

H2B Forest Workers Agenda

December 6, 2011; 2:00 p.m. – 4:00 p.m.

Third Floor Conference Rooms: Room 3B

Robert Duncan Building, 333 SW First Avenue, Portland, Oregon

Facilitator: Margaret Petersen

Objectives:

1. Proactive alignment of resources to meet our common purpose in assuring protection of the vulnerable H2B worker group.
2. Review what has been accomplished to date; what has worked and what has not
3. Provide focus and clarity on the critical “next steps”

2:00 Welcome and Introductions

Claire Lavendel

2:10 Reaching common understanding: An update on key items

- Results of the Forest Worker Safety and Health Surveys Carl Wilmsen
- OSHA & DOL enforcement strategies and investigations Jeff Genkos
- Action plan Charles Hill
- Overview of awarded projects Laurie Abernathy
- Evaluation Criteria
- Training Elida Monroe
- E-Verification
- Government Estimates: Research Findings Cassandra Moseley

3:00 Focus on our next steps:

A discussion to identify key actions that strengthen our efforts together

3:45 Recap agreements and next steps

4:00 Adjourn

Phases of Monitoring Activity for H2B Workers

Phase 1: Proactive Management

- Continue to distribute information to all front-line staff to increase awareness.
- Identify full suite of Labor Intensive Service Contracts before field season to post on FS web-site for partners through up-dated spreadsheet. .
- Conduct quarterly and annual reviews and report to Regional Forester (Acquisition Management and Public & Legislative Affairs).
- Develop e-verification and solicitation evaluation guidance
- Brief RLT at Hot Topics during meetings to monitor H2B worker issues in Northwest.
- Update LISC projects through usage of Advance Acquisition Plan.

Phase 2: Monitoring Activities

- **Contracting Officers will:**
- Perform pre-proposal, pre-work, and site inspection
- Ask about contractor's workforce
- Initiate immediate contacts with DOL and OSHA at contract award for field compliance visits
- Conduct field visits on various labor intensive service contract
- Establish "active contract" field visits for awareness and monitoring
- CORs keep Contracting officers aware of new crew employees coming on to work projects.

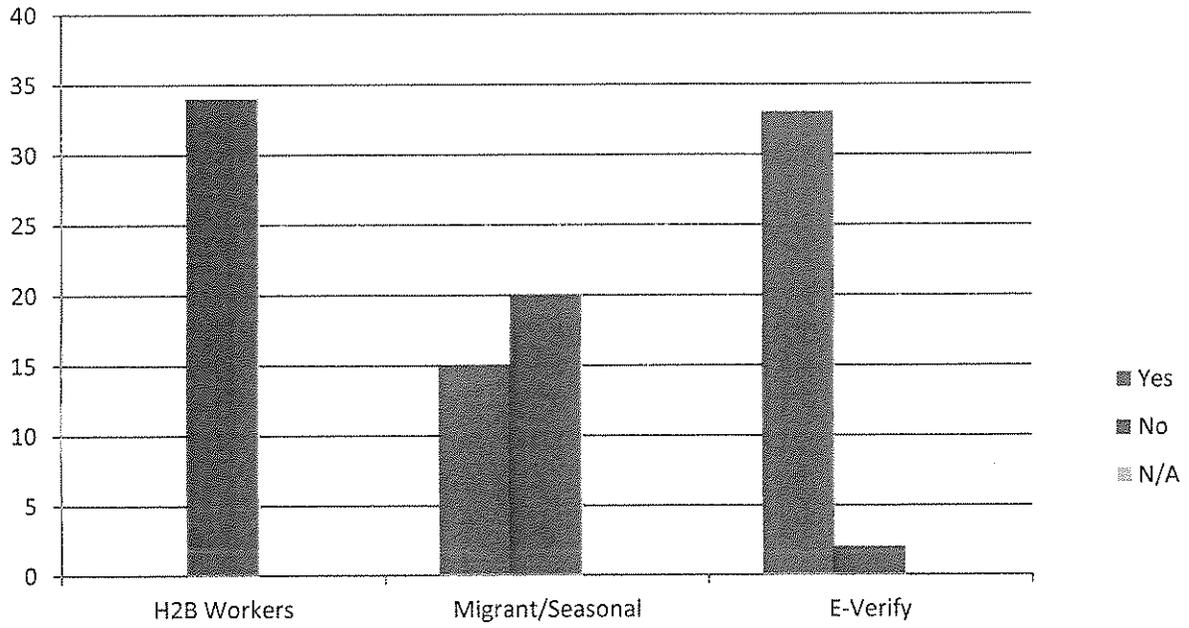
Phase 3: Compliance and enforcement

- Department Of Labor (DOL) enforcement and site visits
- Office of Safety & Health Administration (OSHA)
- Proactive communication with partners to address compliance and enforcement needs with partners.
- CO reports non-compliant e-verification to Homeland Security and Social Security.

Phase 4: Penalties for Infractions/Worker Protection

- Committing substantiated violations can result in ineligibility of award or a denial of future contract award.
- Contractors may be debarred when major violations findings through DOL enforcements.

