

County Attorney's Comment

Date: March 11, 2016
To: Gila County Board of Supervisors
From: Gila County Attorney's Office

ARF 3577 Governor's Office of Highway Safety Contract No. 2016-AL-085 for DUI/Impaired Driving Enforcement Related Equipment.

The County Attorney's Office cannot approve this contract as to form because it fails to comply with two statutes. It has incomplete language on page 16 in the paragraph titled "E-Verify," and mandatory language regarding budgeting for expenses is missing.

1. "E-Verify". The existing paragraph contains the requirement that each party adhere to the e-verify program. There are two statutorily required elements missing. A.R.S. § 41-4401(A) reads, in part:

Every government entity shall require that *every government entity contract include all* of the following provisions: 1. That each contractor and subcontractor warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with section 23-214, subsection A. 2. That a breach of warranty under paragraph 1 shall be deemed a material

breach of the contract that is subject to penalties up to and including termination of the contract. 3. That the government entity retains the legal right to inspect the papers of any contractor or subcontractor employee who works on the contract to ensure that the contractor or subcontractor is complying with the warranty under paragraph 1.

(Emphasis added.)

Section 41-4401 sets forth three provisions that are required to be in every governmental entity contract. Since the contract contains the first requirement, but not the second and third requirements, it doesn't comply with the statute. The county attorney's office must defer to the wishes of the legislature in this binding legislative directive lest the legislative words be void, having no effect.

2. Budget. A.R.S. § 11-952(B) requires: "Any such [IGA] ... shall specify the following: 3. The manner of ... establishing and maintaining a budget for the undertaking." The contract does not have language to comply with this statute.