Public Works Employment Verification Act

(Act 127 of 2012)

Commonwealth of Pennsylvania

Department of General Services

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Background and Purpose

- The Federal government created the Employment Verification Program (EVP) to ensure that companies employ a legal workforce.

- E-Verify® is an internet-based system, operated by the United States Department of Homeland Security, that compares information from an employee's Form I-9, Employment Eligibility Verification, to the data from the Department of Homeland Security and Social Security Administration records to confirm employment eligibility.

- In 2012, Pennsylvania enacted the Public Works Employment Verification Law (Act 127) which assigns the Department of General Services the responsibility to implement the Commonwealth's process of notification, investigation and compliance with Act 127.

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Key Definitions

The following terms and definitions are key to understanding Act 127 of 2012.

- **Contract** – A type of written agreement, regardless of what it may be called, for the procurement of construction work.

- **Employee** – An individual hired by a public works contractor or subcontractor after January 1, 2013 for whom a public works contractor or subcontractor is required by law to file a Form W-2 with the Internal Revenue Service.
  - This definition is broad and includes all newly hired employees of the contractor or subcontractor, regardless of whether he will be working onsite or offsite of a public work or otherwise.

Key Definitions

- **Form** – Public Work Employment Verification Form

- **Maintenance Work** – Annual inspection or routine upkeep of an existing facility which does not alter the use or size of the facility.

- **Public Body** – The Commonwealth of Pennsylvania, its political subdivisions, authorities created by the General Assembly of the Commonwealth and instrumentalities or agencies of the Commonwealth.

Key Definitions

- **Public Work** - construction, reconstruction, demolition, alteration and/or repair work other than maintenance work, done under contract and paid for in whole or in part out of the funds of a public body where the estimated cost of the total project is in excess of twenty-five thousand dollars ($25,000), but shall not include work performed under a rehabilitation or manpower training program.

- **Public Works Contractor** – A contractor that provides work under a contract involving public works.

- **Public Works Subcontractor** – A person, other than a natural person, including a staffing agency, that performs works for a public works contractor under a contract for public works.
  - This terms applies to subcontractors of every level.

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Scope of Act 127 of 2012

- Act 127 ("the Act") applies to:
  - All public works contractors and subcontractors
    - performing on a public works contract
      - paid for in whole or in part out of the funds of a public body
      - when the cost of the total project is in excess of $25,000

- The total cost of the project includes the sum of all prime contracts and any subcontracts.
  - The total cost determines if the project is subject to the requirements of the Act.
  - **Example:** If you are a contractor with a $5,000 contract on a project with total costs over $25,000, then you must comply with the Act.

- If the project is subject to the Act, then every contract and subcontract, regardless of value, shall comply with the act.
  - **Example:** If you are a sub-subcontractor with a $5,000 contract on a $1,000,000 project, then you must comply with the Act.

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Scope of Act 127 of 2012

Emergency Procurement

- If the emergency procurement contract reaches the $25,000 threshold, then it **is** subject to Act 127.

- Before beginning work onsite or offsite, the contractor or subcontractor must submit an Employment Verification Form to the Public Body.

Exemptions from Act 127 of 2012

- Work performed under a rehabilitation program.
- Work performed under a manpower training program.
- Project material suppliers.
- Specific Services
  - Design Professional
  - Commissioning Agent
  - Construction Management
  - Engineering

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Responsibilities – Public Bodies

Bidding Phase

- Ensure that the bidding documents advise contractors as to the applicability of Act 127.
  - Notice to bidders and/or bid proposal package should notify bidders of Act's applicability.
    - **Example from DGS bid proposal package:** Bidder acknowledges that this bid is for a public works contract and bidder is therefore subject to the provisions, duties, obligations and penalties of the Public Works Employment Verification Act, 43 P.S. 167.1-167.11, which is incorporated herein by reference.
  - Bidding documents must contain the appropriate verification language.
    - **Example:** The lowest responsible bidder must comply with the Public Works Employment Verification Act by submitting a Commonwealth Public Works Employment Verification Form to the public body prior to award of contract. The Form and relevant information can be found on the Department of General Services' web site at www.dgs.state.pa.us.

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Responsibilities – Public Bodies

Award Phase

- Prior to award, the public body must obtain a completed Verification form from each successful bidder that will be awarded a contract.

- The Verification form is a precondition of award.
  - A bidder will **NOT** be awarded a contract if he fails to submit a completed Public Works Employment Verification Form to the Public Body.

Responsibilities – Public Bodies

Construction Phase

- Receive and retain Verification forms from all subcontractors of any level.
  - As subcontractors are added to the project, they must submit a Verification Form prior to commencing work on the Project.
  - Subcontractors must submit the Form to the Public Body, not the Prime Contractor.