**SW. OR/W. OR Area FY-11
(Total Projects were 35)**



***N/A - No Data Returned**

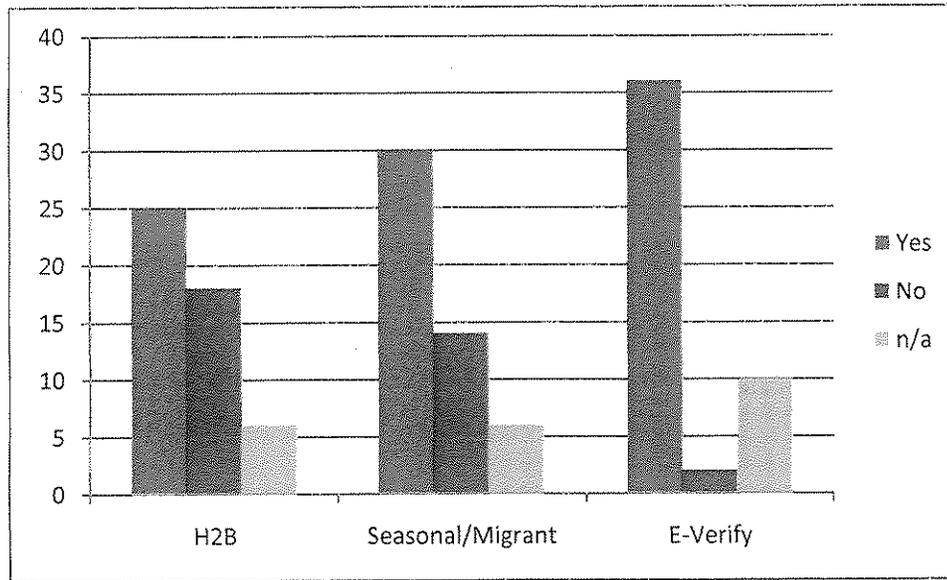
Projects not requiring e-verification (i.e. No employees)

Three questions were asked to contractors by telephone:

1. Were H2B Workers used for LISC Contracts?
2. Were Seasonal/Migrant Workers used for LISC Contracts?
3. Did you E-Verify for LISC Contracts?

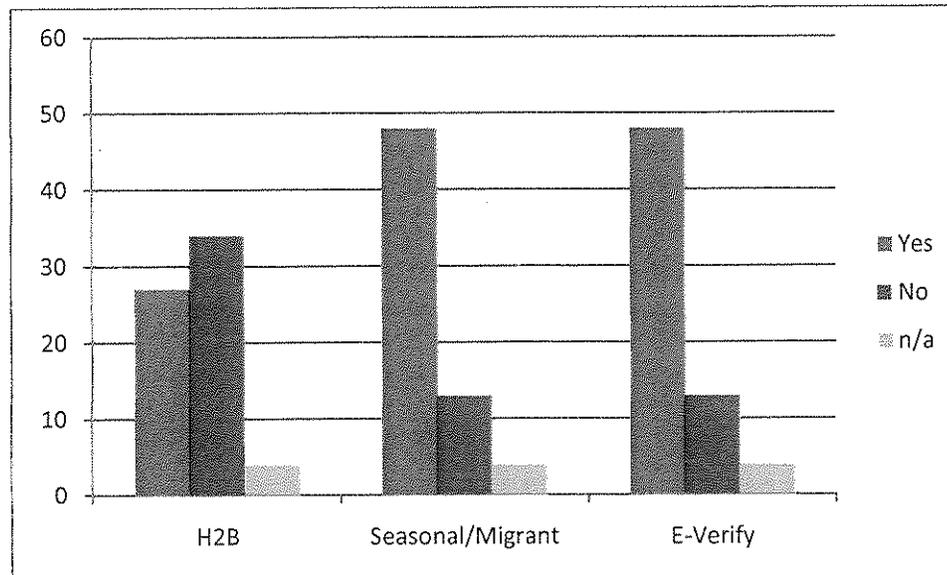
W. OR/SW OR Economic Recovery Projects

4. (Total Projects were 50)



W. OR/SW OR R6 Program of Work

(Total Projects were 65)



*N/A - No Data Returned

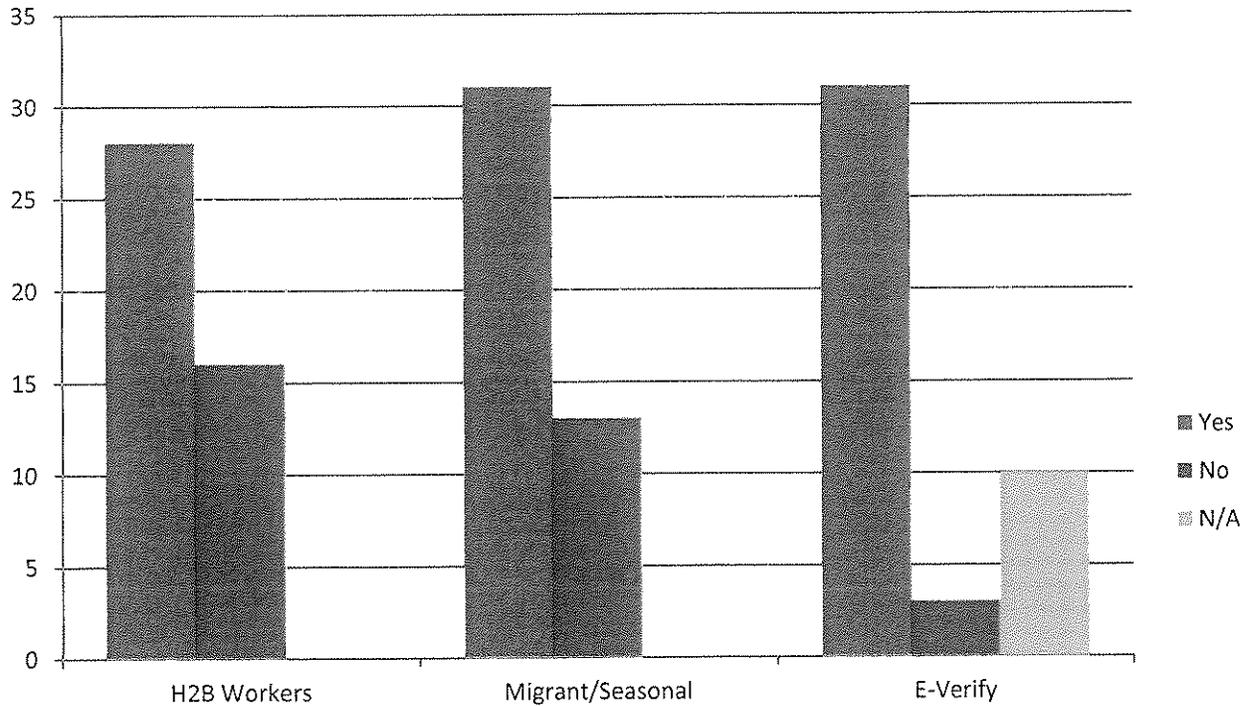
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**Note: Economic Recovery Project above and beyond regular Program of Work.

