



CITY AUDITOR'S OFFICE

# E-Verify Compliance During FY 2022/23

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April 29, 2024

AUDIT NO. 2402

**CITY COUNCIL**

Mayor David D. Ortega

Tammy Caputi

Tom Durham

Barry Graham

Betty Janik

Kathy Littlefield

Vice Mayor Solange Whitehead





April 29, 2024

Honorable Mayor and Members of the City Council:

Enclosed is the audit report for *E-Verify Compliance During FY 2022/23*, which was included on the Council-approved FY 2023/24 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 comply with this warranty.

We selected five applicable City contractors and three of their identified subcontractors for testing this year. While the contractors reviewed used the E-Verify system for their employees, two of the subcontractors did not perform E-Verify for the selected employees that worked on city projects. We have notified the contractor of the non-compliance and reminded them of their contractual obligation to assure that all subcontractors comply with the requirements.

If you need additional information or have any questions, please contact me at (480) 312-7851.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lai Cluff".

Lai Cluff, CIA  
Acting City Auditor

Audit Team:

Brad Hubert, CIA, CGAP, CGFM, CRMA – Sr. Auditor  
Mel Merrill, Sr. Auditor



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# AUDIT HIGHLIGHTS

## E-Verify Compliance During FY 2022/23

April 29, 2024

Audit No. 2402

### WHY WE DID THIS AUDIT

This audit was included on the Council-approved FY 2023/24 Audit Plan to confirm whether selected City contractors and their subcontractors use the E-Verify program to verify employment eligibility of those working on city contracts. The City is required by Arizona Revised Statute (A.R.S.) §41-4401 to check contractor and subcontractor compliance.

### BACKGROUND

Since 2010, after the state'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 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

City Auditor 480 312-7851  
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### WHAT WE FOUND

**The selected City contractors were using the E-Verify program for their workers but need to ensure that their subcontractors are also in compliance.**

We selected five contractors and three of their subcontractors for review. Specifically, we found that while the contractors were using the E-Verify program, two of the three subcontractors had not used E-Verify for the employees we reviewed.

**Table 1. E-Verify Compliance for Selected Service Contractors and Subcontractors.**

	No. of Employees Reviewed	Reviewed Employees Hired After 12/31/2007	Confirmed Use of E-Verify
Contractors	19	16	16
Subcontractors	6	5	2
<b>Total</b>	<b>25</b>	<b>21</b>	<b>18</b>

### WHAT WE RECOMMEND

We recommend that the Purchasing Department continue reminding contractors of the requirement to use the E-Verify employment eligibility system and their responsibility to ensure that subcontractors do as well.

### MANAGEMENT RESPONSE

The department responded that they agree and will create a template for staff to remind contractors of the requirement to use the E-Verify system and to ensure that subcontractors do as well.





## BACKGROUND

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Since 2010, after the state'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 was included on the Council-approved FY 2023/24 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. E-Verify is an internet-based application that allows any US employer to electronically confirm the employment eligibility of its newly hired employees. City contracts detail this requirement as shown below.

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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.

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## OBJECTIVES, SCOPE, AND METHODOLOGY

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An audit of *E-Verify Compliance* was included on the City Council-approved fiscal year (FY) 2023/24 Audit Plan. The audit objective was to confirm whether selected City contractors and their subcontractors are using the E-Verify program to verify employment eligibility of those working on city contracts. 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 five service contracts that had payments between July 1, 2022, and June 30, 2023, and
2. Reviewed the contractors' or subcontractors' E-Verify documentation for randomly selected employees working on the selected City of Scottsdale 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, the most recent version. We also reviewed the results of previous City Auditor E-Verify audit reports including Audit No. 2302, which is the most recent.

From approximately 500 vendors paid more than \$10,000 during FY 2022/23 for contracted service, we randomly selected two construction services contracts and three other services contracts for review.

We requested each selected contractor submit a listing of employees and any subcontractors that worked on the specified City contracts between July 2022 and June 2023. From these, we randomly selected employees hired after the law's effective date for verification. For the two contractors that used subcontractors, we also requested employee listings from their three subcontractors and randomly selected employees for review.

Our review concluded that the selected contractors were using the E-Verify program for their workers but need to ensure that their subcontractors are also in compliance.

We conducted this performance audit in accordance with generally accepted government auditing standards. 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 September 2023 to February 2024.



## FINDINGS AND ANALYSIS

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### 1. The selected City contractors were using the E-Verify program for their workers but need to ensure that their subcontractors are also in compliance.

Auditors selected five contractors with City services contracts during FY 2022/23 for E-Verify employment eligibility testing. Two of the five selected contractors used subcontractors to perform work on their applicable contracts, so we randomly selected three of their subcontractors for testing.

For all or a random selection of their applicable employees, we asked these contractors and subcontractors to provide documentation of the E-Verify confirmation performed.

**Table 1. E-Verify Compliance for Selected Service Contractors and Subcontractors.**

	No. of Employees Reviewed	Reviewed Employees Hired After 12/31/2007	Confirmed Use of E-Verify
Contractors	19	16	16
Subcontractors	6	5	2
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SOURCE: Auditor analysis of selected service contractors' and subcontractors' E-Verify documentation.

The selected contractors provided the required E-Verify documentation for the employees we reviewed. However, two subcontractors selected for review had not used the E-Verify system for one or more employees.

- One subcontractor with one employee subject to the Arizona E-Verify requirements stated that they did not start using the E-Verify system until 2020 and therefore had not verified this employee hired in 2010. We confirmed that the subcontractor enrolled with the E-Verify system in 2020. However, according to E-Verify system documentation, employers may not submit cases for employees hired before their program enrollment date.
- Another subcontractor stated that they had reviewed the I-9 documentation for the two employees that worked on city projects, but their payroll processor had not run them through the E-Verify system when they were hired. They reported that, as of September 2023, their new payroll processor is using E-Verify as part of their new employee enrollment.

As per the City contract, “the Contractor will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program.”

These two contracts have since been completed, but because these contractors also work on other city projects, they have been reminded that not complying with the E-Verify

requirement may subject a contractor or subcontractor to penalties up to and including termination for breach of contract.

**Recommendation:**

The Purchasing Department should continue reminding contractors of the requirement to use the E-Verify employment eligibility system and their responsibility to ensure that subcontractors do as well.

## MANAGEMENT ACTION PLAN

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1. The selected City contractors are using the E-Verify program for their workers but need to ensure that their subcontractors are also in compliance.

### Recommendation:

1.1 The Purchasing Department should continue reminding contractors of the requirement to use the E-Verify employment eligibility system and their responsibility to ensure that subcontractors do as well.

Priority	Management Response and Proposed Resolution		
Med	<p>Agree</p> <p>The Purchasing Department will create a template for staff to use at renewal time to remind contractors of the requirement to use the E-Verify employment eligibility system and their responsibility to ensure that subcontractors do as well.</p>		
<table border="0" style="width: 100%;"> <tr> <td data-bbox="191 1056 885 1182"> <b>Responsible Party:</b>                      Jenn Myers                 </td> <td data-bbox="885 1056 1469 1182"> <b>Est. Completion Date:</b>                      June 30, 2024                 </td> </tr> </table>		<b>Responsible Party:</b> Jenn Myers	<b>Est. Completion Date:</b> June 30, 2024
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The City Auditor's Office conducts audits to promote operational efficiency, effectiveness, accountability, and integrity in City Operations.