



CITY AUDITOR'S OFFICE

E-Verify Compliance During FY 2018/19

May 5, 2020

AUDIT REPORT NO. 2002

CITY COUNCIL

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May 5, 2020

Honorable Mayor and Members of the City Council:

Enclosed is the audit report for *E-Verify Compliance During FY 2018/19*, which was included on the Council-approved FY 2019/20 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 are in compliance with this warranty.

We selected five applicable City contractors and eleven of their identified subcontractors for testing this year. Based on the records they submitted, 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,

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

Audit Team:

Brad Hubert, CIA, CGAP – Senior Auditor

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AUDIT HIGHLIGHTS

E-Verify Compliance During FY 2018/19

May 5, 2020

Audit Report No. 2002

WHY WE DID THIS AUDIT

This audit was included on the Council-approved FY 2019/20 Audit Plan to confirm, for selected City contractors, use of the E-Verify program as required by state and federal law. The City is required by Arizona Revised Statute (A.R.S.) §41-4401 to check contractor and subcontractor compliance.

BACKGROUND

Since 2010, after Arizona'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. All the selected contractors used subcontractors to perform work on their applicable contracts. Specifically, we found:

- Four of the five selected contractors and seven of the eleven selected subcontractors performed e-verification of their sampled employees before being contacted for the audit.
- One contractor did not have E-Verify documentation for a selected employee, but the employee was no longer working for the company.
- One subcontractor did not have E-Verify documentation for its selected employee and stated its former payroll processing company that performed the verification is no longer in business.
- The remaining contractor and four subcontractors provided E-Verify documentation that was dated after our audit request.

WHAT WE RECOMMEND

We did not make any recommendations.

MANAGEMENT RESPONSE

The Purchasing director acknowledged receiving the audit report and noted the department will continue communicating the requirements to contractors to support compliance efforts.

BACKGROUND

Since 2010, after Arizona’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 of E-Verify Compliance was included on the Council-approved FY 2019/20 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 2018/19* was included on the City Council-approved fiscal year (FY) 2019/20 Audit Plan. The audit objective was to, for selected City contractors, confirm they are using the E-Verify program as required by state and federal law. 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, 2018, and June 30, 2019, 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. We also reviewed the results of previous City Auditor E-Verify audit reports including Audit Report No. 1902, which is the most recent.

Using a report of vendor payments in FY 2018/19, we judgmentally selected ten categories of service contract expenditures and from those categories, randomly selected 2 service contractors to review. From Capital Projects Management, we obtained a list of the 6 contractors that worked on FY 2018/19 projects and selected the 3 contractors that had not previously been reviewed in our 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 and any subcontractor employees working on the specified City contracts from July 2018 to June 2019. We then selected 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 October 2019 to April 2020.

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 2018/19 for E-Verify employment eligibility testing. All five of the selected contractors used subcontractors to perform work on their applicable contracts, so we randomly selected eleven subcontractors for testing.

For 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.

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

	Sample Size	Sampled Employees Hired after 12/31/07	Confirmed Use of E-Verify	E-Verify Performed Prior to Audit Request
Contractors ¹	5	30	29	24
Subcontractors ²	11	54	53	41
Total	16	84	82	65

¹ Documentation was not available for one contractor employee who no longer works for the company.

² One subcontractor stated that the outside payroll processor performed E-Verify. However, the payroll processing company is no longer in business, and records for the selected employee were not available.

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

As illustrated in Table 1, each contractor and subcontractor provided the required E-Verify documentation for most selected employees. One contractor and one subcontractor could not provide documentation for one employee. The contractor did not have E-Verify documentation for a former employee, and the subcontractor explained that its payroll processing company had gone out of business and these records were not transferred to the subcontractor. As well, one contractor and four subcontractors provided E-Verify documentation dated after our audit request rather than within 3 days of their employees' original employment dates.

However, the provided documentation indicates the selected contractors and subcontractors are generally now using the E-Verify program.

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

Recommendation:

None.

MANAGEMENT RESPONSE



Purchasing Department

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Date: May 4, 2020

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RE: E-Verify Compliance During FY 2018/19, Audit No. 2002 response

This letter constitutes the Purchasing Department's response to the E-Verify Compliance During FY 2018/19, Audit No. 2002 report.

According to the report, the E-verify audit program was completed with no further recommendations. The Purchasing department will continue to communicate to the contractors the requirements and support the efforts of the City Auditor's Office to promote compliance.

City Treasurer's Office: Jeff Nichols
Purchasing Department

 5/4/2020
Signature Date

Robert Schoepe, Purchasing Director
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