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DIVISION 5. CONFIRMATION OF LAWFUL EMPLOYMENT STATUS BY CITY CONTRACTORS ^[4]

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Sec. 20-90. Purpose.

Pursuant to HB 06-1343, codified at § 8-17.5-101, et seq., C.R.S., as amended, the State of Colorado prohibited political subdivisions of the state from entering into or renewing any public contract for services with a contractor who knowingly employs or subcontracts with an illegal alien to perform work under the contract. Among other things, HB 06-1343 requires contractors to confirm the employment eligibility of all employees who are newly hired to perform work under the public contract for services through the federal E-verify program. The purpose of this division 5 is to clarify and confirm the applicability of the requirements of HB 06-1343 to certain contracts entered into by the City and County of Denver. This division is also intended to provide supplemental local procedures for enforcing the requirements of HB 06-1343 in regard to city contractors.

(Ord. No. 414-10, § 1, 8-9-10)

Sec. 20-90.1. Definitions.

As used in this division 5, unless the context otherwise requires:

- (1) *Auditor* means the auditor of the City and County of Denver.
- (2) *E-verify program* means the electronic employment verification program created in Public Law 104-208 and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program.
- (3) *CDLE* means the Colorado Department of Labor and Employment.
- (4) *Contract* means:
 - a. Any public contract for services between the city and a contractor within the meaning of section 8-17.5-101(6), C.R.S., as amended; or
 - b. Any contract or a purchase authorization between the city and a contractor for construction, alteration, improvement, repair, maintenance or demolition of any public building or public work by or on behalf of the city.
- (5) *Contractor* means a person having a contract with the city.
- (6)

Newly hired for employment means hired to work in the United States since the effective date of the contract.

(Ord. No. 414-10, § 1, 8-9-10)

Sec. 20-90.2. Verification and certification of employment eligibility under city contracts.

- (a) Prior to executing a contract, each prospective contractor shall certify that, at the time of the certification, it does not knowingly employ or contract with an illegal alien who will perform work under the contract and that the contractor will participate in the e-verify program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the contract.
- (b) Each contract shall include a provision that the contractor shall not:
 - (1) Knowingly employ or contract with an illegal alien to perform work under the contract; 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 contract.
- (c) Each contract shall also include the following provisions:
 - (1) A provision stating that the contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the contract through participation in the e-verify program;
 - (2) A provision that prohibits the contractor from using the e-verify program procedures to undertake pre-employment screening of job applicants while the contract is being performed and that otherwise requires the contractor to comply with any and all federal requirements related to use of the e-verify program including, by way of example, all program requirements related to employee notification and preservation of employee rights;
 - (3) A provision that, if the contractor obtains actual knowledge that a subcontractor performing work under the contract knowingly employs or contracts with an illegal alien, the contractor shall be required to:
 - a. Notify the subcontractor and the city within three (3) 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 (3) days of receiving the notice required pursuant to sub-subparagraph a. of this subparagraph (3) 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 (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
 - (4) A provision that requires the contractor to comply with any reasonable request by the CDLE or the auditor made in the course of an investigation that the CDLE is undertaking pursuant to the authority established in section 8-17.5-102, C.R.S., as amended, or that the auditor is undertaking pursuant to [section 20-90.3](#)
- (d) If a contractor violates a provision of the contract required pursuant to subsections (b) or (c) of this section, the city 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

city. Any such termination of a contract due to a violation of this section may also, at the discretion of any city department or agency responsible for soliciting contract bids and proposals, constitute grounds for disqualifying the violator from submitting bids or proposals for future contracts with the city.

(Ord. No. 414-10, § 1, 8-9-10)

Sec. 20-90.3. Powers of the auditor.

- (a) The auditor may investigate whether a contractor is complying with the contract provisions required pursuant to [section 20-90.2](#). The auditor may conduct on-site inspections where a contract is being performed, request and review documentation that proves the citizenship of any person performing work on the contract, or take any other reasonable steps that are necessary to determine whether a contractor is complying with the provisions of the contract required pursuant to [section 20-90.2](#). The auditor shall receive complaints of suspected violations of a provision of a contract required pursuant to [section 20-90.2](#) and shall have discretion to determine which complaints, if any, are to be investigated.
- (b) The auditor shall notify the head of the department or agency responsible for administering the contract if the auditor suspects that there has been a breach of a provision in the contract required pursuant to [section 20-90.2](#)

(Ord. No. 414-10, § 1, 8-9-10)

Sec. 20-90.4. Reporting requirements.

If any contract is terminated pursuant to subsection [20-90.2\(d\)](#), the head of the department or agency administering the contract shall report the termination to the Colorado Secretary of State in accordance with section 8-17.5-102(4), C.R.S., as amended, and shall also report the termination to the Immigration and Customs Enforcement division of the United States Department of Homeland Security or its successor agency.