Blue Mountain Area FY-11 (Total Projects were 44)



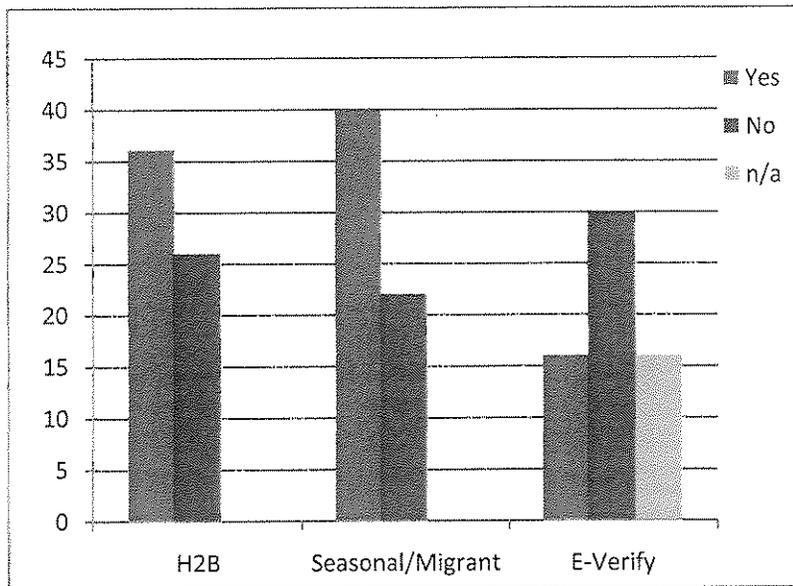
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Projects not requiring e-verification (i.e. No employees)

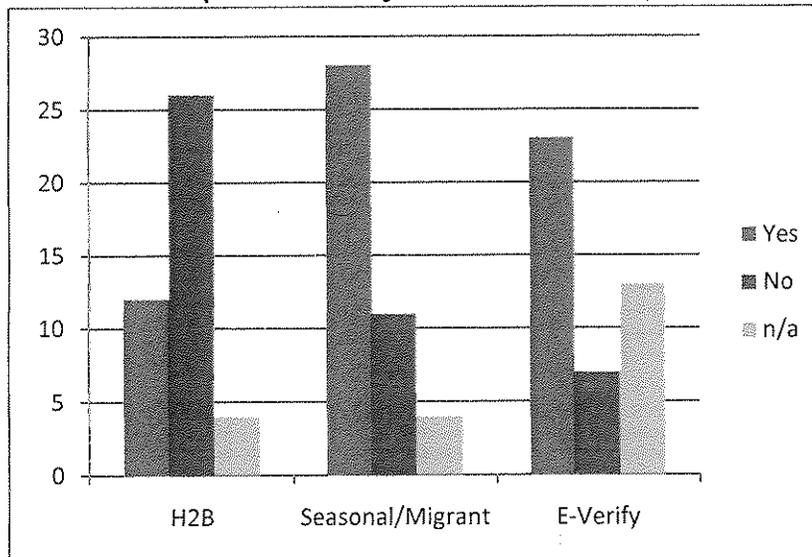
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Blue Mountain Economic Recovery Projects (Total Projects were 62)



Blue Mountain R6 Program of Work (Total Projects were 42)



