January 9, 2017

Honorable Mayor and Members of the City Council:

Enclosed is the audit report for E-Verify Compliance During FY 2015/16, which was included on the Council-approved FY 2016/17 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 seven of the applicable City contractors and eight of their identified subcontractors for testing. Three contractors provided the required E-Verify documentation for all but one or two of their employees selected for testing. One subcontractor did not provide documentation for its three 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,

Sharron Walker, CPA, CFE, CLEA
City Auditor

Audit Team:
Cathleen Davis, CIA - Senior Auditor
Dan Spencer, CIA - Senior Auditor
# TABLE OF CONTENTS

AUDIT HIGHLIGHTS ........................................................................................................... 1

BACKGROUND .................................................................................................................. 3

Compliance with Federal and Arizona State Immigration Laws ........................................... 3

OBJECTIVES, SCOPE, AND METHODOLOGY .................................................................... 5

FINDINGS AND ANALYSIS ............................................................................................... 7

1. City contractors and subcontractors are generally using the E-Verify program for their workers on City of Scottsdale contracts. .......................................................... 7

   Table 1. City Service Contractor and Subcontractor E-Verify Compliance ....................... 7

MANAGEMENT ACTION PLAN ......................................................................................... 9
AUDIT HIGHLIGHTS

E-Verify Compliance During FY 2015/16

January 9, 2017  Audit Report No. 1702

WHY WE DID THIS AUDIT

This audit was included on the Council-approved FY 2016/17 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 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 vendors’ compliance with the required use of the federal E-Verify system. 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. Further, the state law provides that every government entity that enters into a service contract is required to establish procedures to conduct the random verifications.

WHAT WE FOUND

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

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

WHAT WE RECOMMEND

We recommend the Purchasing Department:

- Provide direction to Contract Administrators to emphasize the E-Verify contract requirements at the start of each contract, including that contractors and any subcontractors are subject to random verification of compliance.
- Work with the Contract Administrators and the City Attorney’s Office to follow up with these contractors and subcontractors regarding the E-Verify documentation that was not provided during the audit.

MANAGEMENT RESPONSE

The Department agreed with the audit recommendations and expects to have all recommendations implemented by December 2017.

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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 2016/17 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).

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

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.)
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 was included on the City Council-approved fiscal year (FY) 2016/17 Audit Plan. The audit objective was 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 compliance.

For this audit, we:

1) Selected service contracts that had payments between July 1, 2015, and September 30, 2016, and
2) Reviewed the contractors’ or subcontractors’ E-Verify documentation for selected employees working on the selected 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 §274A - Unlawful Employment of Aliens specified in state law. Also, to understand the E-Verify program requirements and restrictions, we reviewed the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services’ E-Verify User Manual for Employers and the U.S. Department of Labor’s Recordkeeping Requirements under the Fair Labor Standards Act (FLSA). Finally, to understand the federal and state record keeping requirements, we reviewed the U.S. Citizenship and Immigration Services’ Instructions for Employment Eligibility Verification. We also reviewed the results of previous City Auditor E-Verify audit reports including Audit Report No. 1402, which is the most recent.

Using a report of purchase orders and check requisitions for applicable expenditure codes, we identified almost 1,300 potential service contractors that had not been previously tested. We selected 4 service contractors to review. We also obtained from the Capital Projects Management department a list of the 9 contractors that worked on Arizona Department of Transportation (ADOT) grant funded projects in FYs 2013/14 through 2015/16. For this audit, we selected 3 of the 5 contractors from FY 2015/16.

We did not audit all original payroll records of each contractor. Instead, we requested each selected contractor to submit lists of contractor and any subcontractor employees working on the specified City contracts from July 2015 to approximately November 2016, along with their hire dates. We then selected a random sample of the contractor and subcontractor employees hired on or after the law’s effective date and requested the E-Verify documentation that each company obtained at the time of hire.

