



CITY AUDITOR'S OFFICE

E-Verify Compliance of City Contractors — October 2008 through June 2010

APRIL 6, 2011

AUDIT REPORT NO. 1115

CITY COUNCIL

Mayor W.J. "Jim" Lane

Lisa Borowsky

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Vice Mayor Robert Littlefield

Ron McCullagh

Linda Milhaven

Dennis Robbins



April 6, 2011

Honorable Mayor and Members of the City Council:

This audit of the *E-Verify Compliance of City Contractors — October 2008 through June 2010* found that most of the randomly selected contractors and subcontractors providing services to the City were using the required E-Verify Program. One subcontractor did not respond with E-Verify documentation and was terminated from the City contract.

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. To facilitate an efficient random verification process, the City needs to better track its services contracts.

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

Sincerely,

Sharron Walker, CPA, CFE
City Auditor

Audit Team:

Joyce Gilbride, Assistant City Auditor
Kyla Anderson, Senior Auditor

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EXECUTIVE SUMMARY

This audit of *E-Verify Compliance*, included on the Council-approved FY 2010/11 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 applied to City contracts after September 30, 2008.

Of the 362 City vendors identified as potential service contractors, we randomly selected 30 to test. Several of these were not subject to the requirement due to having a contract prior to October 1, 2008, not having a contract, or not providing services. There were 17 applicable contractors and 28 subcontractors included in the review. All but one provided the necessary E-Verify documentation for their employees among the 44 selected for verification. The non-responding subcontractor was terminated from the City of Scottsdale contract.

The Purchasing department does not maintain a summary record of City service contracts to facilitate the City's compliance with this state requirement. As a result, a relatively small number of contractors were tested over a period of several months. Tracking applicable service contracts would greatly improve the efficiency of conducting the required compliance verifications.

BACKGROUND

The City is required by state law to conduct random verification of the employment records of its services contractors to ensure compliance with federal immigration laws and 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

Further, the state law provides that every government entity that enters into a services 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 (see page 4).

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)

The City Auditor’s office developed procedures to test E-Verify compliance and applied them to two City contracts that were being audited in February and March 2010. Subsequently, the Audit Committee and City Council approved this audit of E-Verify Compliance for the FY 2010/11 Audit Plan.

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 The “E-Verify Program” means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

¹ The federal E-Verify Program is an employment eligibility verification program jointly administered by the US 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 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 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.

The City will not consider the Contractor or any of its subcontractors in material breach of its Contract if the Contractor and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 U.S.C.A. §1324 (a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. Services are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. 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.

Source: excerpt from standard terms and conditions in City contract.

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 had payments between October 1, 2008 and June 25, 2010, and those contractors' and subcontractors' employees working on the selected City contracts who were hired after September 30, 2008, as specified in A.R.S. §41-4401(A).

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 §274A 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* (dated March 2009), *Memorandum of Understanding* and *E-Verify Quick Reference Guide for Designated Agents*, (dated March 2009), and the U.S. Department of Justice, Civil Rights Division, publication: *E-Verify Employer Do's and Don'ts* (dated September 28, 2009).

The City does not maintain a record of its service contracts so potential contracts must be identified through vendor payment records. From the Purchasing department, auditors obtained a listing of potential service contractors that had been developed from vendor payments recorded in certain accounting codes.³ To provide assurance that a complete population was identified, auditors selected vendor payments for the period of October 1, 2008, through June 25, 2010, with additional accounting codes likely to include service contracts. Auditors excluded vendors that did not appear applicable, such as payments to individuals, professional associations, and state or local governments. These procedures resulted in a listing of 362 potential service contractors. Other factors affecting applicability, such as the existence of a contract, were not readily apparent and were identified after sample selection. Of the 30 vendors randomly selected for testing, auditors determined that 3 were not service contracts, 5 contracts predated the statutory requirement, 5 were check requisition-type payments rather than service contracts, and 17 were service contracts.

The City receives certified payroll records from some of its contractors under requirements of the federal Davis Bacon Act; however, none of the selected contractors were among those.⁴ We did not audit the original payroll records of each contractor and subcontractor, several of which were maintained at out-of-state corporate offices. Instead, we requested each selected contractor to submit lists of the contractor and subcontractor employees working on City contracts, along with their hire dates. We then selected a number of the

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

⁴ The Davis-Bacon Act, which applies to City contracts that are partly or wholly funded with federal funds, requires payment of prevailing wage rates to certain laborers. Federal law requires those contractors to submit certified payroll records to demonstrate compliance in paying prevailing wage rates.

employees hired on or after October 1, 2008, and requested the E-Verify documentation that each company obtained at the time of hire.

Audit conclusions are summarized in the *Findings and Analysis* section of this report.

