



CITY AUDITOR'S OFFICE

E-Verify Compliance During FY 2020/21

March 21, 2022

AUDIT NO. 2202

CITY COUNCIL

Mayor David D. Ortega
Vice Mayor Tammy Caputi
Tom Durham
Betty Janik
Kathy Littlefield
Linda Milhaven
Solange Whitehead



March 21, 2022

Honorable Mayor and Members of the City Council:

Enclosed is the audit report for *E-Verify Compliance During FY 2020/21*, which was included on the Council-approved FY 2021/22 Audit Plan. State law requires the City's contractors and subcontractors to warrant that they use the federal E-Verify program to confirm employment eligibility of their employees working on City service contracts. The law also requires the City to randomly verify that its contractors and subcontractors comply with this warranty.

We selected five applicable City contractors and nine of their identified subcontractors for testing this year. Three subcontractors did not provide the required E-Verify documentation for one or two of their employees selected for testing. However, most of the tested contractors and subcontractors appear to be currently complying with the requirement.

If you need additional information or have any questions, please contact me at (480) 312-7867.

Sincerely,

A handwritten signature in blue ink that reads "Sharron Walker".

Sharron E. Walker, CPA, CFE, CLEA
City Auditor

Audit Team:

Paul Christiansen, CPA, CIA, CISA – Sr. Auditor

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AUDIT HIGHLIGHTS

E-Verify Compliance During FY 2020/21

March 21, 2022

Audit No. 2202

WHY WE DID THIS AUDIT

This audit was included on the Council-approved FY 2021/22 Audit Plan to confirm whether selected City contractors and their subcontractors use the E-Verify program to verify employment eligibility of those working on city contracts. The City is required by Arizona Revised Statute (A.R.S.) §41-4401 to check contractor and subcontractor compliance.

BACKGROUND

Since 2010, after the state's Legal Arizona Workers Act (LAWA) went into effect, the City Auditor's Office has periodically audited selected City contractors' compliance with the required use of the federal E-Verify system. The state law provides that every Arizona government entity that enters into a service contract is required to establish procedures to conduct random verifications to ensure its contractors and their subcontractors comply with required use of the E-Verify employment eligibility program.

City Auditor's Office

City Auditor 480 312-7867
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WHAT WE FOUND

The selected City contractors and subcontractors are generally now using the E-Verify program for their workers on City of Scottsdale contracts.

Auditors selected five contractors with City services contracts for testing. Three of the five selected contractors used subcontractors to perform work on their applicable contracts. Specifically, we found:

- Most of the selected contractors and subcontractors provided the required E-Verify documentation for the sampled employees.
- However, three contractors and seven subcontractors provided some E-Verify documentation that was dated after our audit request.
- Further, three subcontractors did not provide E-Verify documentation indicating the employment eligibility for one or two of their selected employees. Two of them did not provide any documentation for their selected employees.

WHAT WE RECOMMEND

We recommend the Purchasing Department work with the applicable Contract Administrators and the City Attorney's Office to follow up with the subcontractors that did not provide E-Verify documentation during the audit.

MANAGEMENT RESPONSE

The Purchasing Director responded that he will coordinate implementation of the recommendation and will continue communicating the E-Verify compliance requirements.

BACKGROUND

Since 2010, after the state’s Legal Arizona Workers Act (LAWA) went into effect, the City Auditor’s Office has periodically audited selected City vendors’ compliance with the required use of the federal E-Verify system. This audit was included on the Council-approved FY 2021/22 Audit Plan.

The City is required by state law to conduct random verification of the employment records of its service contractors to ensure compliance with required use of the E-Verify employment eligibility program. Under LAWA, the Arizona Legislature has made it unlawful for any employer to intentionally or knowingly employ an unauthorized alien. “After September 30, 2008, a government entity shall not award a contract to any contractor or subcontractor that fails to comply with section 23-214, subsection A.” Arizona Revised Statutes (A.R.S.) §23-214(A) specifically requires every employer to use the federal E-Verify program to confirm the employment eligibility of every employee hired after December 31, 2007. ¹

Further, the state law provides that every government entity that enters into a service contract is required to establish procedures to conduct random verification of the employment records of its contractors and subcontractors to ensure they are complying as warranted with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. §23-214(A).

After September 30, 2008, “Every government entity that enters into a contract shall establish procedures to conduct random verification of the employment records of [its] contractors and subcontractors to ensure that [they] are complying with their warranties [of complying with federal immigration laws and regulations that relate to their employees and compliance with A.R.S. §23-214(A)].”

SOURCE: A.R.S. §41-4401(B)

Compliance with Federal and Arizona State Immigration Laws

In November 2008, the City Attorney’s Office and the Purchasing department modified the City’s standard contract language to incorporate the required contractor warranties.

The City will not consider the contractor or any of its subcontractors in material breach of its contract if the contractor and its subcontractors can establish that they have complied with the employment verification provisions prescribed by 8 United States Code (U.S.C.) §1324 (a) and (b) and the E-Verify requirements prescribed by A.R.S. §23-214(A). ²

(continued on next page)

¹ The federal E-Verify program is an employment eligibility verification program jointly administered by the U.S. Department of Homeland Security and the Social Security Administration.

² U.S.C. §1324 (a) and (b) codify the federal Immigration and Nationality Act sections 274A and 274B, which are referenced in A.R.S. §23-214(A), into the applicable federal laws.