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 June to December 2016.
FINDINGS AND ANALYSIS

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

Auditors selected seven contractors with City services contracts during FY 2015/16 for E-Verify employment eligibility testing. Additionally, four of the selected contractors used subcontractors to perform work on their applicable contracts.

The applicable contractors and subcontractors were asked to provide a copy of the I-9 form with the E-Verify number written on it or the screen print of the E-Verify confirmation performed at the time of employment.

Table 1. City Service Contractor and Subcontractor E-Verify Compliance

<table>
<thead>
<tr>
<th></th>
<th>Sample Size</th>
<th>Sampled Employees Hired after 12/31/07</th>
<th>Confirmed Use of E-Verify</th>
<th>E-Verify Performed Prior to Audit Request</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractors</td>
<td>7</td>
<td>62</td>
<td>58</td>
<td>36</td>
</tr>
<tr>
<td>Subcontractors</td>
<td>1</td>
<td>6</td>
<td>44</td>
<td>41</td>
</tr>
<tr>
<td>Total</td>
<td>13</td>
<td>106</td>
<td>99</td>
<td>57</td>
</tr>
</tbody>
</table>

1 Four of the seven contractors used 34 subcontractors in total; auditors selected eight subcontractors for testing. However, E-Verify compliance tests were not performed for two of these eight. One subcontractor’s employees were all hired prior to the E-Verify requirement, and the other subcontractor only employed family members.

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

As illustrated in Table 1, most contractors provided the required E-Verify documentation for the selected employees. However, for some or all of their employees, 4 contractors and 4 subcontractors provided E-Verify documentation dated after our audit request rather than at the original time of hire.

Further, the following 3 contractors and one subcontractor did not provide E-Verify documentation indicating the employment eligibility for some of the selected employees:

- One contractor was unable to provide E-Verify documentation for one of its 3 selected employees. The contractor explained that this was a temporary employee and the personnel file was not retained. Also, one of this contractor’s subcontractors did not provide E-Verify documentation for any of its 3 selected employees.

- A second contractor was unable to provide E-Verify documentation for 2 of its 10 selected employees. The contractor explained that these employees no longer work for the contractor and their files had been misplaced.
• A third contractor was unable to provide E-Verify documentation for one of its 10 selected employees. The contractor explained that this file had been misplaced.

Additionally, another contractor provided E-Verify documentation for 4 of its 10 selected employees that showed a pending status, rather than confirmation of employment eligibility, at the time of our review.

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

**Recommendation:**

The Purchasing Department should:

- Provide direction to Contract Administrators to emphasize the E-Verify contract requirements at the start of each contract, including that contractors and any subcontractors are subject to random verification of compliance.
- Work with the Contract Administrators and the City Attorney’s Office to follow up with these contractors and subcontractors regarding the E-Verify documentation that was not provided during the audit.
MANAGEMENT ACTION PLAN

1. City contractors and subcontractors are generally using the E-Verify program for their workers on City of Scottsdale projects.

Recommendation:
The Purchasing Department should:

- Provide direction to Contract Administrators to emphasize the E-Verify contract requirements at the start of each contract, including that contractors and any subcontractors are subject to random verification of compliance.
- Work with the Contract Administrators and the City Attorney’s Office to follow up with these contractors and subcontractors regarding the E-Verify documentation that was not provided during the audit.

MANAGEMENT RESPONSE: Agree

PROPOSED RESOLUTION: Purchasing will send out a notice to all Contract Administrators advising them of their responsibility to inform their suppliers of their requirement to adhere to the E-Verify rules and that their contractors are also responsible to make sure their subcontractors are to adhere to the E-Verify rules.

Once the details of the audit specifics are released Purchasing will work with Legal and the cognizant Contract Administrators to determine appropriate actions for any contractors and subcontractors that may have been identified as lacking in compliance.

RESPONSIBLE PARTY: J. Flanagan, Purchasing Director

COMPLETED BY: 12/31/2017
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