

MOHAVE EDUCATIONAL SERVICES COOPERATIVE, INC.

2008 Arizona Legislation Impacting Mohave Contracts

October 1, 2008

HB2151 (A.R.S. § 35-397) Prohibition on Government Contracts

Prohibits the State and its political subdivisions from purchasing from a company with scrutinized business operations in Iran. The State and its political subdivisions shall include a clause that requires the contractor to certify they do not have scrutinized business operations in Iran. The State and its political subdivisions shall notify the State Procurement Administrator if a contractor has submitted a false certification.

The State Procurement Administrator shall provide a list annually of the companies excluded from Arizona Procurement. The State Procurement Office (AzSPO) will place an area on its website for the Excluded Parties List. Procurement Officers shall verify the offeror is not on the Excluded Parties List prior to procurement award.

HB-2705 (A.R.S. § 35-397) Prohibition on Government Contracts

Prohibits the State and its political subdivisions from purchasing from a company with scrutinized business operations in Sudan. The State and its political subdivisions shall include a clause that requires the contractor to certify they do not have scrutinized business operations in Sudan. The State and its political subdivisions shall notify the State Procurement Administrator if a contractor has submitted a false certification.

The State Procurement Administrator shall provide a list annually of the companies excluded from Arizona Procurement. The State Procurement Office (AzSPO) will place an area on its website for the Excluded Parties List. Procurement Officers shall verify the offeror is not on the Excluded Parties List prior to procurement award.

SB1489 (A.R.S. § 35-391) Terrorism Country Divestments

Prohibits the State and its political subdivisions from purchasing from companies that are in violation of the Export Administration Act.

The State Procurement Office (AzSPO) will place an area on its website for the Excluded Parties List. Procurement Officers shall verify the offeror is not on the Excluded Parties List prior to solicitation award.

To comply with applicable law, all Mohave procurement solicitations issued after September 26, 2008, will include the following contract terms.

Business Operations in Sudan/Iran

In accordance with A.R.S. § 35-397, the Contractor shall not have not have scrutinized business operations in Sudan and/or Iran.

Terrorism Country Divestments

In accordance with A.R.S. § 35-391, the Mohave and its members are prohibited from purchasing from a company that is in violation of the Export Administration Act. By entering into the contract, contractor warrants compliance with the Export Administration Act.

HB2151, HB2705 and SB1489 do not apply to existing contracts, but do apply to renewals of those contracts. To comply with applicable law, renewals of existing Mohave contracts will include the following requirements.

Business Operations in Sudan/Iran

By renewing this contract, Contractor hereby certifies in accordance with A.R.S. § 35-397 that the contractor does not have scrutinized business operations and/or Iran.

Terrorism Country Divestments

By renewing this contract, Contractor warrants compliance with the Export Administration Act in accordance with A.R.S. § 35-391.

HB 2745 (A.R.S. § 41-4401)

Adds subsection 41-4401 to the Arizona Revised Statutes. Prohibits a government entity (State and political subdivisions receiving/using tax revenues) from awarding a contract to any company or subcontractor that fails to comply with A.R.S. § 23-214 and Federal Immigration Laws and Regulations. Requires the government entity to include specific provisions in each contract and to establish a procedure for random verification of employment records of contractors and subcontractors.

The requirements in HB2745 specifically apply to contracts awarded after September 30, 2008. To comply with applicable law, all Mohave procurement solicitations issued after September 26, 2008, will include the following contract terms.

Contractor's employee eligibility

By entering into the contract, contractor warrants compliance with A.R.S. § 41-4401, A.R.S. § 23-214, the Federal Immigration and Nationality Act (FINA), and all other Federal immigration laws and regulations. Mohave and/or Mohave members may request verification of compliance from any contractor or subcontractor performing work under this contract. Mohave and its members reserve the right to confirm compliance. Should Mohave or its members suspect or find that the contractor or any of its subcontractors are not in compliance, Mohave may pursue any and all remedies allowed by law, including, but not limited to suspension of work, termination of the contract for default, and suspension and/or debarment of the contractor. All costs necessary for compliance are the responsibility of the contractor.

Under HB2745, "Contract" means all types of government entity agreements, regardless of what they may be called, for the procurement of services in this state." Beginning October 1, 2008, the requirements appear to apply to purchases made from some existing contracts. Mohave will review existing contracts and require that vendors holding contracts to which HB2745 is applicable agree to the following.

Contractor's employee eligibility

The Contractor complies and maintains compliance with the Federal Immigration and Nationality Act (FINA), A.R.S. § 41-4401 and A.R.S. § 23-214, which requires compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

In accordance with A.R.S. § 41-4401, Mohave and/or Mohave members may request verification of compliance from any contractor or subcontractor performing work under this contract. Mohave and its members reserve the right to confirm compliance. Should Mohave or its members suspect or find that the contractor or any of its subcontractors are not in compliance, Mohave may pursue any and all remedies allowed by law, including, but not limited to suspension of work, termination of the contract for default, and suspension and/or debarment of the contractor. All costs necessary for compliance are the responsibility of the contractor.

HB2694 (A.R.S. § 15-512)

Establishes fingerprinting requirements for contractors, subcontractors, vendors, or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis on school property. Defines regular basis on school property and authorizes the school district may charge the costs of the fingerprint check to the contractor, subcontractor or vendor or the employee of the contractor, subcontractor or vendor. Specifies that school district governing board shall adopt policies that may exempt persons who are not likely to have direct, unsupervised contact with pupils from the requirements of this subsection. Provides exemption from civil liability for the consequences of adoption and implementation of such policies and procedures unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

After talking with a number of school officials, it appears that local governing board policy will exempt a majority of contracts from the requirements in HB2694 because contractors, subcontractors, vendors, or employees of a contractor, subcontractor or vendor, will not have direct unsupervised contact with pupils. Mohave strongly suggests that its vendors contact school district purchasing department or business office personnel for guidance prior to any contract-related presence on school property.

To comply with applicable law, all Mohave procurement solicitations issued after September 26, 2008, will include the following contract term.

Fingerprint & background checks

If required to provide services on school district property at least five (5) times during a month, contractor shall submit a full set of fingerprints to the school district in accordance with A.R.S. § 15-512 of each person or employee who may provide such service. Alternately, the school district may fingerprint those persons or employees. An exception to this requirement may be made as authorized in Governing Board policy.

The district shall conduct a fingerprint check in accordance with A.R.S. § 41-1750 and Public Law 92-544 of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the district. Contractor, subcontractors or vendors and their employees shall not provide services on school district property until so authorized by the school district.

Additionally, contractor shall comply with applicable governing board policy at the school district where services are provided.

Beginning October 1, 2008, the requirements of HB2694 appear to apply to purchases made from some existing contracts. In order to comply with applicable law, Mohave will require vendors holding existing contracts to agree to the following.

Fingerprint & background checks

The Contractor shall comply with fingerprinting requirements in accordance with A.R.S. § 15-512, unless otherwise exempted.