



CITY AUDITOR'S OFFICE

E-Verify Compliance of Selected FY 2011/12 City Contractors

November 2, 2012

AUDIT REPORT NO. 1301

CITY COUNCIL

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November 2, 2012

Honorable Mayor and Members of the City Council:

This annual audit of *E-Verify Compliance* was on the Council-approved FY 2012/13 Audit Plan. After September 30, 2008, 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.

Several of the 30 City contractors that we randomly selected were not subject to the state requirement because their contracts predated the requirement's effective date or because the payments were not for service contracts. Of the 10 selected contractors that were subject to the requirement, one did not provide E-Verify documentation for three temporary workers and one did not respond to the City's audit requests. One City contract did not incorporate the E-Verify requirements; therefore, we did not test this contractor's records. The remaining 7 contractors either had not hired employees for their City of Scottsdale contracts after the law's effective date or provided the necessary E-Verify documentation.

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

Sincerely,

A handwritten signature in black ink that reads "Sharron Walker". The signature is fluid and cursive.

Sharron Walker, CPA, CFE
City Auditor

Audit Team:

Cathleen Davis, CIA — Senior Auditor
Joanna Munar, CIA — Senior Auditor

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EXECUTIVE SUMMARY

This annual audit of *E-Verify Compliance*, included on the Council-approved FY 2012/13 Audit Plan, was conducted to comply with a state requirement for the City to randomly verify its services contractors' and subcontractors' compliance. The audit tested selected City contractors' and subcontractors' compliance with the state law requiring their use of the federal E-Verify Program to confirm employment eligibility of their new hires working on the City's contracts. This requirement applies to City contracts after September 30, 2008.

From 684 City vendors identified as potential service contractors that were paid in FY 2011/12 and have not previously been tested, we randomly selected 30 to test. Several of these were not subject to the requirement due to having a contract dated prior to October 1, 2008; not having a formal contract; or not providing services. Of the 10 selected contractors that were subject to the requirement, one used the services of a subcontractor.

Subsequently, we found that one vendor's Scope of Work-based contract did not include the required E-Verify terms and conditions. So that this state requirement is not overlooked in the future, the Purchasing department should incorporate the E-Verify compliance requirements into the standard terms and conditions it has established for Scope of Work contracts.

Two of the 9 sampled contractors did not provide the necessary E-Verify documentation for their employees. At the time of our testing, one small business no longer had an active contract with the City. We advised this business that compliance with the E-Verify requirements will be necessary to be eligible for future service contracts with the City of Scottsdale. Another company, which is located out of state, did not respond to the City's multiple requests to cooperate with the audit. Accordingly, the City Attorney's office and the Purchasing department are reviewing this contract for noncompliance with the agreed-to terms and conditions.

The remaining 7 contractors either had not hired employees for their City of Scottsdale contracts after the law's effective date or provided the necessary E-Verify documentation for their applicable employees and subcontractor.

BACKGROUND

For the third year since Arizona's Legal Arizona Workers Act (LAWA) went into effect, the City Auditor's office has completed an audit of 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 2012/13 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 the Legal Arizona Workers Act, 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

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)

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).

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.

COMPLIANCE WITH FEDERAL AND ARIZONA STATE IMMIGRATION LAWS

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

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. (U.S.C. is also referred to as U.S.C.A., or United States Code Amended.)

City of Scottsdale Standard Contract Terms

COMPLIANCE WITH FEDERAL AND ARIZONA STATE IMMIGRATION LAWS

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

The objective of this audit was to comply with the state requirement in Arizona Revised Statutes (A.R.S.) §41-4401 to conduct random verification of the City's contractors and their subcontractors to ensure they are complying with employment verification provisions of the federal Immigration and Nationality Act and the E-Verify requirements of A.R.S. §23-214(A). This audit reviewed selected contracts that were effective after September 30, 2008, and had payments between July 1, 2011, and June 30, 2012, and the contractors' or subcontractors' employees working on the selected City 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 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 and B specified in state law. Also, to understand the E-Verify program requirements and restrictions, we reviewed the U.S. Department of Homeland Security's *E-Verify User Manual for Employers*, *Memorandum of Understanding* and *E-Verify Quick Reference Guide for Designated Agents*, and the U.S. Department of Justice, Civil Rights Division, publication: *E-Verify Employer Do's and Don'ts*.

We reviewed the previous audit results in Audit Report No. 1213, "*e-Verify Compliance of City Contractors – October 2008 through September 2011*," issued on March 8, 2012 and Audit Report No. 1115, "*E-Verify Compliance of City Contractors – October 2008 through June 2010*," issued on April 6, 2011. Purchase orders and check requisitions are the two applicable methods to pay for services, so the Purchasing department created a standard report to identify vendors not previously tested paid by purchase order or check requisition using specific category codes or accounts.³

Using this report, we identified 684 potential service contracts; however, certain factors affecting applicability, such as the existence of a contract, had to be determined after sample selection. Of the 30 vendors randomly selected for testing, we found that 5 contracts predated the statutory requirement, 5 were not applicable service contracts, and 11 vendors did not receive any contract-based payments during FY 2011/12, the period to be tested. After the random selection, one additional service contract was judgmentally added; thus, 10 service contracts were reviewed during this audit.

