceed $150,000.

iii. any highway or bridge construction, whether undertaken by the department of transportation or by any political subdivision of the state of Colorado for which appropriation or expenditures of moneys in the aggregate fiscal year may be reasonably expected to exceed $50,000.

iv. any project for construction entered into by a governmental body of the executive branch of Colorado which is subject to the "Procurement Code." (§§ 24-101-101 through 24-112-101, C.R.S.).

"Colorado labor" means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification.

A resident of the state of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty days. (§ 8-17-101(2)(a), C.R.S.).

The terms **"site of the project"** and **"worker"** are not defined in the Keep Jobs in Colorado Act. Davis Bacon definitions are utilized for each of the terms.

"Site of the project" is defined pursuant to the Davis Bacon Act, 29 C.F.R. § 5.2. Site of the project is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project.

i. Not included in the site of the project are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular public works contract or project.

"Worker" is defined pursuant to the Davis Bacon Act, 29 C.F.R. § 5.2. Workers are those whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual.

5. Can a contractor waive the 80% Colorado labor requirement?

If a waiver is needed, said waiver is granted through the governmental body financing the associated public works project. The governmental body shall waive the 80% Colorado labor requirement if there is reasonable evidence to demonstrate insufficient Colorado labor to perform the work of the project and if compliance with this article would create an undue burden that would substantially prevent a project from proceeding to completion. A governmental body that allows a waiver shall post notice of the waiver and a justification for the waiver on its web site. A governmental body shall not impose contractual damages on a contractor for a delay in work due to the waiver process. (§ 8-17-101(1), C.R.S.).

6. Does the contract need to have a provision for the 80% Colorado labor requirement?

All contracts let for public works financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado shall contain provisions for the preference in employment of Colorado labor. (§ 8-17-102, C.R.S.).

7. Do I (contractor) need to collect specific documentation for the 80% Colorado labor requirement?

In the event of an investigation, the contractor shall provide the following documentation to the Division within 14 days of a request, unless additional time is granted at the Division's discretion:

i. taxable wages and fringe benefits for each covered worker on the public works project;

AND

ii. the required residency documentation for each covered worker on the public works project.

Upon request by the contractor, each subcontractor on the public works project shall provide the required documentation listed above to the contractor. Each subcontractor shall retain the required documentation for at least 180 days after the completion of the entire public works project.

8. What happens when the Division receives a complaint?

Upon the receipt of a complaint, the Division shall notify the contractor of the complaint in writing via U.S. mail. In the event that the contractor cannot be contacted via U.S. mail, or other circumstances exist which warrant the use of other contact methods, the Division shall utilize other methods to contact the contractor.

The Division shall commence the investigation only at the completion of the project, and shall complete any investigation in response to a complaint within ninety days of the date that the Division began the investigation. (§ 8-17-104(2)(b), C.R.S.).

In the event of an investigation, the contractor shall provide the following documentation to the Division within 14 days of a request, unless additional time is granted at the Division's discretion:

i. taxable wages and fringe benefits for each covered worker on the public works project;

AND

ii. the required residency documentation for each covered worker on the public works project.

Upon request by the contractor, each subcontractor on the public works project shall provide the required documentation listed above to the contractor. Each subcontractor shall retain the required documentation for at least 180 days after the completion of the entire public works project.

Compliance shall be measured over the entirety of the completed project. (§ 8-17-104(2)(b), C.R.S.).

9. How do I file a Keep Jobs in Colorado Act complaint with the Division?

A person who alleges a potential violation of the law may file a complaint with the Division. Anonymous complaints are not accepted by the Division. Complaints shall be filed using the Division-approved form. The complaint shall include the complainant's signature, contact information, and basis for the complaint. Failure to include this information on the complaint form may result in administrative dismissal of the complaint.

Complaint forms and instructions are available at www.colorado.gov/cdle/kjica

10. What if I (complainant) want to go to court instead of filing a complaint with the Division?

The requirements of this law may not be enforced through a private right of action. (§ 8-17-104(5), C.R.S.).

11. What are the penalties for non-compliance?

After conducting an investigation of a complaint alleging a violation of the provisions of the law, if the Division determines that a contractor has knowingly violated the requirements of the law by importing labor in excess of that permitted pursuant to § 8-17-101(1), C.R.S., the Division shall impose a fine on such contractor as follows:

i. For the first violation, $5,000 or an amount equal to one percent of the cost of the contract, whichever is less;
ii. For the second violation, $10,000 or an amount equal to one percent of the cost of the contract, whichever is less; or
iii. For the third violation and any violation thereafter, $25,000 or an amount equal to one percent of the cost of the contract, whichever is less. (§ 8-17-104(2)(a), C.R.S.).

If the Division has imposed three fines on a contractor within 5 years and finds the violations to be egregious, the Division may initiate the process to debar the contractor pursuant to § 24-109-105, C.R.S. (§ 8-17-104(2)(c), C.R.S.).

The Division may dismiss a complaint in its discretion if, after conducting an investigation pursuant to this section, the Division determines that the circumstances that led to the complaint were the result of a minor paperwork violation. (§ 8-17-104(2)(d), C.R.S.).

12. What if I (contractor) want to appeal the Division's initial decision?

A contractor who is found to be in violation of the law may appeal such findings to the Division. The Division shall hold a hearing to review such notice or order and take final action in accordance with the Colorado Administrative Procedure Act, § 24-4-105, C.R.S. A Division hearing officer will preside over the hearing.

13. What happens to the revenue collected from the fines imposed by this law?

The revenue collected from the fines imposed shall be transmitted to the state treasurer, who shall credit the same to the Colorado labor enforcement cash fund, which is hereby created. The general assembly shall make appropriations from the fund as necessary to cover the direct and indirect costs of the Department of Labor and Employment in connection with the requirements of this article. All moneys not expended or encumbered and all interest earned on the investment or deposit of moneys in the fund remains in the fund and does not revert to the general fund or any other fund at the end of any fiscal year. (§ 8-17-104(4), C.R.S.).

14. What if this law conflicts with a different state or federal law?

Nothing in the law contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this article to the extent of that accordance. The requirements of this article are suspended if such requirement would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available. (§ 8-17-107, C.R.S.).

15. Where can I obtain more information on the law?

The Division solely enforces the 80% Colorado labor requirement. For more information, or to file a complaint against an employer or prospective employer, contact the Division at 303-318-8441, or visit www.colorado.gov/cdle/kjica

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