*N/A - No Data Returned

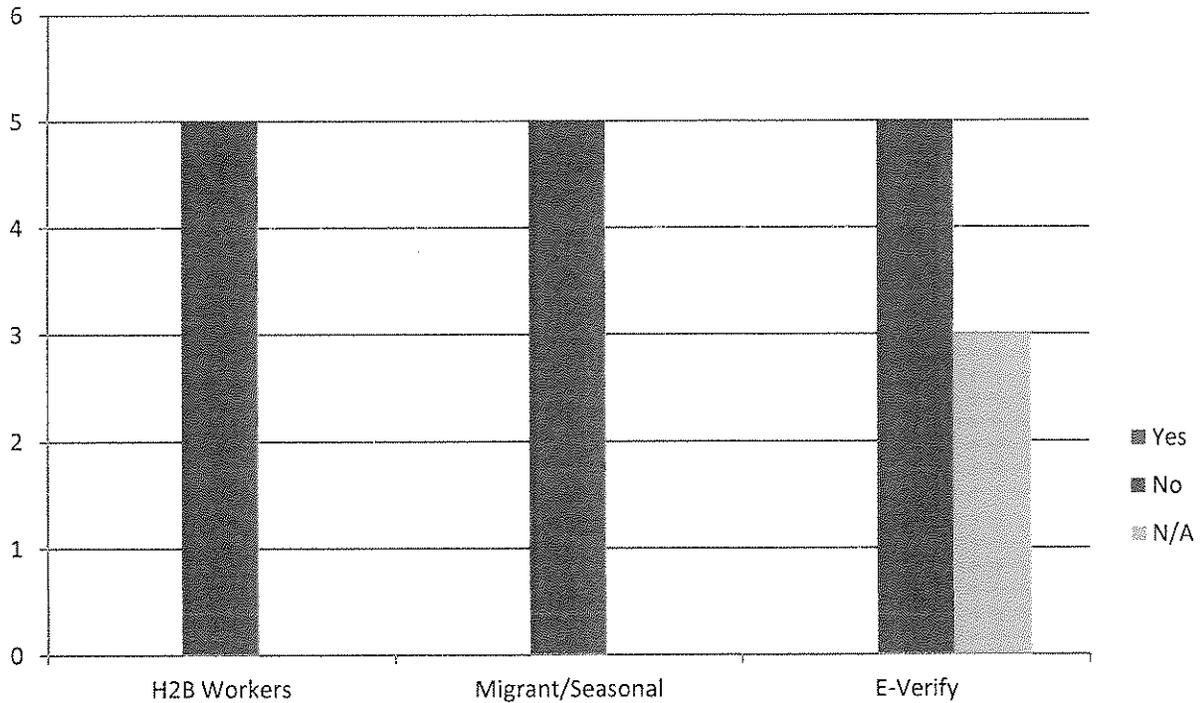
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W. WA/NW OR Area FY-11 (Total Projects were 5)



***N/A - No Data Returned**

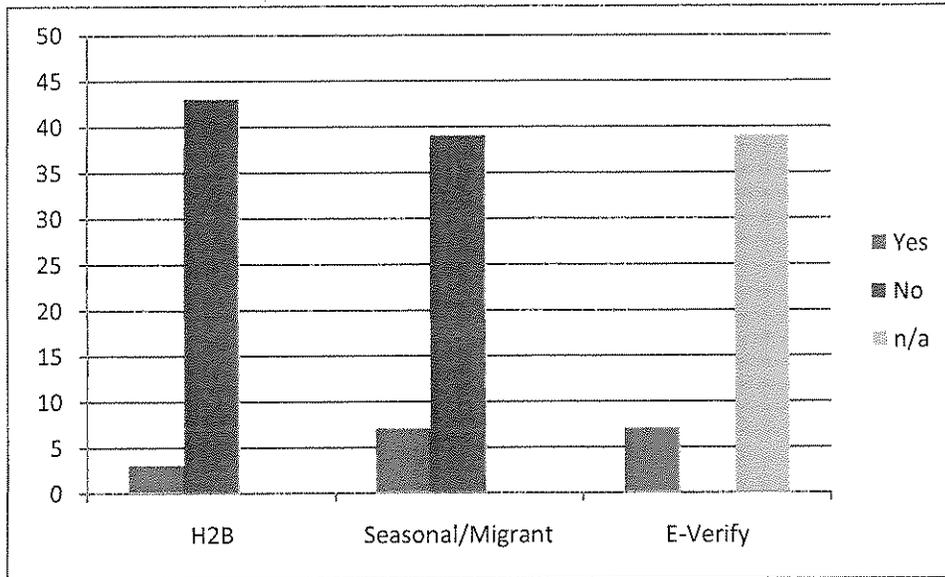
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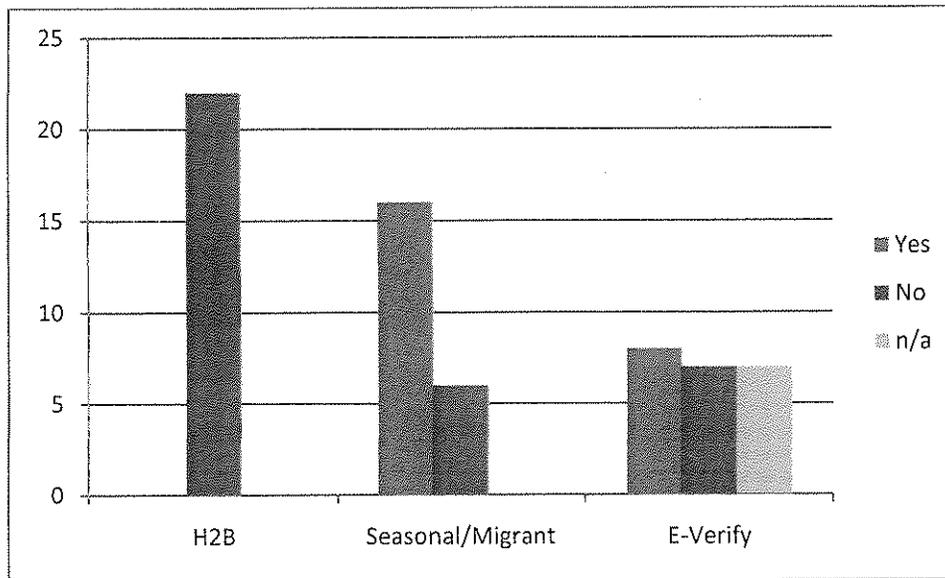
W.WA/NW OR Economic Recovery Projects