We did not audit all original payroll records of each contractor, several of which were maintained at out-of-state corporate offices. Instead, we requested each selected contractor to submit lists of contractor and any subcontractor employees working on the specified City contracts, along with their hire dates. One of the 10 applicable contractors used a subcontractor. We reviewed payroll forms to confirm hire dates of the contractor employees listed as being hired prior to the law's effective date. We then requested the E-Verify documentation that each company obtained at the time of hire for the contractor employees

³ Payments to individuals were excluded because they would not be required to perform employment eligibility verification.

hired on or after the law's effective date. We also requested and obtained the subcontractor's documentation.

We conducted this audit in accordance with generally accepted government auditing standards as required by Article III, Scottsdale Revised Code, §2-117 et seq. 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 July 2012 through mid-October 2012, with Cathleen Davis and Joanna Munar conducting the work.

FINDINGS AND ANALYSIS

1. The E-Verify requirement is not included in the standard terms and conditions for a Scope of Work-based contract.

One of the selected contracts was a Professional Services Scope of Work-based contract. Through oversight, the E-Verify compliance language required by state law was not included or referenced in any documents provided to the contractor. Because this vendor had not been required to warrant its use of the federal E-Verify program and consent to allow the City to verify its use, we did not complete the planned testing.

Arizona Revised Statutes §41-4401 states, in part: “Every government entity shall require that every government entity contract includes ... That each contractor and subcontractor warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with §23-214(A).”

While the Purchasing department has established standard terms and conditions to be used for various types of purchase orders and contracts, the Scope of Work standard language does not cite the E-Verify requirement. The Purchasing department indicated that this requirement is included in the Purchase Order standard terms and conditions. However, if City staff does not reference the separate Purchase Order standard terms and conditions, this state law requirement is not communicated to and warranted by the vendor.

Recommendation:

The Purchasing Director should ensure the required E-Verify language is also included in the standard terms and conditions for Scope of Work-based contracts.

2. City contractors are generally using the E-Verify Program for workers on City of Scottsdale contracts.

Of the 30 potential service contracts selected for FY 2011/12 testing, auditors determined that:

- Five vendors were excluded because their contracts predated the state requirement,
- Payments to 11 vendors were not related to service contracts, and
- Five vendors were not paid during FY 2011/12.

Auditors added one additional service contract to the sample, giving a total of 10 service contracts to be tested. One of these contractors used a subcontractor to perform its applicable City service contract.

As noted previously, one City contract did not incorporate the E-Verify requirements; therefore, we did not test this contractor's records.

The federal E-Verify Program does not allow the system to be used to re-verify employment authorization, so the applicable contractors and subcontractor were asked

to provide a copy of the I-9 form with the E-Verify confirmation number written on it or the screen print of the E-Verify confirmation performed at the time of employment.

One out-of-state contractor, who was paid \$3,494 during the fiscal year, did not respond to the City's audit requests. The City Attorney's office and the Purchasing department are in the process of reviewing this contract.

The 8 responding contractors reported 69 employees, including the subcontractor employee, working on the selected City contracts. Of the 69 employees, 30 were hired after the state law's effective date. The contractors provided E-Verify documentation for 27 of these employees, including the subcontractor. However, the E-Verify documentation provided by 3 contractors was dated after our audit request rather than at the time of hire. Further, one contractor was unable to provide E-Verify documentation for 3 temporary workers. This small business, which was paid a total of \$4,317 during the fiscal year, no longer had an active contract with the City. We advised this business that compliance with the E-Verify requirements would be necessary to be eligible for future service contracts.

Recommendation:

None.

MANAGEMENT ACTION PLAN

1. The E-Verify requirement is not included in the standard terms and conditions for a Scope of Work-based contract.

Recommendation:

The Purchasing Director should ensure the required E-Verify language is included in the standard terms and conditions for Scope of Work-based contracts.

MANAGEMENT RESPONSE: Agree

PROPOSED RESOLUTION: Purchasing checked and there weren't any other Scope of Work-based contracts for professional services in FY 2011/12 that used an outdated template. The current process of date and version control, coupled with continued education of City staff to always download the most current version of any template is a reasonable, practical and economical means to ensure the City's compliance with the State's E-Verify law. As a further safeguard, Purchasing will put the E-Verify language in the Scope of Work standard terms and conditions as well.

RESPONSIBLE PARTY: James Flanagan, Purchasing Director

COMPLETED BY: 1/31/2013

2. City contractors are generally using the E-Verify Program for workers on City of Scottsdale contracts.

Recommendation:

None.

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