- It is incumbent upon the Public Body to know:
  - All active contracts; and
  - All prime contractors; and
  - All subcontractors of every level.

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Responsibilities – Public Bodies

Verification Form

- Must retain the forms for the duration of the public work contract.
- The "duration of the contract" is dictated by the individual Public Bodies' retention polices.
  - In accordance with Pennsylvania's Right to Know Law.
- Public Bodies must be able to provide the Form in the event of an audit by the Department of General Services Public Works Employment Verification Compliance Office.

Responsibilities – Public Bodies

Audit of Public Bodies

- The Public Works Employment Verification Compliance Office will conduct random and complaint based audits of public bodies for compliance with the Act.

- The Public Body shall cooperate during an investigation or audit.

- The Public Body must be able to provide, upon request:
  - Date of bids; and
  - Date of Verification Form receipt; and
  - Date of contract award; and
  - Verification Forms for all prime contractors and subcontractors performing work on the project.

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Responsibilities - Contractors

- Submit a completed Public Works Employment Verification Form to the contracting public body with the initial bid.
  - The contractor may be required by the public body to submit the Form with its bid, or once it is determined to be the lowest bidder, but it **MUST** be submitted before the contract is awarded.
  - Look to the Bidding Documents for the public body's requirements on submission of the Form.

- Verify all new employees hired after January 1, 2013.
  - Verification must be completed within 5 business days of the employee's start date. The employee may work during this time.
  - Remember the definition of "employee" is very broad. All employees must be verified through EVP regardless of whether the employee will be working onsite or offsite of a public work or otherwise.

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Responsibilities - Contractors

- Notify all subcontractors in their subcontracts of:
  - Applicability of the act; and
  - Information regarding the use of EVP; and
  - Reference to the web site where they can obtain a copy of the Form: http://www.dgs.state.pa.us

- Maintain documentation of continued compliance with the act.
  - Quick Audit Report (Click here and here for more information)
  - Proof of enrollment in E-Verify® (Click here and here for more information)

- Cooperate during an investigation or audit by providing, upon request:
  - Documentation of date of hire for all employees; and
  - Documentation of use of EVP; and
  - Other information as required

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Quick Audit Report

- The Quick Audit Report is generated on the Federal E-Verify® web site.
  - It collects information from The U.S. Department of Homeland Security and the Social Security Administration.
- Report provides data about each employee.
  - Data includes basic company and employee information and employment eligibility status.
- The report does not include sensitive employee information such as social security number.
- Report downloads in Excel format.

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Quick Audit Report

LAST_NAME	FIRST_NA	HIRE_DATE	INITIAL_RESOLUTION	ADDITIONAL_RESOLUTION	DHS_3RD_STEP_RESOLUTION	FINAL_STATUS	CASE_CLOSURE_DATE	CLOSURE_DESCR
Jefferson	Thomas	10/16/2012 0:00	Employment Authorized			Employment Authorized	10/16/2012 15:32	The employee continues to work for the employer after receiving an Employment Authorized result.
Jefferson	Thomas	10/23/2012 0:00	Employment Authorized			Employment Authorized	10/17/2012 13:22	The employee continues to work for the employer after receiving an Employment Authorized result.
Pitts	Dieter	10/21/2012 0:00	DHS Tentative Nonconfirmation (TNC)		DHS No Show	DHS No Show		
Jefferson	Thomas	10/31/2012 0:00	Employment Authorized			Employment Authorized	10/22/2012 14:11	The employee continues to work for the employer after receiving an Employment Authorized result.
Pitts	Dieter	10/27/2012 0:00	DHS Tentative Nonconfirmation (TNC)		DHS No Show	DHS No Show		
Pitts	Dieter	10/27/2012 0:00	Employment Authorized			Employment Authorized	10/22/2012 16:17	The employee continues to work for the employer after receiving an Employment Authorized result.
Pitts	Dieter	10/24/2012 0:00	Employment Authorized			Employment Authorized	10/23/2012 10:24	The employee continues to work for the employer after receiving an Employment Authorized result.
Pitts	Dieter	10/26/2012 0:00	DHS Tentative Nonconfirmation (TNC)		DHS No Show	DHS No Show		
dafds	asdfasd	10/23/2012 0:00	Employment Authorized			Employment Authorized		
asfa	sdfsdf	11/20/2012 0:00	Employment Authorized			Employment Authorized		
sdsfd	sdfsdf	11/20/2012 0:00	Employment Authorized			Employment Authorized		

- **Double click the form to see the full example.**

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E-Verify® Enrollment Proof

HOW TO PROVIDE PROOF OF ENROLLMENT IN E-VERIFY®

- For a company to provide proof of enrollment they should:
  - Log into E-Verify®; and
  - Access the *Edit Company Profile* link on the left navigation menu; and
  - Print the screen containing their company information.
    - This page contains proof of their company's enrollment in E-Verify®.

