



CITY AUDITOR'S OFFICE

E-Verify Compliance During FY 2021/22

March 10, 2023

AUDIT NO. 2302

CITY COUNCIL

Mayor David D. Ortega

Tammy Caputi

Tom Durham

Barry Graham

Betty Janik

Vice Mayor Kathy Littlefield

Solange Whitehead



March 10, 2023

Honorable Mayor and Members of the City Council:

Enclosed is the audit report for *E-Verify Compliance During FY 2021/22*, which was included on the Council-approved FY 2022/23 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 two of their identified subcontractors for testing this year. One contractor and one subcontractor did not provide the required E-Verify documentation for one of their employees selected for testing. However, the tested contractors and subcontractors are generally complying with the requirement.

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
Travis Attkisson – Sr. Auditor

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AUDIT HIGHLIGHTS

E-Verify Compliance During FY 2021/22

March 7, 2023

Audit No. 2302

WHY WE DID THIS AUDIT

This audit was included on the Council-approved FY 2022/23 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 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

Acting City Auditor 480 312-7851
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WHAT WE FOUND

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 and two subcontractors for testing. Specifically, we found:

- The five selected contractors used E-Verify for the majority of their employees although one contractor could not provide the documentation for one employee who no longer works for the company. Another contractor provided verifications for all requested employees, but one form was dated after we contacted them for the audit.
- One selected subcontractor provided E-Verify documentation for all but one employee. The subcontractor stated that they were using manual processes at the time and were unable to find the document showing that the E-Verify system was used for that employee. They have since switched to a computer-based system and provided documentation for the other two employees that we selected.

WHAT WE RECOMMEND

We recommend that the Purchasing Department continue reminding contractors of the requirement to use the E-Verify employment eligibility system.

MANAGEMENT RESPONSE

The Purchasing Director responded that he will continue communicating the E-Verify requirements and coordinate with the applicable contract administrators to fulfill the recommendation.

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 vendors’ compliance with the required use of the federal E-Verify system. This audit was included on the Council-approved FY 2022/23 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, 2007.¹

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).²

(continued on next page)

¹ E-Verify is an internet-based program that allows any US employer to electronically confirm the employment eligibility of its newly hired employees.

² 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.

City of Scottsdale Standard Contract Terms

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.

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

OBJECTIVES, SCOPE, AND METHODOLOGY

An audit of *E-Verify Compliance During FY 2021/22* was included on the City Council-approved fiscal year (FY) 2022/23 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, 2021, and June 30, 2022, 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. 2202, which is the most recent.

From approximately 300 vendors paid more than \$10,000 during FY 2021/22 for service contracts, we judgmentally selected two CPM contractors and three other vendors that had not been previously reviewed for E-Verify compliance. Of these, two subcontractors were also included in the review.

We did not audit all original payroll records of each contractor or subcontractor. Instead, we requested each selected contractor to submit lists of contractor employees and any subcontractors working on the specified City contracts between July 2021 and June 2022. We randomly selected two subcontractors from the one selected contractor that used subcontractors. We also requested these subcontractors to provide a list of their employees working on the specified City contracts between July 2021 and June 2022. We then selected all or a random sample of the contractor and subcontractor employees reported as being hired on or after the law's effective date and requested the E-Verify documentation for those employees.

Our review concluded that the selected contractors and subcontractors are generally now 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. 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 August 2022 to February 2023.

FINDINGS AND ANALYSIS

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

Auditors selected five contractors with City services contracts during FY 2021/22 for E-Verify employment eligibility testing. One of the five selected contractors used subcontractors to perform work on their applicable contracts, so we randomly selected two 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 for the selected employees.

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

	Sample Size	Sampled Employees Hired after 12/31/2007	Confirmed Use of E-Verify	E-Verify Performed Prior to Audit Request
Contractors	5	29	28	27
Subcontractors	2	8	7	7
Total	7	37	35	34

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

As illustrated in Table 1, most of the selected contractors and subcontractors provided the required E-Verify documentation for their selected employees. However, for one employee, one contractor provided E-Verify documentation that was dated after our audit request rather than at the original time of hire.

Further, one contractor and one subcontractor did not provide E-Verify documentation indicating the employment eligibility for one of their selected employees:

- One contractor was not able to provide E-Verify documentation for one of eight selected employees. They stated that at the time of this hire, they were outsourcing the E-Verify process and do not know why the employee was not checked. They also provided information showing that this former employee worked for them for less than four months. They stated that they have since moved the E-Verification process back in-house.
- One subcontractor was unable to provide E-Verify documentation for a selected employee. The subcontractor stated that they used manual documents when the employee was hired in 2019 and are now unable to find the record showing that the E-Verify process was completed. Documentation was available for the other two

sampled employees, who were hired in 2020 and 2021, after the subcontractor had switched to a computer-based system.

Not complying with the E-Verify requirement may subject a contractor or subcontractor to penalties up to and including termination for breach of contract.

Overall, the selected contractors and subcontractors were currently complying with the requirement.

Recommendation:

The Purchasing Department should continue reminding contractors of the requirement to use the E-Verify employment eligibility system.

MANAGEMENT RESPONSE



OFFICE OF THE CITY TREASURER / PURCHASING

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TO: Brad Hubert, Senior Auditor
Lai Cluff, Acting City Auditor

FROM: Robert Schoepe, Purchasing Director
City Treasure's Office: Sonia Andrews

DATE: March 6, 2023

SUBJECT: E-Verify Compliance During FY 2021/22, Audit No. 2302 response

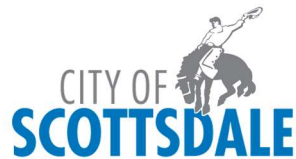
The Purchasing Department will continue communicating the E-Verify requirements in support of these compliance efforts. Coordination with the applicable Contract Administrators will occur to fulfil this recommendation within the current fiscal year.

City Auditor's Office

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