(Ord. No. 414-10, § 1, 8-9-10)

Sec. 20-90.5. Compliance with federal law.

- (a) The city shall not deem a contractor or subcontractor to be in material breach of a contract if the contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by federal law and the e-verify requirement prescribed by this division 5.
- (b) When investigating a complaint, performing an audit, or otherwise enforcing the requirements of this division 5, the city shall not attempt independently to make a final determination on whether an employee is authorized to work in the United States, recognizing that any such determination must be made by federal officials in accordance with federal law.
- (c) A contractor that establishes that it has complied in good faith with the employment verification requirements set forth in federal law and the e-verify requirements set forth in this division shall, in any action to enforce the requirements of this division 5, have an affirmative defense that the employer did not knowingly employ an illegal alien.
- (d) Nothing in this division 5 shall be construed as requiring a contractor to violate any terms of participation in the e-verify program.

(Ord. No. 414-10, § 1, 8-9-10)

FOOTNOTE(S):

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Editor's note— Section 2 of Ord. No. 414-10, adopted Aug. 9, 2010, states that the provisions herein codified as div. 5, §§ 20-90—20-90.5, shall become effective Oct. 1, 2010. ([Back](#))

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ARTICLE V. BONDS ^[5]

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Sec. 20-91. Definitions.

For the purposes of this article, the following words and phrases shall be defined as follows:

Financial advisor: A person hired or retained by the city either to render financial advice or assistance to the city on matters pertaining to municipal bonds or with the authority to represent the city in the matter of municipal bonds, including advice with respect to the structure, timing, terms and other similar matters concerning such municipal bonds, for a fee or other compensation or in expectation of such compensation for rendering of such services.

Municipal bond or bond issue: Any evidence of indebtedness, including but not limited to bonds, notes, agreements for the advancement of money and other instruments evidencing municipal debt issued or executed by or on behalf of the city or any agency of the city which are payable from ad valorem taxes or any other pledged revenue except those issued:

- (1) In the name of the city by the board of water commissioners;
- (2) By the city to finance local public improvements payable from special assessments;
and
- (3) By the city as or known as private activity, industrial development, economic development and similar bonds for which the city is not financially obligated other than airport system revenue bonds and single-family mortgage revenue bonds.

Underwriter: Any person who offers to purchase municipal bonds whether for resale or investment. It does not include those whose interest is limited to a commission, concession or allowance from an underwriter, broker or dealer of municipal bonds.

(Ord. No. 459-90, § 2, 8-13-90)

Sec. 20-92. Financial advisor.

- (a) Upon the retention of a financial advisor by the mayor or the manager of finance, the manager shall summarize the work to be performed by such advisor and shall communicate the retention in writing to the president of city council. The city clerk shall read the communication to the council.
- (b) No financial advisor shall, either alone or as a participant in a syndicate, either directly or indirectly participate in the purchase from the city or in any original-issue resale by the purchasing account of municipal bonds on which the advisor has rendered advice or assistance. No financial advisor shall arrange for acquisition or participation in the acquisition of municipal bonds by a person controlling, controlled by or under common control with such financial advisor.

(Ord. No. 459-90, § 2, 8-13-90; Ord. No. 775-07, § 45, 12-26-07)

Sec. 20-93. Notification of council regarding transactions relating to bonds.

- (a) Before beginning negotiations, promulgating the request for qualifications or request for proposals for underwriters or undertaking any other action that obligates or could obligate the city financially with regard to issuance of municipal bonds, the manager shall notify the president of council in writing that the city may be issuing municipal bonds. The city clerk shall read the notification to the council at its next regularly scheduled meeting.
- (b) The notification shall include a description of the following to the extent known at the time of notification:
 - (1) The purpose, cost, benefits, useful life and reason for the project;
 - (2) The proposed financing of the project, including the type of securities being offered, amount, projected interest rates, projected debt service amount and source of payment;
 - (3) The process to be used for the sale of municipal bonds, including a description of whether the bonds will be sold by competitive bidding, by negotiation or by private placement. If the bonds are not to be sold after competitive bidding, the description shall include the process that will be used to notify and select underwriters;
 - (4) In reasonable detail, the events leading up to the issuance;
 - (5) The proposed timetable for the events leading up to the issuance;
 - (6) The name of the person or agency proposing the issuance;
 - (7) The name of the person or firm who will be serving as bond counsel; and
 - (8) Other information that will in the opinion of the manager provide council with full knowledge of the process to be followed.
- (c) The manager shall not take any action that obligates the city to issue municipal bonds until at least fifteen (15) days after the city clerk reads the notification submitted by the manager in accordance with subsection (a) of this section.