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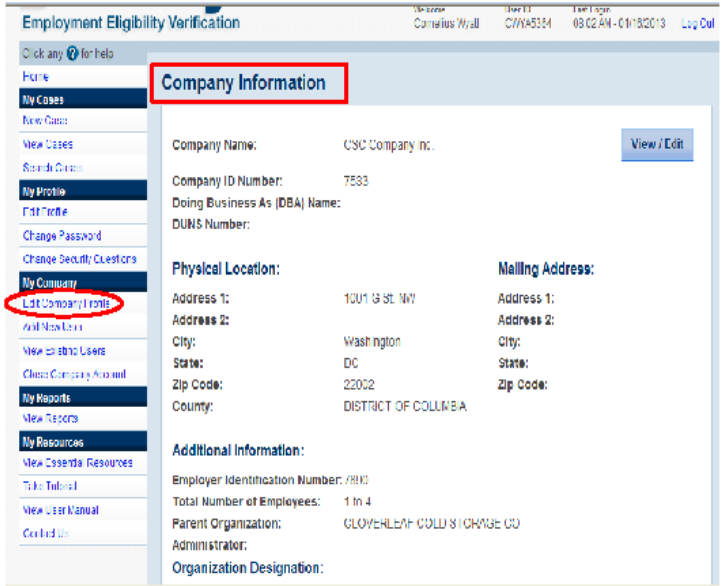
E-Verify® Enrollment Proof

HOW TO PROVIDE PROOF OF ENROLLMENT IN E-VERIFY

Below is an example of how Federal contractors that are subject to the Federal Acquisition Regulation (FAR) E-Verify clause may be asked to provide proof of enrollment in E-Verify, but can be used by anyone requesting confirmation of company enrollment. As shown below, to provide proof, access the 'Edit Company Profile' link on the left navigation menu and print the screen containing your company information. This page contains proof of your enrollment in E-Verify.



- **Double click the form to see the full example.**

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Responsibilities - Subcontractors

- Submit a completed Public Works Employment Verification Form to the contracting Public Body.
  - The Form must be submitted before the subcontractor can commence work on the project.
  - The Form must be submitted to the Public Body, not the Prime Contractor.

- Verify all new employees hired after January 1, 2013.
  - Verification must be completed within 5 business days of the employees' start date. The employee may work during this time.
  - Remember the definition of "employee" is very broad. All employees must be verified through EVP regardless of whether the employee will be working onsite or offsite of a public work or otherwise.

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Responsibilities - Subcontractors

- Required to notify all subcontractors, at every level:
  - Applicability of the act.
  - Information regarding the use of E-Verify®
  - Reference to the web site where they can obtain a copy of the form. http://www.dgs.state.pa.us

- Maintain documentation of continued compliance with the act.
  - Quick Audit Report (Click here and here for more information)
  - Proof of Enrollment in E-Verify® (Click here and here for more information)

- Cooperate during an investigation or audit by providing, upon request:
  - Documentation of date of hire for all employees; and
  - Documentation of use of EVP; and
  - Other information as required.

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Public Works Employment Verification Form

- The Form is available at http://www.dgs.state.pa.us.
- For use by public bodies, public works contractors and subcontractors.
- May **NOT** be changed or altered.

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Public Works Employment Verification Form

- Shall be signed by an authorized representative.
  - The Department may require supporting documentation that the representative signing the Form has authority to legally bind the public works contractor or subcontractor.
  - That representative must have sufficient knowledge to make the representations and certifications in the Form.

- The submitted Form shall be retained by the public body for the duration of the public work contract.

- The Form is subject to the Pennsylvania Right to Know Law.

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Public Works Employment Verification Form

COMMONWEALTH OF PENNSYLVANIA

PUBLIC WORKS EMPLOYMENT VERIFICATION FORM

Date _____

Business or Organization Name (Employer)_____

Address _____

City _____ State_____ Zip Code _____

Contractor/Subcontractor (circle one)

Contracting Public Body _____

Contract/Project No _____

Project Description _____

Project Location _____

As a contractor/subcontractor for the above referenced public works contract, I hereby affirm that as of the above date, our company is in compliance with the Public Works Employment Verification Act ('the Act') through utilization of the federal E-Verify Program (EVP) operated by the United States Department of Homeland Security. To the best of my/our knowledge, all employees hired post January 1, 2013 are authorized to work in the United States.

It is also agreed to that all public works contractors/subcontractors will utilize the federal EVP to verify the employment eligibility of each new hire within five (5) business days of the employee start date throughout the duration of the public works contract. Documentation confirming the use of the federal EVP upon each new hire shall be maintained in the event of an investigation or audit.

