



SUPPLEMENTAL **GENERAL CONDITIONS** **REGARDING ILLEGAL IMMIGRATION**

May 10, 2011

Article 1. Intent and Purpose. Senate Bill 81 modified by Senate Bill 39 – 2009. The 2009 Utah Legislature passed Senate Bills 81 and 39 regarding “**Illegal Immigration**” which laws became effective July 1, 2009 (hereinafter “SB81/39”). The 2011 Utah Legislature made further amendments that relate to this document in HB 116. These bills deal with provisions related to the immigration status of individuals within the state. The intent of Articles 1 through 3 of these Supplemental General Conditions is to provide the necessary provisions to the General Conditions as a result of such bills.

Article 2. Applicability. These “Supplemental General Conditions for Illegal Immigration” under SB 39 of the 2009 Utah General Legislative Session and HB 116 of the 2011 Utah General Legislative Session, only applies to Request for Proposals and includes sole sources that are part of Requests for Proposals. However, all entities under contract with DFCM as well as all others that are subject to applicable immigration laws, including their subcontractors/subconsultants, at any tier, shall comply with all applicable immigration laws. This document does not apply to procurements that are done by the Competitive Sealed Bidding process (often referred to as “low-bid”), the Multi-Step Process, direct awards, sole sources awards that are not part of Requests for Proposals, and emergency procurements. This document also does not apply to good faith contract modifications to contracts that existed prior to July 1, 2009.

There is a Program Start Date defined in said HB 116 of the 2011 Utah General Legislative Session. At such time that knowledge is obtained about when that Program Start Date is, DFCM will post an amendment to this “Supplemental General Conditions Regarding Illegal Immigration.”

Article 3. E-Verify Clause. Certify registration and use of employment “Status Verification System”.

- 3.1 Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the Contractor’s new employees that are employed in the State of Utah in accordance with 63G-12-302 as described in HB 116 of the 2011 Utah General Legislative Session. *(A copy of 63G-12-302 is provided at the end of this document for your convenience.)*
- 3.2 The Contractor shall require that the following provision be placed in each subcontract at every tier: “The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each

SUPPLEMENTAL GENERAL CONDITIONS FOR ILLEGAL IMMIGRATION

May 10, 2011

PAGE NO. 2

new employee of the respective subcontractor, all in accordance with Section 63G-11-103 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work.”

- 3.3 The State of Utah or DFCM will not consider a proposal for award, nor will it make any award where there has not been compliance with this Article.
- 3.4 Manually or electronically signing the Proposal is deemed the Contractor’s certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-12-302 as described in HB 116 of the 2011 Utah General Legislative Session. *(A copy of 63G-12-302 is provided at the end of this document for your convenience.)*

Article 4. Indemnity

- 4.1 Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State of Utah, the DFCM and its officers, employees, agents, representatives and anyone that the State of Utah or the DFCM may be liable for, against any claim, damages or liability arising out of or resulting from violations of these Supplemental General Conditions Regarding Illegal Immigration whether violated by employees, agents, or contractors of the following:
 - 4.1.1 Contractor;
 - 4.1.2. Subcontractor at any tier; and/or
 - 4.1.3 any entity or person for whom the Contractor or Subcontractor may be liable.
- 4.2 Notwithstanding 4.1 above, Design Professionals or Designers under direct contract with the DFCM shall only be required to indemnify the State of Utah or the DFCM for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the Design Professional shall be required to indemnify the State of Utah or the DFCM in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

SUPPLEMENTAL GENERAL CONDITIONS FOR ILLEGAL IMMIGRATION

May 10, 2011

PAGE NO. 3

*** The following is provided for your convenience: Note: The definitions of "Public Employer," "Status Verification System," "Unauthorized Alien," and "Program Start Date" as well as other relevant definitions are located in Section 63G-12-102. Other provisions of Utah Code Title 63G, Chapter 12, should be read as well as all applicable immigration laws.)**

63G-12-302. Status verification system -- Registration and use -- Performance of services -- Unlawful practice.

(1) As used in this section:

(a) "Contract" means an agreement for the procurement of goods or services that is awarded through a request for proposals process with a public employer and includes a sole source contract.

(b) "Contractor" means a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier.

(2) (a) Subject to Subsection (5), a public employer shall register with and use a Status Verification System to verify the federal employment authorization status of a new employee.

(b) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) (a) Subject to Subsection (5), beginning July 1, 2009:

(i) a public employer may not enter into a contract for the physical performance of services within the state with a contractor unless the contractor registers and participates in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the state; and

(ii) a contractor shall register and participate in the Status Verification System in order to enter into a contract with a public employer.

(b) (i) For purposes of compliance with Subsection (3)(a), a contractor is individually responsible for verifying the employment status of only new employees who work under the contractor's supervision or direction and not those who work for another contractor or subcontractor, except as otherwise provided in Subsection (3)(b)(ii).

(ii) Each contractor or subcontractor who works under or for another contractor shall certify to the main contractor by affidavit that the contractor or subcontractor has verified through the Status Verification System the employment status of each new employee of the respective contractor or subcontractor.

(c) Subsection (3)(a) does not apply to a contract:

(i) entered into by the entities referred to in Subsection (3)(a) prior to July 1, 2009, even though the contract may involve the physical performance of services within the state on or after July 1, 2009; or

(ii) that involves underwriting, remarketing, broker-dealer activities, securities placement, investment advisory, financial advisory, or other financial or investment banking services.

(4) (a) It is unlawful for an employing entity in the state to discharge an employee working in Utah who is a United States citizen or permanent resident alien and replace the employee with, or have the employee's duties assumed by, an employee who:

(i) the employing entity knows, or reasonably should have known, is an unauthorized alien hired on or after July 1, 2009; and

(ii) is working in the state in a job category:

(A) that requires equal skill, effort, and responsibility; and

(B) which is performed under similar working conditions, as defined in 29 U.S.C., Sec. 206 (d)(1), as the job category held by the discharged employee.

(b) An employing entity, which on the date of a discharge in question referred to in Subsection (4)(a) is enrolled in and using the Status Verification System to verify the

employment eligibility of its employees in Utah who are hired on or after July 1, 2009, is exempt from liability, investigation, or lawsuit arising from an action under this section.

(c) A cause of action for a violation of this Subsection (4) arises exclusively from the provisions of this Subsection (4).

(5) On and after the program start date:

(a) a public employer, after hiring an employee, shall verify the employment eligibility of the new employee:

(i) through the status verification system if the individual does not hold a permit; and

(ii) through the u-verify program if the individual holds a permit; and

(b) a contractor is considered to be in compliance with this section if, after hiring an employee, the contractor verifies the employment eligibility of the new employee:

(i) through the status verification system if the individual does not hold a permit; and

(ii) through the u-verify program if the individual holds a permit.

Renumbered and Amended by Chapter 18, 2011 General Session