



CITY AUDITOR'S OFFICE

# E-Verify Compliance During FY 2017/18

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September 12, 2018

AUDIT REPORT NO. 1902

## **CITY COUNCIL**

Mayor W.J. "Jim" Lane  
Suzanne Klapp  
Virginia Korte  
Kathy Littlefield  
Linda Milhaven  
Vice Mayor Guy Phillips  
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September 12, 2018

Honorable Mayor and Members of the City Council:

Enclosed is the audit report for *E-Verify Compliance During FY 2017/18*, which was included on the Council-approved FY 2018/19 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 seven 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,

A handwritten signature in blue ink that reads "Sharron Walker". The signature is written in a cursive, flowing style.

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 2017/18

September 12, 2018

Audit Report No. 1902

### WHY WE DID THIS AUDIT

This audit was included on the Council-approved FY 2018/19 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

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### WHAT WE FOUND

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

Specifically, we found:

- Four of the five selected contractors and five of the seven selected subcontractors performed E-Verification of their sampled employees before being contacted for the audit.
- The remaining contractor and two subcontractors performed E-Verification of their sampled employees after being contacted for the audit.

### WHAT WE RECOMMEND

The Purchasing Department should continue to advise Contract Administrators to emphasize the E-Verify contract requirements to contractors at the start of each contract and that the City audits for compliance with these requirements.

### MANAGEMENT RESPONSE

The Department agreed and will incorporate this reminder into the existing internal contract award and renewal notifications to Contract Administrators.



## BACKGROUND

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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 2017/18 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.<sup>1</sup>

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).<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

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**City of Scottsdale Standard Contract Terms**

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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.*

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

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## OBJECTIVES, SCOPE, AND METHODOLOGY

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An audit of *E-Verify Compliance During FY 2017/18* was included on the City Council-approved fiscal year (FY) 2018/19 Audit Plan. The audit objective was, for selected City contractors, to 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, 2017, and June 30, 2018, and
- 2) Reviewed the contractors' or subcontractors' E-Verify documentation for randomly 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 §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. 1802, which is the most recent.

Using a report of vendor payments in FY 2017/18, we judgmentally selected five 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 25 contractors that worked on FY 2017/18 projects. Of the 25 contractors, 4 contractors worked on Arizona Department of Transportation (ADOT) grant funded projects in FY 2017/18 and of those, we selected the one contractor that had not been reviewed in a previous E-Verify audit. We also selected 2 additional capital project contractors that received significant funding during the fiscal year and had not previously been reviewed in an E-Verify audit.

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 2017 to June 2018. We then selected a random sample of the contractor and subcontractor employees and requested the E-Verify documentation for those employees.

Our review concluded that the selected contractors and subcontractors are generally 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, 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 August 2018.



## FINDINGS AND ANALYSIS

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

Auditors selected five contractors with City services contracts during FY 2017/18 for E-Verify employment eligibility testing. Additionally, four of the selected contractors used subcontractors to perform work on their applicable contracts, so we randomly selected seven subcontractors for testing.

For a random selection of their applicable employees, we asked these contractors and subcontractors to provide 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.

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**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 <sup>1</sup>    | 5           | 15                                     | 14                        | 9   |
| Subcontractors <sup>2</sup> | 7           | 15                                     | 15                        | 10  |
| <b>Total</b>                | <b>12</b>   | <b>30</b>                              | <b>29</b>                 | <b>19</b>                                 |

<sup>1</sup> One sampled employee is the company owner's child and the company did not perform E-Verification for this employee.

<sup>2</sup> Four of the five contractors used 34 subcontractors in total; auditors selected seven subcontractors for testing.

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

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As illustrated in Table 1, each contractor and subcontractor provided the required E-Verify documentation for the selected employees. However, for the selected employees, one contractor and two subcontractors provided E-Verify documentation dated after our audit request rather than within 3 days of the original employment dates.

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.

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**Recommendation:**

The Purchasing Department should continue to advise Contract Administrators to emphasize the E-Verify contract requirements to contractors at the start of each contract and that the City audits for compliance with these requirements.

## MANAGEMENT ACTION PLAN

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- 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 continue to advise Contract Administrators to emphasize the E-Verify contract requirements to contractors at the start of each contract and that the City audits for compliance with these requirements.

**MANAGEMENT RESPONSE:** Agree

**PROPOSED RESOLUTION:** Purchasing will continue to advise the Contract Administrators of their responsibility to remind contractors of the E-Verify requirements that were established in each contract. Enhancing a timeliness to this task, Purchasing will incorporate the Contract Administrator reminder into the internal contract award notification and the internal annual contract renewal notice. These two notifications are already distributed to Contract Administrators at the start of each contract and will ensure the E-Verify advisement is completed.

**RESPONSIBLE PARTY:** Robert Schoepe, Purchasing Director

**COMPLETED BY:** 10/31/2018

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### **City Auditor's Office**

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The City Auditor's Office conducts audits to promote operational efficiency, effectiveness, accountability and integrity.

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