4. (Total Projects were 46)



W.WA/NW OR R6 Program of Work

(Total Projects were 22)



*N/A - No Data Returned

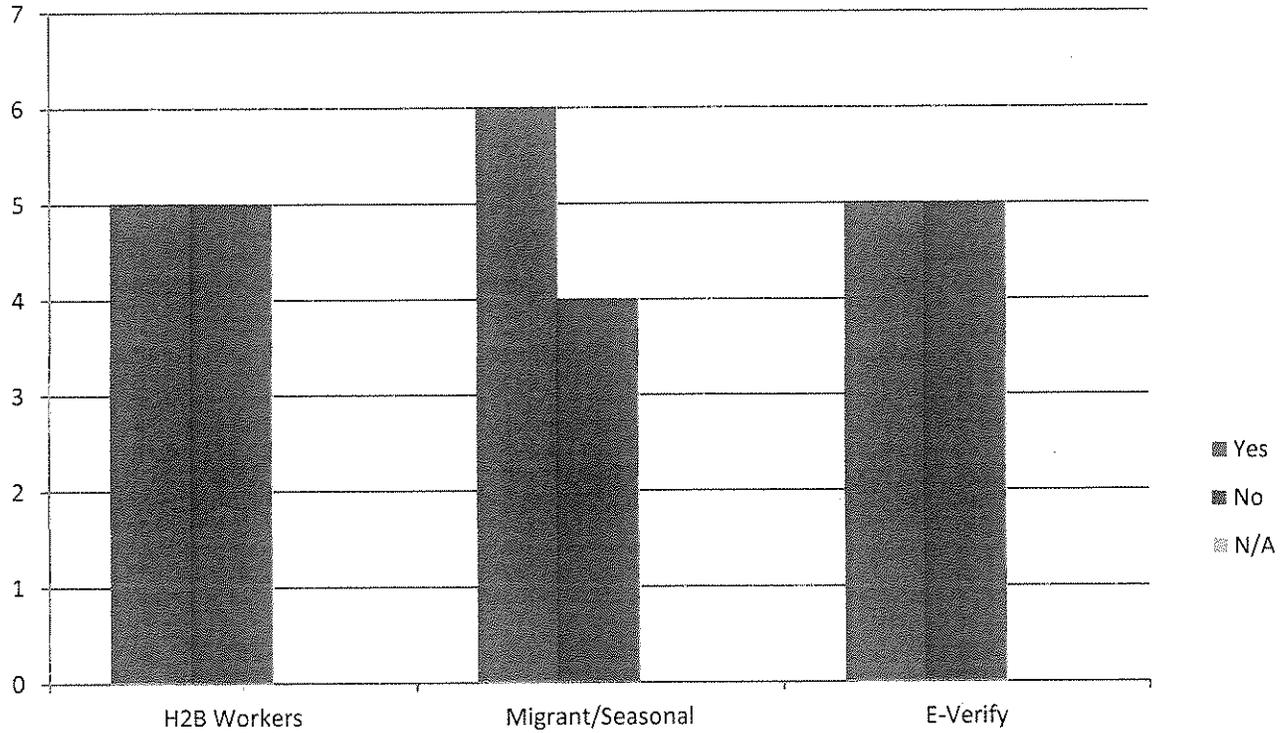
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E. WA Area FY-11 (Total Projects were 10)



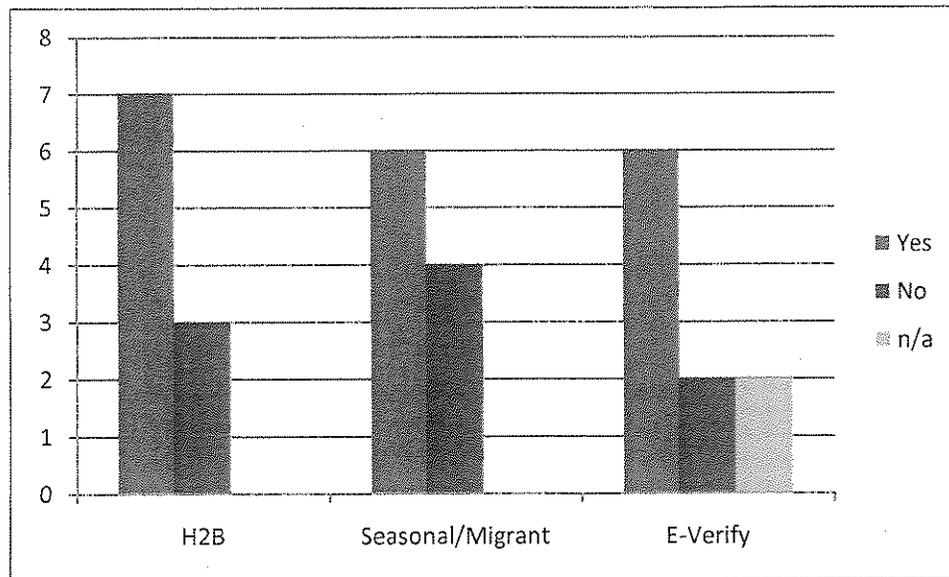
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Projects not requiring e-verification (i.e. No employees)

