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**INFORMATION BULLETIN NO. 09-02**

**TO:** ADOT Project Managers/Monitors, Resident Engineers  
And Consultant Engineering Firms

**FROM:** Engineering Consultants Section (ECS)

**SUBJECT:** GOVERNMENT PROCUREMENT  
Federal Immigration and Nationality Act

Pursuant to the new ARS 41-4401 & 23-214, ECS procedures are modified to require all prime consultants and subconsultants hiring any new employee to verify the employment eligibility of the employee through the E-verify program (ARS 23-214) prior to entering into contract with ADOT.

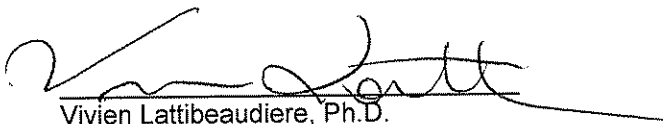
The contracts to be covered include:

- 1) All ECS contracts awarded after October 1, 2008
- 2) All existing contract that that are granted a time extension or renewal after October 1, 2008.

These ECS contracts will include or be modified to include the attached revised Federal Immigration and Nationality Act contract language requiring the consultant and subconsultants to comply with ARS 23-214, (e-verify requirement) and allowing the State the right to inspect records and to take necessary action if violations are encountered.

All primes and subconsultants are required to maintain for inspection at an agreed upon location all immigration and e-verification documents for all employees performing services under ECS contracts. In addition, all primes and subconsultants are to notify their employees of the Department's right to personally inspect and verify their immigration documents if requested.

If you have questions regarding this bulletin or the contract language, please contact the Engineering Consultants Section at (602) 712-7525.



Vivien Lattibeaudiere, Ph.D.  
ECS Director

## Revised Contract Language

### **4.XX Federal Immigration and Nationality Act:**

#### **(A) General:**

The Consultant, including all Subconsultants, shall comply with all federal, state and local immigration laws and regulations, as set forth in Arizona Executive Order 2005-30, relating to the immigration status of their employees who perform services on the contract during the duration of the contract. The State shall retain the right to perform random audits of Consultant and Subconsultant and Subconsultant records or to inspect papers of any employee thereof to ensure compliance.

#### **The Consultant shall include the provisions of Section 4.XX. in all its subcontracts.**

In addition, the Consultant shall require that all Subconsultants comply with the provisions of Section 4.XX, monitor such Subconsultant compliance, and assist the Department in any compliance verification regarding any Subconsultant.

#### **(B) Compliance Requirements for A.R.S. § 41-4401, Government Procurement, E-Verify Requirement; Sanctions:**

By submission of a bid, the Consultant warrants that the Consultant and all proposed Subconsultants are and shall remain in compliance with:

- (1) All federal, state and local immigration laws and regulations relating to the immigration status of their employees who perform services on the contract, and
- (2) A.R.S. Section 23-214, Subsection A (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.").

A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the Consultant and Subconsultants are subject to sanctions specified in Section 4.XX.

Failure to comply with a State audit process to randomly verify the employment records of Consultant and Subconsultant shall be deemed a material breach of the contract, and the Consultant and Subconsultants are subject to sanctions specified in Section 4.XX.

#### **(C) Compliance Verification:**

The State may, at its sole discretion, require evidence of compliance from the Consultant or Subconsultant.

Should the State request evidence of compliance, the Consultant or shall complete and return the State Consultant Employment Record Verification Form and Employee Verification Worksheet, provided by the Department, no later than 21 days from receipt of the request for such information.

Listing of the compliance verification procedure specified above does not preclude the Department from utilizing other means to determine compliance.

The State retains the legal right to inspect the papers of any employee who works on the contract to ensure that the Consultant or Subconsultant is complying with the warranty specified in Section 4.XX.

#### **(D) Sanctions for Non-Compliance:**

For purposes of this paragraph, non-compliance refers to either the Consultant's or Subconsultant's failure to follow immigration laws or to the Consultant's failure to provide records when requested. Failure to comply with the immigration laws or to submit proof of compliance constitutes a material breach of contract. At a minimum, the Department will reduce the Consultant's compensation by \$10,000 for the initial instance of non-compliance by the Consultant or a Subconsultant. If the same Consultant or Subconsultant is in non-compliance within two years

from the initial non-compliance, the Consultant's compensation will be reduced by a minimum of \$50,000 for each instance of non-compliance. The third instance by the same Consultant or Subconsultant within a two-year period may result, in addition to the minimum \$50,000 reduction in compensation, in removal of the offending Consultant or Subconsultant, suspension of work in whole or in part or, in the case of a third violation by the Consultant, termination of the contract for default.

In addition, the Department may debar a Consultant or Subconsultant who is in non-compliance three times within a two-year period for up to one year. For purposes of considering debarment: (1) non-compliance by a Subconsultant does not count as a violation by the Consultant, and (2) the Department will count instances of non-compliance on other Department contracts.

The sanctions described herein are the minimum sanctions; in case of major violations the Department reserves the right to impose any sanctions up to and including termination and debarment, regardless of the number of instances of non-compliance.

Any delay resulting from a compliance verification or a sanction under this subsection is a non-excusable delay. The Consultant is not entitled to any compensation or extension of time for any delays or additional costs resulting from a compliance verification or a sanction under Section 4.XX.

An example of the minimum sanctions under this subsection is presented in the following table:

Offense by:			<b>Minimum Reduction in Compensation</b>
Consultant	Subconsultant A	Subconsultant B	
First			\$10,000
	First		\$10,000
	Second		\$50,000
		First	\$10,000
	Third		\$50,000 *

\* May, in addition, result in removal and debarment of the Subconsultant.

## Revised Contract Language

### 4.30 SUBCONTRACTS

The CONSULTANT agrees to insert in all subcontracts the clauses hereof entitled "Civil Rights," "Affirmative Action," "Ownership of Documents," "Patents and Copyrights", "Anti Lobbying and Disclosure," "Retention of Records", and "Federal Immigration and Nationality Act." Consultant further agrees to insert in any subcontract exceeding \$100,000 the clause hereof entitled "Environmental Protection."