City of Scottsdale Standard Contract Terms

IMMIGRATION LAW COMPLIANCE

Under the provisions of A.R.S. §41-4401, the Contractor warrants to the City that the Contractor and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Contractor and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Contractor or any of its subcontractors will be considered a material breach of this Contract and may subject the Contractor or Subcontractor to penalties up to and including termination of this Contract or any subcontract. The Contractor will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Contractor's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

The City retains the legal right to inspect the papers of any employee of the Contractor or any subcontractor who works on this Contract to ensure that the Contractor or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Contractor and any of its subcontractors to ensure compliance with this warranty. The Contractor agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

SOURCE: Excerpt from standard terms and conditions in the contract template for a City Services Contract over \$10,000.

OBJECTIVES, SCOPE, AND METHODOLOGY

An audit of *E-Verify Compliance During FY 2020/21* was included on the City Council-approved fiscal year (FY) 2021/22 Audit Plan. The audit objective was to confirm whether selected City contractors and their subcontractors are using the E-Verify program to verify employment eligibility of those working on city contracts. The City is required by Arizona Revised Statute (A.R.S.) §41-4401 to check contractor and subcontractor compliance.

For this audit, we:

- 1) Selected service contracts that had payments between July 1, 2020, and June 30, 2021, and
- 2) Reviewed the contractors' or subcontractors' E-Verify documentation for randomly selected employees working on the selected City of Scottsdale contracts who were hired after the law's effective date.

To gain an understanding of the state requirements, we reviewed the applicable A.R.S. sections and the Scottsdale City Attorney's Office's previous analysis of the City's related responsibilities. To gain an understanding of the applicable federal requirements, we reviewed the federal Immigration and Nationality Act §274 A – Unlawful Employment of Aliens specified in state law. Also, to understand the E-Verify program requirements and restrictions, we reviewed the U.S. Citizenship and Immigration Services' *E-Verify User Manual* as of April 2018, the most recent version. We also reviewed the results of previous City Auditor E-Verify audit reports including Audit No. 2102, which is the most recent.

Using a report of FY 2020/21 vendor payments, we judgmentally selected eleven categories of service contract expenditures. From those categories, we randomly selected two service contractors that had not been previously reviewed. From the Capital Projects Management department, we obtained a list of the 28 contractors that worked on FY 2020/21 projects. From these, we selected three contractors that had not been reviewed in our previous E-Verify audits.

We did not audit all original payroll records of each contractor or subcontractor. Instead, we requested each selected contractor to submit lists of contractor employees and any subcontractors working on the specified City contracts between July 2020 and June 2021. We randomly selected three subcontractors from each of the selected contractors that used subcontractors. Each of these subcontractors then provided a list of their employees working on the specified City contracts between July 2020 and June 2021. We then selected all or a random sample of the contractor and subcontractor employees reported as being hired on or after the law's effective date and requested the E-Verify documentation for those employees.

Our review concluded that the selected contractors and subcontractors are generally now using the E-Verify program for their workers on City of Scottsdale contracts.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Audit work took place from August 2021 to February 2022.

FINDINGS AND ANALYSIS

1. **The selected City contractors and subcontractors are generally now using the E-Verify program for their workers on City of Scottsdale contracts.**

Auditors selected five contractors with City services contracts during FY 2020/21 for E-Verify employment eligibility testing. Three of the five selected contractors used subcontractors to perform work on their applicable contracts, so we randomly selected nine of their subcontractors for testing.

For all or a random selection of their applicable employees, we asked these contractors and subcontractors to provide documentation of the E-Verify confirmation performed for the selected employees.³

Table 1. E-Verify Compliance for Selected Service Contractors and Subcontractors

	Sample Size	Sampled Employees Hired after 12/31/2007	Confirmed Use of E-Verify	E-Verify Performed Prior to Audit Request
Contractors	5	48	48	38
Subcontractors	9	34	29	16
Total	14	82	77	54

SOURCE: Auditor analysis of selected service contractors' and subcontractors' E-Verify documentation.

As illustrated in Table 1, most of the selected contractors and subcontractors provided the required E-Verify documentation for their selected employees. However, three contractors and seven subcontractors provided some E-Verify documentation dated after our audit request rather than at the original time of hire.

Further, three subcontractors did not provide E-Verify documentation indicating the employment eligibility for at least some of their selected employees:

- One subcontractor was unable to provide E-Verify documentation for both selected employees. The contractor explained that they were unable to complete the E-Verify registration process and provide the documentation.

³ Some contractors or subcontractors had fewer than 10 applicable employees, so we tested all their verifications.

- A second subcontractor was unable to provide E-Verify documentation for its selected employee. The contractor explained that he tried to go through the E-Verify process but did not complete it due to the complexity.
- A third subcontractor was unable to provide E-Verify documentation for two of its 15 applicable employees. The contractor explained that this documentation had been misplaced. Documentation for the other verifications indicated they were routinely being completed timely.

Not complying with the E-Verify requirement may subject a contractor or subcontractor to penalties up to and including termination for breach of contract.

Overall, most of the selected contractors and subcontractors are currently complying with the requirement.

Recommendation:

The Purchasing Department should work with the applicable Contract Administrators and the City Attorney's Office to follow up with the subcontractors that did not provide E-Verify documentation during the audit.

MANAGEMENT RESPONSE



OFFICE OF THE CITY TREASURER / PURCHASING

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TO: Paul Christiansen, Senior Auditor
City Auditor's Office: Sharron Walker

FROM: Robert Schoepe, Purchasing Director
City Treasurer's Office: Sonia Andrews

DATE: March 17, 2022

SUBJECT: E-Verify Compliance During FY 2020/21, Audit No. 2202 response

The Purchasing Department will continue communicating the E-Verify requirements in support of these compliance efforts. Coordination with the applicable Contract Administrators will occur to fulfill this recommendation within the current fiscal year.

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