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 2010 through February 2011, with Joyce Gilbride and Kyla Anderson conducting the work.

FINDINGS AND ANALYSIS

1. Most of the randomly selected contractors and their subcontractors used the E-Verify Program for workers on City of Scottsdale contracts.

Of the 362 potential service contractors identified, auditors randomly selected 30 to test employment eligibility verification compliance. Thirteen of the selected vendors were not applicable for testing:

- Three selected vendors did not provide services;
- Five vendors were paid through a check requisition and, therefore, did not have a contract;⁵ and
- Five vendors were excluded because their contracts were entered into before October 1, 2008, and therefore did not include this requirement.

The remaining 17 service contractors and their 28 identified subcontractors provided information regarding employees they hired after September 30, 2008, to work on the applicable City contracts. Seven of the 17 contractors provided written statements that they had hired no employees for the applicable City of Scottsdale contract after September 30, 2008.

Auditors then requested the contractors to provide E-Verify documentation for selected employees of the contractors and their subcontractors. The E-Verify Program does not allow the system to be used to re-verify employment authorization, so contractors 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.

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

Service Contractor or Subcontractors	Number	Employees Hired after 9/30/08	Selected for Testing	Confirmed Use of E-Verify
Contractors	7	0	0	0
Contractors	10	36	31	31
Subcontractors	28	111	13	12
Total	45	147	44	43

SOURCE: Auditor analysis of selected service contractors' and subcontractors' I-9 forms and E-Verify documentation.

As illustrated in Table 1, all contractors provided the required E-Verify documentation for the employees we selected. In addition, two contractors voluntarily provided proof of their use of E-Verify for employees hired prior to October 1, 2008.

⁵ Check requisitions are allowed to be used to make certain types of payments without a formal contract. These five vendor payments were for training, Property Owners Association (POA) assessments, streetlight operation and maintenance billings, and a Downtown Redevelopment project.

Twelve of the 13 subcontractors provided E-Verify documentation for the selected employees, although 4 of these were dated after we requested the documentation. One of the 13 selected subcontractors did not respond to multiple requests. The City notified its contractor to obtain the requested E-Verify documentation as required by terms of the contract or terminate this subcontractor's work on the City of Scottsdale project. Subsequently, the contractor provided a copy of its termination letter to the subcontractor.

Recommendation:

None.

2. A record of City service contracts is not available to facilitate compliance with this state requirement.

Identifying the potential population of service contracts issued after September 30, 2008, is difficult. The Purchasing department does not maintain a listing of all City service contracts. The limited contract information that is available does not designate the type of contract, such as goods or professional services. As a result, a substantial amount of time has been spent by the Purchasing department and auditors in trying to develop a reliable list to allow random sample selection. With only 17 of the 30 selected vendor payments actually being for service contracts, a more reliable method of assuring City compliance is needed.

Recommendation:

The Purchasing Department maintain a complete centralized record of service contracts to facilitate the City's compliance with A.R.S. §41-4401.

ACTION PLAN

2. A record of City service contracts is not available to facilitate compliance with this state requirement.

Recommendations:

The Purchasing Department maintains a complete centralized record of service contracts to facilitate the city's compliance with A.R.S. 41-4401.

MANAGEMENT RESPONSE: Agree

The current process appears to have achieved a very high compliance rate, based on the sample testing. The single vendor (a subcontractor) which did not respond to the City's multiple requests, for compliance verification, was terminated by their general contractor and was no longer allowed to work on the City project.

Driven by multiple motivations to improve in the area of contract identification (by type of contract), Purchasing has initiated processes to improve its ability to identify contracts by multiple categories and will have an improved reporting ability to support this audit function in the future. Additional identification coding was initiated for Smart Stream purchase orders in Nov, 2009 and similarly within our SOLO solicitation tracking software during October, 2010. Both of these improvements enhance our ability to provide more accurate reporting. However, to attempt to create and maintain a complete centralized database of contracts is far beyond our current scope and resources.

PROPOSED RESOLUTION: Purchasing will continue to assist in this compliance audit process and has previously improved its ability to track its contracts, by category type, which will result in an ability to generate a more complete and accurate reporting of contracts which come through the Purchasing award process. There will always be some contracts which Purchasing does not touch and therefore are not archived within the Purchasing records system. A request will be made to Information Technology to begin working on a revised report based on the new category identifiers so it is in place for the next round of compliance auditing.

RESPONSIBLE PARTY: Purchasing management

COMPLETED BY: By May 1, 2011, Purchasing management will request that a revised report be created by Information Technology. The project is subject to prioritization with other requests. Purchasing management anticipates revisions will be complete in time for the next round of compliance auditing.

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