(Ord. No. 459-90, § 2, 8-13-90)

Sec. 20-93.1. Council action.

- (a) When the council receives the notification described in [section 20-93](#), the matter shall be assigned to the appropriate council committee. The council may in its discretion, within fifteen (15) days of the reading by the city clerk of the notification, introduce and act upon a resolution stating council's intent to approve the issuance.
- (b) If the resolution fails, the manager shall confer with the committee of council assigned the matter for the purpose of reconsidering the proposed bond issue.

- (c) If the manager changes substantially the description of the bond issue, the manager shall notify the president of council in writing of the changes. The city clerk shall read the notification of changes to the council at its next regularly scheduled meeting.

(Ord. No. 459-90, § 2, 8-13-90)

Sec. 20-93.2. Ordinance approving bond sale.

The ordinance authorizing the issuance of municipal bonds shall be enacted in advance of the closing of the sale. Enactment of the ordinance authorizing the issuance of the municipal bonds shall be conclusive evidence that the procedures and requirements of this article have been completely and timely met.

(Ord. No. 459-90, § 2, 8-13-90)

Sec. 20-93.3. Disclosure of underwriters and dealers.

Within seventy (70) days after the delivery of the proceeds from a sale of municipal bonds, the underwriter managing the transaction shall submit to the manager of finance a list of the underwriters involved in such transaction together with a list of the participating dealers, if different, and the percentage of participation by each underwriter involved.

(Ord. No. 459-90, § 2, 8-13-90; Ord. No. 115-97, § 1, 2-18-97; Ord. No. 775-07, § 46, 12-26-07)

Sec. 20-94. Local public improvement district bonds; revolving fund.

- (a) The manager of finance, upon the estimate and order of the manager of public works and with the approval of the mayor, may issue and sell, at not less than par and accrued interest, sufficient local public improvement bonds of the City and County of Denver to pay for all local public improvements authorized according to the procedures set forth in part 6 of article VII of the Charter, including the engineering and clerical services, advertising, cost of bond issuance, costs of inspection, accrued interest on outstanding bonds, and any necessary lands taken or damaged.
- (b) The council shall establish the maximum rate of bond interest and the period of time for which the maximum rate is applicable.
- (c) All such bonds shall be issued by the manager of finance upon order of the manager of public works, without being audited by the auditor or the audit committee or allowed by council. The bonds shall be issued in accordance with [section 20-97](#), and the manager shall preserve a record of all such bonds issued.
- (d) Local public improvement bonds shall be payable only out of the moneys collected on account of the respective assessments made for such improvements or from the proceeds of refunding bonds. All moneys collected on account of the assessments for any improvement shall only be applied to the payment of the bonds issued for the same improvement or to the payment of any bonds issued to refund such bonds, until the payment of all the bonds related to such improvement has occurred.
- (e) Whenever funds may be held to the credit of any local public improvement district exceeding six months interest on the unpaid principal, the manager of finance may, with such notice as the manager shall determine, call in a suitable number of the bonds of such district for payment; and interest on the bonds so called shall cease on the date set in the notice.
- (f) Where all outstanding bonds have been paid in a local public improvement district for which bonds were issued, and any money remains to the credit of such district, it shall be

transferred to a special surplus and deficiency fund. Whenever there is a deficiency in any local public improvement district to meet payment of outstanding bonds, such deficiency shall be paid out of the fund. Any income derived from the investment of the special surplus and deficiency fund may be transferred by ordinance to another city fund, subject to the following conditions:

- (1) No such transfer shall cause the balance in the surplus and deficiency fund immediately after the transfer to be less than 25 percent of the principal amount of all local public improvement district bonds then outstanding and not defeased; and
 - (2) No such transfer shall be made unless all local public improvement district bonds issued prior to the transfer and remaining outstanding and not defeased on the date of the transfer provide that the purchaser thereof waives any contractual rights such purchaser may have to the money permitted herein to be transferred.
- (g) Whenever there is insufficient money in the treasury to the credit of any local public improvement district to pay any installment of interest, or part thereof, on the bonds of the district, when the same becomes due and payable, then the city shall, upon appropriation by city council, pay the interest when due, and reimburse itself from collections to be made on the unpaid assessments due the district.
- (h) As an alternative to the issuance of local public improvement bonds pursuant to this section to fund local public improvements, the city may establish a local public improvement revolving fund for the purpose of financing such local public improvements with funds of the city. Such local public improvement revolving fund shall be funded through appropriations made by the city council and by the assessments made for such local public improvements on the property especially benefitted thereby. All assessments made for local public improvements financed with moneys from such local public improvement revolving fund shall be deposited in such local public improvement revolving fund and utilized for additional local public improvements throughout the city.