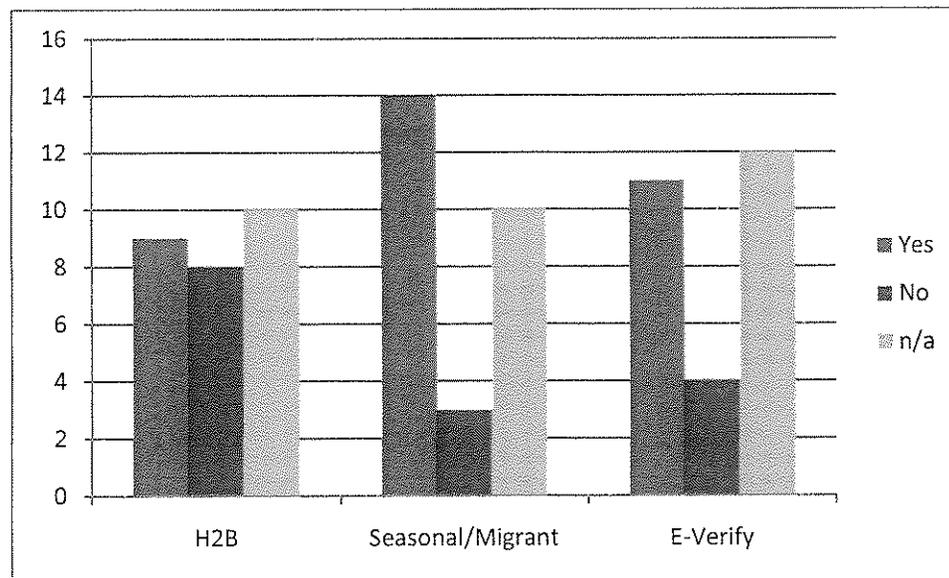
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E. Washington Economic Recovery Projects (Total Projects were 10)



E. Washington R6 Program of Work (Total Projects were 27)



*N/A - No Data Returned

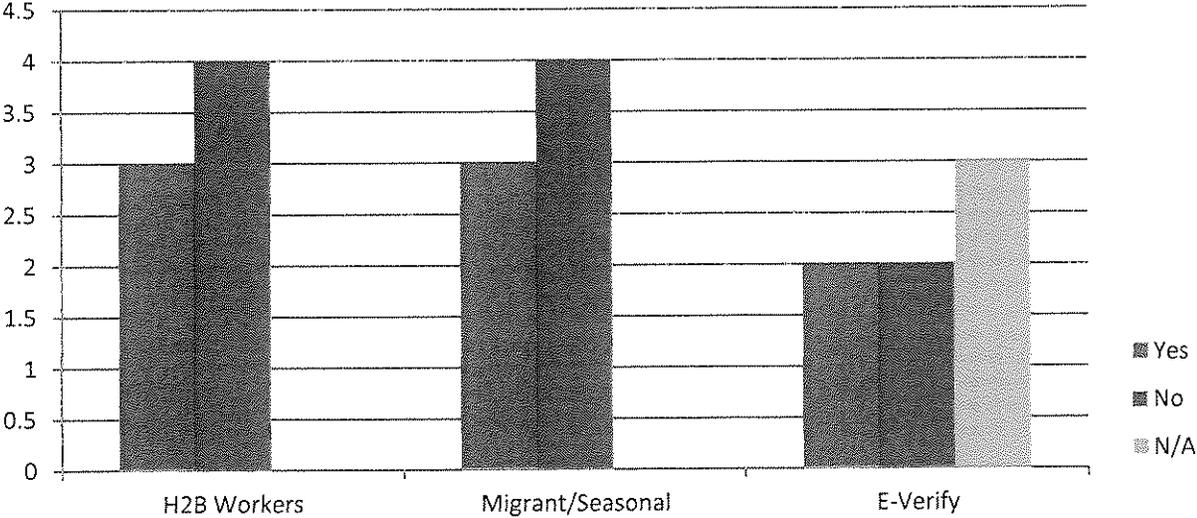
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**Note: Economic Recovery Project above and beyond regular Program of Work.

Central Oregon Area FY-11 (Total Projects were 7)



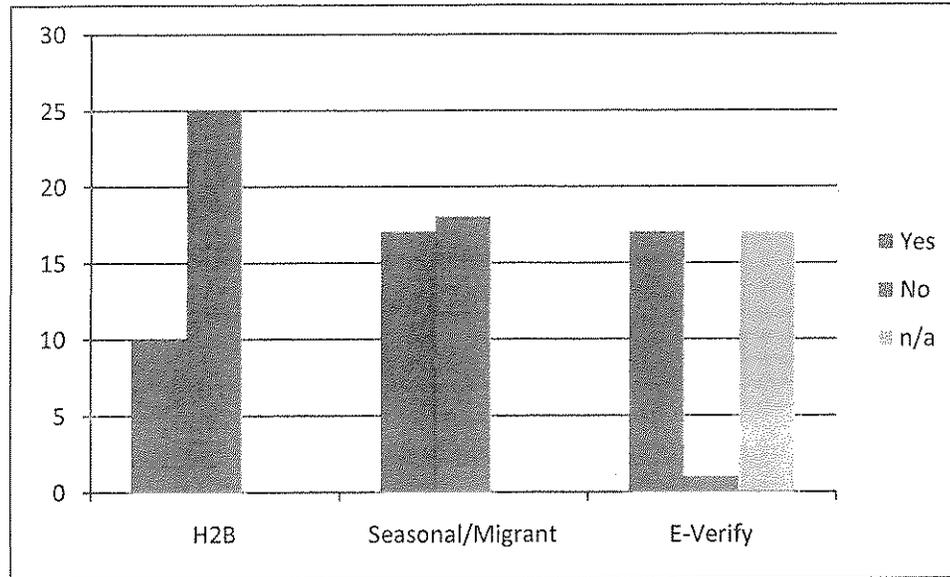
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Projects not requiring e-verification (i.e. No employees)

