

**Q&A for Implementation of CRS 8-17.5-101 &102
HB 06-1343 as revised by HB 07-1073 and SB 08-193
Public Contracts for Services**

August 2, 2006 original; last updated June 10, 2008

1. What type of agreements are covered by CRS 8-17.5-101 &102?

Under CRS 8-17.5-101 (6), "Public contract for services" means any type of agreement, regardless of what the agreement may be called, between a State agency, institution of higher education or political subdivision and a Contractor for the procurement of services. Any purchase for any amount for services is covered by CRS 8-17.5-101 &102; there is no dollar limit included in the statute. Agreements covered by the statute include:

- Contracts for services,
- Purchase orders for services, and
- Agreements for services that are provided without a written contract or purchase order as provided under Fiscal Rule 2-2.
- Grant agreements in which the grantee provides services. The grantee and subrecipient will be subject to the CRS 8-17.5-101 &102 just the same as a Contractor/Vendor providing personal services.
- Price agreements for services

SB 08-193 amended CRS 8-17.5-101 &102 to exclude the following:

1. *Agreements relating to the offer, issuance, or sale of securities,*
2. *Investment advisory services or fund management services,*
3. *Sponsored projects,*
4. *Intergovernmental and interagency agreements,*
5. *Information technology services or products and services.*

2. What specific items are considered services under CRS 8-17.5-101 &102?

The following **are** considered services under CRS 8-17.5-101 &102:

- a. Installation, initial set-up, and training to use equipment that is associated with the purchase of equipment
- b. Operating expenses in a building lease that are separate from rent
- c. Capital Construction - See definition in CRS 24-75-301 and also on OSC website:

http://www.colorado.gov/dpa/dfp/sco/contracts/Unauthorized_Immigrants.htm

The following are **NOT** considered services under CRS 8-17.5-101 &102:

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

3. When is SB 08-193 effective and how will we implement this statute?

SB 08 193 amended CRS 8-17.5-101 &102 and is effective for all new procurements beginning on and after May 13, 2008.

To comply with SB 08-193, all state agencies and institutions of higher education are granted a fiscal rule waiver to use the temporary forms for Special Provisions and Purchase Order terms and conditions for all procurements beginning on and after May 13, 2008. The Special Provisions and Purchase Order terms and conditions contain the certification and affirmation. These forms are posted on the website of the Office of the State Controller (OSC):

<http://www.colorado.gov/dpa/dfp/sco/contracts.htm>

For services that do not involve a written contract with the State’s Special Provisions or purchase order with the State’s terms and conditions, the contractor shall complete the Certification and Affidavit located on the OSC website:

http://www.colorado.gov/dpa/dfp/sco/contracts/Unauthorized_Immigrants.htm

4. How does the contractor comply with CRS 8-17.5-101 &102?

The Contractor providing services to the State or political subdivision shall participate in *either* the E-Verify Program *or* the Department Program.

If Contractor participates in the Department Program, Contractor shall

1. Complete the “Notice of Participation in the Department Program for Public Contracts for Services” (“Notice Form”) located at the OSC website address below.
2. Retain the original Notice Form and send one copy by mail or in-person to the Division of Labor at 633 17th Street, Suite 200, Denver, Colorado 80202-3660 and one copy with the contract to the contracting State agency, institution of higher education, or political subdivision.

3. Complete a “Contractor Affirmation for the Department Program” within 20 days after hiring each employee who is newly hired to perform work under the public contract for services. The Contractor shall affirm that it has examined the legal work status of such employee, retained file copies of documents required by 8 USC Sec 1324a, and not altered or falsified the employee’s identification documents. The affirmation is located at the OSC website address below.
4. Retain the original notarized affirmation and send a copy to the State agency, institution of higher education, or political subdivision listed in the contract.
5. Retain copies of identity documents for each employee who is newly hired to perform work under the public contract for services.

See the OSC website for:

- “Notice of Participation in the Department Program for Public Contracts for Services”
- “Contractor Affirmation for the Department Program”
- “Guide for Contractor Participation in the E-verify Program OR the Department Program”

http://www.colorado.gov/dpa/dfp/sco/contracts/Unauthorized_Immigrants.htm

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

Yes, Contractors/Vendors who perform services for State agencies or political subdivisions shall either obtain a certification from their subcontractors similar to the Certification and Affidavit form or include the certification requirements in the contract between the Contractor/Vendor and the subcontractor using language that is included in the Special Provisions and Purchase Order Terms and Conditions. See CRS 8-17.5-102(2)(a)(II).

6. What employees are covered?

All newly-hired employees of the Contractor who perform work under the public contract for services with the State agency or political subdivision are covered under CRS 8-17.5-101 & 102. The statute does not cover all of the Contractor’s worldwide employees.

7. 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.

8. 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 or institution of higher education to obtain a certification before work begins. However, the requirements for certification, procurement and commitment vouchers still apply and must be complied with as soon as possible.

9. Are sole proprietors covered under CRS 8-17.5-101 &102?

Yes; sole proprietors are covered under CRS 8-17.5-101 &102 and are also covered under CRS 24-76.5-101 (HB 06S-1023).

10. 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.