(Code 1950, § 163.1; Ord. No. 1013-02, § 2, 12-9-02; Ord. No. 775-07, § 47, 12-26-07)

Sec. 20-95. Refunding bonds.

- (a) *Term and redemption.* Refunding bonds issued by the city shall run for such term as shall be fixed and determined by ordinance of the city, and may be exchanged for bonds to be refunded or sold and the proceeds received by the treasurer and deposited with a banking institution to be selected by the manager of finance and kept and held in a separate fund and to be paid out only for the purpose of redeeming and paying off the outstanding bonds so to be refunded. Upon such exchange or redemption and payment, the outstanding bonds and the unmatured coupons thereof shall be immediately canceled.
- (b) *Statutes inapplicable.* The restrictions contained in the language quoted hereinbelow from C.R.S. 1973, 31-21-205, and the words quoted from such sections hereinbelow be and the same are hereby expressly superseded and declared to have no application, force or effect within the city: "... and maturing during a period not exceeding thirty-five (35) years from the date thereof."

(Code 1950, § 163.2; Ord. No. 775-07, § 48, 12-26-07)

State law reference— Refunding revenue securities law, C.R.S. 1973, 11-54-101 et seq.

Sec. 20-96. Earnings from municipal bonds and certificate of participation proceeds.

- (a)

Unless otherwise provided in the ordinance authorizing the issuance of any municipal bonds issued by or on behalf of the city, the earnings from the investment of proceeds from the sale of such bonds shall be deposited in the fund or account from which debt service on such bonds is payable.

- (b) Unless otherwise provided by the ordinance authorizing the city to enter into an agreement related to the lease-purchase of property financed by the issuance of certificates of participation and subject to annual appropriation, the city may enter into any such agreement only if the document under which such certificates are issued provides that the earnings from the investment of proceeds from the sales of such certificates be deposited in the fund or account from which annual debt service on such certificates is payable.
- (c) Notwithstanding the provisions of subsections (a) and (b) of this section, earnings in an amount estimated to equal the payments required to be paid to the federal government pursuant to the Internal Revenue Code may be deposited in a fund or account to be used for such payments.

(Ord. No. 421-89, § 1, 8-14-89)

Sec. 20-97. Form and procedures for bonds and other securities.

- (a) Bonds, other securities and other similar obligations of the City and County of Denver (collectively referred to in this section as "public securities") may be issued in book entry form, with or without the delivery of physical securities, any registered form or bearer form, with or without interest coupons, or in any combination thereof, with or without the right of conversion to another form, and in any denomination or denominations, with or without the right of conversion to any other denomination, subject to such conditions for transfer, all as may be provided in the instrument authorizing the public securities. As used in this section, "the instrument authorizing the public securities" means the ordinance of the city council, the order of the manager of public works or the resolution of the board of water commissioners, or other appropriate action, whichever is applicable, which authorizes the sale and issuance of such public securities.
- (b) The instrument authorizing the public securities shall appoint the manager of finance or any other officer of the city or any retained corporate agent as registrar or registrars to perform such duties with respect to the registration, custody, conversion, exchange and transfer of the city's public securities as may be provided therein.
- (c) Public securities may be made registrable, transferable and payable by the registrar under such terms and conditions as may be provided in the instrument authorizing the city's public securities. Payment at designated due dates or in installments may be by check, draft, warrant or other order for payment or medium of payment and under such other conditions as may be provided in the instrument authorizing the public securities.
- (d) The instrument authorizing the public securities shall stipulate the form of the securities. If the instrument requires the delivery of securities in physical form, such securities shall contain the manual or facsimile signatures of any city official stipulated in the instrument authorizing the public securities. Any registrar may hold in custody any partially or fully executed public securities if provided by, and to the extent permitted by, the instrument authorizing the public securities.
- (e) Records with regard to the ownership or pledge of public securities are not subject to public inspection or copying under any law of the City and County of Denver or of this state relating to the right of the public to inspect or copy public records. Registration records of the City and County of Denver may be maintained at such locations within the United States as may be determined by the instrument authorizing the public securities.

(Ord. No. 1013-02, § 3, 12-9-02; Ord. No. 775-07, § 49, 12-26-07)

Secs. 20-98—20-100. Reserved.

FOOTNOTE(S):

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Editor's note— Section 1 of Ord. No. 459-90, adopted Aug. 13, 1990, repealed former §§ 20-91—20-93, pertaining to definitions, selection of bond advisor and bond transaction procedure, respectively; § 2 of said ordinance added new §§ 20-91—20-93.3 in lieu thereof. Said former sections originated from the 1950 Code, §§ 163.3-1, 163.3-2, 163.4-1 and 163.4-2. ([Back](#))