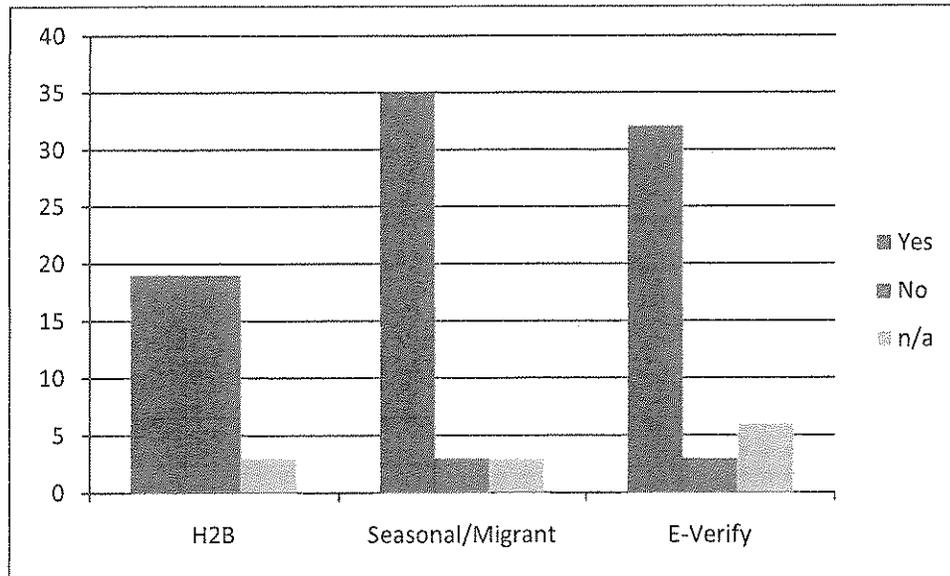
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Central Oregon Economic Recovery Projects (Total Projects were 36)



Central Oregon R6 Program of Work (Total Projects were 41)



*N/A - No Data Returned

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United States
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Forest
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Pacific
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Region

333 SW First Avenue (97204)
PO Box 3623
Portland, OR 97208-3623
503-808-2468

File Code: 6300
Route To:

Date: June 9, 2011

Subject: Solicitations for Labor Intensive Service Contracts Evaluation Requirements
To: AQM Leadership Team

Over the last year, Region 6 has undertaken several actions to ensure that work being performed under Labor Intensive Service Contracts is in compliance with safety and health, wage benefit, and other requirements of Federal and State Law. Individual effort by the AQM Team has demonstrated an improvement in this area and is appreciated.

To further the Region's efforts, an evaluation of worker safety and protection is required for any solicitation for Labor Intensive Service Contracts. The following guidance and direction provides options for meeting this requirement. The attached guidance and samples is provided to accomplish this effort. In crafting the final evaluation criteria and factors or responsibility determination based special standards, Contracting Officers should use the sample guidance to fit the particular procurement, type of proposed contract and method of contracting whether a formal Request for Proposal or a Request for Quotation.

1. Evaluation Criteria and Factors

A formal process with an Evaluation Criteria for worker safety and protections in accordance with FAR 13.106-2(b) and/or 15.101-1.

2. Contractor Responsibility Determination

This may be accomplished by an expanded responsibility check using special standards in accordance to FAR 9.104-2.

As has been emphasized on several occasions over the past year, worker safety and protection is important to all work performed on behalf of the Forest Service. Your continued assistance in emphasizing safety and worker protections related to Labor Intensive Service Contracts and in all other areas of the Forest Service mission is not only appreciated but expected.

Any questions regarding this memorandum should be referred to Elida Monroe, Procurement Analyst, at telephone number 503-808-2373 or email emonroe@fs.fed.us.

/s/ Charles Hill Jr.

CHARLES HILL JR.
Director, Acquisition Management



**GUIDANCE AND OPTIONS
FOR
EVALUATING LABOR INTENSIVE SERVICE CONTRACTS**

Instructions to Offerors/Quoters – to be included in solicitation.

1. SAMPLE TECHNICAL EVALUATION CRITERIA

Worker Safety and Protection. This contract is subject to clauses FSAR 4G52.222-702 Labor Standards for Contracts Involving Migrant and Seasonal Agricultural Workers (DEC 1999), FSAR 4G52.222-704 Personal Protective Equipment (FEB 2007), and FSAR 4G52.222-705 Camping Provisions for Labor Intensive Contracts (FEB 2007). The contractor is responsible to know and comply with all the requirements of these clauses.

