



CITY AUDITOR'S OFFICE

# E-Verify Compliance During FY 2016/17

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February 16, 2018

AUDIT REPORT NO. 1802

## **CITY COUNCIL**

Mayor W.J. "Jim" Lane

Suzanne Klapp

Vice Mayor Virginia Korte

Kathy Littlefield

Linda Milhaven

Guy Phillips

David N. Smith





February 16, 2018

Honorable Mayor and Members of the City Council:

Enclosed is the audit report for *E-Verify Compliance During FY 2016/17*, which was included on the Council-approved FY 2017/18 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 six applicable City contractors and five 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".

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

Audit Team:

Cathleen Davis, CFE, CIA – Senior Auditor  
Brad Hubert, CIA – Senior Auditor



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# AUDIT HIGHLIGHTS

## E-Verify Compliance During FY 2016/17

February 16, 2018

Audit Report No. 1802

### WHY WE DID THIS AUDIT

This audit was included on the Council-approved FY 2017/18 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 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 comply with required use of the E-Verify employment eligibility program.

### City Auditor's Office

City Auditor 480 312-7867  
Integrity Line 480 312-8348  
[www.ScottsdaleAZ.gov](http://www.ScottsdaleAZ.gov)

### WHAT WE FOUND

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

Auditors selected six contractors with City services contracts for testing. Three of the selected contractors used subcontractors to perform work on their applicable contracts. The contractors and subcontractors provided the required documentation for the employees selected. However, for the selected employees, one contractor and one subcontractor provided E-Verify documentation dated after our audit request.

### WHAT WE RECOMMEND

We did not make any recommendations.

### MANAGEMENT RESPONSE

The department acknowledged receiving the report.



## 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>

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).

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

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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 2016/17* was included on the City Council-approved fiscal year (FY) 2017/18 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 compliance.

For this audit, we:

- 1) Selected service contracts that had payments between July 1, 2016, and June 30, 2017, 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 §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 Quick Reference Guide for Employers* and the U.S. Department of Labor's *Recordkeeping Requirements under the Fair Labor Standards Act (FLSA)*. We also reviewed the results of previous City Auditor E-Verify audit reports including Audit Report No. 1702, which is the most recent.

Using a report of vendor payments in FY 2016/17, we identified service contract expenditures and randomly selected 3 service contractors to review. From Capital Projects Management, we obtained a list of the 11 contractors that worked on Arizona Department of Transportation (ADOT) grant funded projects in FY 2016/17 and selected 3 additional contractors.

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 2016 to December 2017, 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.

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

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 December 2017 to February 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 six contractors with City services contracts during FY 2016/17 for E-Verify employment eligibility testing. Additionally, three of the selected contractors used subcontractors to perform work on their applicable contracts, so we randomly selected five 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>	6	18	18	16
Subcontractors <sup>2</sup>	5	22	22	17
<b>Total</b>	<b>11</b>	<b>40</b>	<b>40</b>	<b>33</b>

<sup>1</sup> One of the selected contractors only employs immediate family members and includes no non-family owners or employees. This contractor's employees were not included in the sample.

<sup>2</sup> Three of the six contractors used 37 subcontractors in total; auditors selected five 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 one subcontractor provided E-Verify documentation dated after our audit request rather than at the original time of hire.

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:

None.



## MANAGEMENT RESPONSE

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### **PURCHASING**

9191 E. San Salvador  
Scottsdale, AZ 85258

February 14, 2018

To: Sharron Walker, City Auditor  
From: Brent Stockwell, Acting Purchasing Director  
Subject: Audit No. 1802 – E-Verify Compliance During FY 2016/17

Thank you for conducting this audit. Management has reviewed the audit and agrees with the conclusion that the selected City contractors and subcontractors are generally using the E-Verify program for their workers on City of Scottsdale projects.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Stockwell".

Brent Stockwell

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**City Auditor's Office**

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Vice Mayor Virginia Korte  
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Sharron Walker, City Auditor

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