



CITY AUDITOR'S OFFICE

e-Verify Compliance of City Contractors - October 2008 through September 2011

March 8, 2012

AUDIT REPORT NO. 1213

CITY COUNCIL

Mayor W.J. "Jim" Lane
Lisa Borowsky
Suzanne Klapp
Robert Littlefield
Ron McCullagh
Vice Mayor Linda Milhaven
Dennis Robbins



March 8, 2012

Honorable Mayor and Members of the City Council:

This audit of the *e-Verify Compliance of City Contractors — October 2008 through September 2011* was on the Council-approved FY 2011/12 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 40 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 21 selected contractors that were subject to the requirement, one did not provide e-Verify documentation. However, at the time of testing, this small business no longer had a contract with the City.

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 fluid and cursive.

Sharron Walker, CPA, CFE
City Auditor

Audit Team:

Joyce Gilbride, CPA, CIA — Assistant City Auditor
Lisa Gurtler, CPA, CIA — Assistant City Auditor
Kyla Anderson, CIA — Senior Auditor
Joanna Munar, CIA — Senior Auditor

TABLE OF CONTENTS

Executive Summary	1
Background	3
Objectives, Scope, and Methodology.....	5
Findings and Analysis	7
1. City contractors are generally using the e-Verify Program for workers on City of Scottsdale contracts.	7
Management Response	9

EXECUTIVE SUMMARY

This audit of *e-Verify Compliance*, included on the Council-approved FY 2011/12 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 approximately 1,400 City vendors identified as potential service contractors that have not previously been tested, we randomly selected 40 to test. Several of these were not subject to the requirement due to having a contract prior to October 1, 2008, not having a formal contract, or not providing services. Of the 21 selected contractors that were subject to the requirement, none used the services of subcontractors.

Of the 21, one sampled contractor did not provide the necessary e-Verify documentation for its employees. However, at the time of our testing, this small business no longer had an active contract with the City. We advised this business that compliance with the e-Verify requirement will be necessary to be eligible for future service contracts with the City of Scottsdale.

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)

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 Contractor will take appropriate steps to assure that all subcontractors comply with the requirements with 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 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 September 30, 2011, and those contractors' 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 §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* (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).

We reviewed the previous audit results in Audit Report No. 1115, "*E-Verify Compliance of City Contractors – October 2008 through June 2010*," issued on April 6, 2011. Since that time, the Purchasing department has improved its ability to track contracts by type. Purchase orders (PO's) and check requisitions are the two applicable methods to pay for services, so a report has been created to identify payments made through PO's with specific category codes and check requisitions paid from specific accounts.³ Auditors were able to use this report to select the FY 2012 e-Verify audit sample.

Using this report, we selected vendor payments for the period of October 1, 2008, through September 30, 2011, resulting in a listing of approximately 1,400 potential service contractors. Other factors affecting applicability, such as the existence of a contract, were not readily apparent from report data, and were determined after sample selection. Of the 40 vendors randomly selected for testing, auditors determined that 11 contracts predated the statutory requirement, 6 payments were not for service contracts, Purchasing did not retain the contract for one vendor (a \$90 payment), and one vendor was listed twice with different names; the remaining 21 were applicable service contracts.

We did not audit the 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. (None of the 21 applicable contractors used subcontractors.) From the lists, we selected a number of the contractor employees hired on or after October 1, 2008, and requested the e-Verify documentation that each company

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

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 October 2011 through February 2012, with Kyla Anderson, Joyce Gilbride, Lisa Gurtler, and Joanna Munar conducting the work.

FINDINGS AND ANALYSIS

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

Of the approximately 1,400 potential service contractors identified, auditors randomly selected 40 to test employment eligibility verification and compliance. Nineteen of the selected vendors were not applicable for testing:

- Eleven vendors were excluded because their contracts predated the state requirement
- Payments to six vendors were not for service contracts
- Purchasing did not retain the contract for one vendor (a \$90 payment)
- One vendor was listed with two different names

Auditors requested the 21 applicable contractors to provide a list of contractor and subcontractor employees providing the contracted City services who were hired after September 30, 2008.

None of the 21 selected contractors reported using subcontractors on the applicable City service contracts. Ten of the 21 contractors provided employee lists; ten submitted written statements that they had no employees with hire dates after September 30, 2008, for the applicable City of Scottsdale contract, and one contractor did not provide the requested documentation.

The one contractor that did not provide e-Verify documentation, a small business, did not have a current contract at the time of our test. The tested purchase order totaled \$225. We informed this small business that compliance with the e-Verify requirement will be necessary to be eligible for future service contracts with the City of Scottsdale.

The federal e-Verify Program does not allow the system to be used to re-verify employment authorization, so the ten applicable 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.

(Continued on next page)

Table 1. City Service Contractor e-Verify Compliance

Type	Number	Employees Hired after 9/30/08	Employees Selected for Testing	Confirmed Use of e-Verify
Contractor	10	0	0	0
Contractor	10	30	20	20
Contractor	1	Unknown	0	0
Total	21	30	20	20

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

As illustrated in Table 1, all contractors provided e-Verify documentation for the employees we selected for testing. However, the e-Verify documentation for 6 employees from 3 contractors was dated after we made the request.

Recommendation:

None.

MANAGEMENT RESPONSE



Purchasing

9191 E. San Salvador
Scottsdale, AZ 85258

MEMORANDUM

March 8, 2012

To: Sharron Walker, City Auditor
From: Bill Yazel, Purchasing Director
Subject: Audit No. 1213 – e-Verify Compliance of City Contractors

Thank you for conducting this audit. Management has reviewed the audit and agrees with the conclusion that City contractors are generally using the e-Verify Program for workers on City of Scottsdale contracts. Although one minor instance of apparent noncompliance was noted, it required no action as there was no current contract. However, Purchasing did suspend this contractor, for one year, from receiving any business from the City based on their non-responsiveness to the City's request for information.

Bill Yazel

C: Brent Stockwell
C: David Richert

City Auditor's Office

4021 N. 75th St., Suite 105
Scottsdale, Arizona 85251
(480) 312-7756

www.ScottsdaleAZ.gov/departments/City_Auditor

Audit Committee

Councilwoman Suzanne Klapp, Chair
Councilman Robert Littlefield
Vice Mayor Linda Milhaven

City Auditor's Office

Kyla Anderson, Senior Auditor
Joyce Gilbride, Assistant City Auditor
Lisa Gurtler, Assistant City Auditor
Joanna Munar, Senior Auditor
Sharron Walker, City Auditor



The City Auditor's Office provides independent research, analysis, consultation, and educational services to promote operational efficiency, effectiveness, accountability, and integrity in response to City needs.