We will assess your worker protection practices/internal controls. Describe in detail your internal practices with regard to:

- Provide a copy of your Certificate of Registration (4G52.222.702(c))
- Wage and Payroll Standards (4G52.222-702(d)(2))
- Motor Vehicle Safety (4G52.222-702 (d)(3) – provide copies of proof of required insurances
- Housing (4G52.222-702 (d)(4))
- Worker training in the safe operation and use of equipment (4G52.222-704)
- List the Personal Protective Equipment (PPE) that you provide for employees, at no cost to them. How often is PPE inspected to insure that is not defective or damaged? What steps do you take to insure that your workers use required PPE on the worksite? What steps are taken if an employee is found to be working without required PPE? (4G52.222-704)
- For camp site(s) describe the following (4G52.222-705).
 - The shelter that you provide to protect the employees from the elements.
 - The sanitary facilities for storing food.
 - Steps that will be taken to provide an adequate supply of potable water.
 - The provision of toilet facilities for the capacity of the camp.
 - Provide name of the individual(s) responsible for maintaining first aid supplies and trained to administer first aid.

For information purposes only:

- Indicate whether you will use seasonal, migrant or both in performance of this proposal project:
 - Yes No Seasonal Agricultural Workers(s)
 - Yes No Migrant Agricultural Workers(s)
 - Yes No H2B Workers(s)
- Indicate if you have complied with U.S. Department of Labor and U.S. Department of Homeland Security processes for the H2B worker program.

SAMPLE SPECIAL STANDARD – This is provided as an example for determining whether a prospective contractor is responsible for standards that relate to having the necessary operational controls that relate to Worker Safety and Protection.

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Provide details on your worker protection practices with regard to:

- Wage and Payroll Standards (4G52.222-702(d)(2))
- Motor Vehicle Safety (4G52.222-702 (d)(3))
- Housing (4G52.222-702 (d)(4))
- Worker training in the safe operation and use of equipment (4G52.222-704)
- List the Personal Protective Equipment (PPE) that you provide for employees, at no cost to them. How often is PPE inspected to insure that is not defective or damaged? What steps do you take to insure that your workers use required PPE on the worksite? What steps are taken if an employee is found to be working without required PPE? (4G52.222-704)
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 - The shelter that you provide to protect the employees from the elements.
 - The sanitary facilities for storing food.
 - Steps that will be taken to provide an adequate supply of potable water.
 - The provision of toilet facilities for the capacity of the camp.
 - Provide name of the individual(s) responsible for maintaining first aid supplies and trained to administer first aid.

Provide the following documentation:

- Copy of your Certificate of Registration (4G52.222.702(c))
- Copies of proof of required insurances (4G52.222-702 (d)(3))

RESPONSIBILITY DETERMINATION FOR AWARD

Contractor has all the required certificates and proofs of insurance or is able to obtain them within 10 days of notice of award. Contractor has complied with all aspects of the clauses FSAR 4G52.222-702 Labor Standards for Contracts Involving Migrant and Seasonal Agricultural Workers (DEC 1999), FSAR 4G52.222-704 Personal Protective Equipment (FEB 2007), and FSAR 4G52.222-705 Camping Provisions for Labor Intensive Contracts (FEB 2007) on past contracts within the last three years or has been cited and corrected the problem. Contractor provided information relating to housing (if applicable), safety training, PPE, and camping that complies with all aspects of the above mentioned clauses.



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333 SW First Avenue (97204)
PO Box 3623
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503-808-2468

File Code: 6300

Date: December 2, 2011

Route To:

Subject: E-verification Requirements

To: AQM Leadership Team

Over the last year, Region 6 has taken action to ensure that work being performed on service, construction, and Labor Intensive Service Contracts complies with e-verification, safety and health, wage benefit, and other requirements of Federal and State Law. Individual efforts by the AQM Team have demonstrated an improvement in this area and are appreciated.

To further the Region's efforts, Attachment A outlines the instructions of FAR 22.18 Employment Eligibility Verification prescribed for FAR 52.222-54. Contracting Officers (CO) shall use this clause to fit their particular procurement. E-verification applies to any contract meeting the criteria #1 and #2 as follows:

- 1) The contract action is greater than \$150,000.00
- 2) The contract's performance period for the contract is greater than 120 days.

When FAR Clause 52.222-54 is included in a solicitation the CO, upon award of the subsequent contract, shall request a copy of the contractors "E-Verify Enrollment Confirmation" that the contractor receives from the E-Verify program of the Department of Homeland Security. The E-Verify Enrollment Confirmation is to be provided prior to start of performance of the work or no later than 30 calendar days after contract award. The E-verify clause is one that passes the same responsibility to utilize E-verify to subcontractors. The prime contractor shall also be required to provide "E-Verify Enrollment Confirmation" for any subcontractors.

As has been emphasized on several occasions over the past year, e-verification, worker safety and protection is important to all work performed on behalf of the Forest Service. Your continued assistance in emphasizing these requirements related to contracts and in all areas of the Forest Service mission is not only appreciated but expected.

Any questions regarding this memorandum should be referred to Elida Monroe, Procurement Analyst, at telephone number 503-808-2373 or email emonroe@fs.fed.us.

/s/ Charles Hill Jr.

CHARLES HILL JR.
Director, Acquisition Management

Enclosure

cc: Phillip E Barricklow



**ATTACHMENT A
E-VERIFICATION CLAUSES**

FAR 22.18 Employment Eligibility Verification

FAR Clause 52.222-54 Employment Eligibility Verification.

As prescribed in 22.1803, Insert the following clause:

EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)

(a) *Definitions.* As used in this clause—

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the

commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803.

An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

“Subcontract” means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

“United States”, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.*

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts.* The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for—

(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.