I, _____, authorized representative of the company above, attest that the information contained in this verification form is true and correct and understand that the submission of false or misleading information in connection with the above verification shall be subject to sanctions provided by law.

_____

Authorized Representative Signature

The complete Verification Form is available on the Department's web site.

- **Double click the form to see the full example.**

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Enforcement

Investigation of complaints

- The Department will accept, review and investigate timely and credible complaints filed on the Complaint Form posted on the Department's web site.
- Complaints must contain sufficient information to investigate the allegations.
- The Department reserves its right to reject complaints that do not provide sufficient information.
- The Department will consider the timeliness of the complaint when assessing its credibility.
- Public bodies, public works contractors and subcontractors shall cooperate with the Department during the investigation of the complaint.

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Complaint Investigation Form

For Internal Use:

Complaint No.:_____

PUBLIC WORKS EMPLOYMENT VERIFICATION COMPLAINT FORM

This form is used for filing complaints under Act 127 of 2012, known as the Public Works Employment Verification Act.

RETURN TO:

Public Works Employment Verification Compliance Office
Room 105 Tent Building
Department of General Services
Public Works Deputate
18th and Herr Streets
Harrisburg, PA 17125
Fax: (717)214-3669

PLEASE PRINT:

I. Complainant Information (Required)

Date: _____

Name of Individual or Business Filing Complaint: _____

Address: _____

_____

Phone: (____) _____-_____

II. Contractor/Subcontractor Information (Please complete this Section to the best of your knowledge. Insufficient information may result in dismissal of your complaint.)

Individual or Business against whom this Complaint is made: _____

Address: _____

_____

Phone: (____) _____-_____

County Location: _____

Project Name/Description (if known): _____

_____

_____

The complete Complaint Form is available on the Department's web site.

- **Double click the form to see the full example.**

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Audit Documentation

During an audit, all contractors/subcontractors must be able to produce the following written documentation:

- Pennsylvania Labor & Industry Weekly Payroll Certification forms for every week of the project (form LLC-25).
- Documentation establishing the date of hire of all employees.
- Documentation of compliance with the Act through the utilization of E-Verify®
  - Quick Audit Report (Click here and here for more information)
  - Proof of Enrollment in E-Verify (Click here and here for more information)

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Violations

A public works contractor or subcontractor violates the Act if either of the following applies:

- Failure to verify the employment eligibility of new employees hired after January 1, 2013.
- Makes a false statement or misrepresentation in connection with the completion or submission of the Form to the contracting public body.

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Sanctions

First Violation

- The Department will issue a warning letter to the public works contractor or subcontractor detailing the violation. This letter will be posted at www.dgs.state.pa.us.

- For purpose of sanctions, a violation by a public works contractor/subcontractor that occurs 10 years or more after a prior violation will be deemed to be a first violation.

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Sanctions

Second Violation

- The Department will initiate debarment proceedings, which will prevent a contractor or subcontractor from submitting a bid or being awarded any contract or performing a subcontract on a public works project in the Commonwealth for 30 calendar days from the date of debarment.

Sanctions

Third and Subsequent Violations

- The Department will initiate debarment proceedings, which will prevent a contractor or subcontractor from submitting a bid or being awarded any contract or performing a subcontract on a public works project in the Commonwealth for no less than 180 calendar days and no more than 1 year from the date of debarment.

Sanctions

Willful Violation

- If the Department investigates and forms a reasonable belief that there has been a willful violation of the Act, the Secretary will file a petition in Commonwealth Court seeking the Court to issue a rule to show cause why a public works contractor or subcontractor did not engage in a willful violation of the act. If the court finds that there was a willful violation, the Department will petition to have the public works contractor or subcontractor debarred from public works contracts for 3 years from the date of the court's determination.

Civil Penalties

- Civil Penalties will be assessed in the following cases:
  - Failure to submit a completed form.
  - Making a false statement or misrepresentation in the form.

- The Department will assess a civil penalty of not less than $250 and not more than $1,000 for each violation.
  - The penalty amount is at the Department's discretion.
  - The Department will consider the severity of the violation as well as any prior violations when posing civil penalties.

Additional Information

DGS Guidelines for Administering and Enforcing
the Public Works Employment Verification Act 127 of 2012
can be found at
www.dgs.state.pa.us

Information pertaining to the Federal E-Verify® program can be found at The Department of Homeland Security's U.S. Citizenship and Immigration Services web site.
www.dhs.gov/e-verify

A list of Frequently Asked Questions and Answers can be found at
www.dgs.state.pa.us

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Contact

Public Works Employment Verification Compliance Office
Department of General Services
Room 105 Tent Building
18th and Herr Streets
Harrisburg, PA 17125
(717) 214-3668
Fax: (717) 214-3669

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