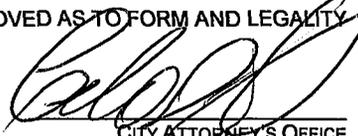


INTRODUCED BY COUNCILMEMBER 2017 OCT 12 PM 3: 37

  
CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL  
ORDINANCE NO. 13459 C.M.S.

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ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO PROHIBIT THE CITY FROM CONTRACTING WITH COMPANIES THAT CONTRACT WITH THE FEDERAL GOVERNMENT TO PROVIDE SERVICES OR GOODS TO CONSTRUCT THE BORDER WALL REFERENCED IN EXECUTIVE ORDER NO. 13767, DATED JANUARY 25, 2017

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION I. Title 2 of the Oakland Municipal Code is amended to add Chapter 2. "ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO PROHIBIT THE CITY FROM CONTRACTING WITH COMPANIES THAT CONTRACT WITH THE FEDERAL GOVERNMENT TO PROVIDE SERVICES OR GOODS TO CONSTRUCT THE BORDER WALL REFERENCED IN EXECUTIVE ORDER NO. 13767, DATED JANUARY 25, 2017", to read as follows:

**2.010. Purpose.** To mandate and direct the City Administrator – in instances where there is no significant additional cost, to be defined in regulations, or conflict with law – to refrain from entering into new or amended contracts to purchase professional, technical, scientific or financial services, goods, construction labor and materials or other services, or supplies from businesses that enter into contracts to provide such services, goods, materials or supplies to build the U.S.-Mexico border wall;

**2.020. Definitions.**

"Border wall" means, as defined in the Executive Order and in the Secure Fence Act of 2006, a contiguous, physical wall or other similarly secure, contiguous, and impassable physical barrier along the land border between the United States and Mexico, including all points of entry, as well as associated improvements to gain operational control along such land border, including but not limited to, roads, lighting, cameras, detection beams

*or devices, sensors or other such tools or instruments, or related cyber network or cloud computing , internet, or cloud-based computer technology or services.*

*“Border Wall Contract” means a contract with the Federal Government to provide services or goods to build the Border Wall.*

*“Border Wall Entity” means any corporation, partnership, individual, sole proprietorship, joint venture, or other non-governmental legal entity or combination thereof, which has submitted a bid or proposal in response to a procurement request, or otherwise proposes to enter into or has entered into a Border Wall Contract on or after January 25, 2017.*

*“Border Wall Work” means any services, work performed or products, materials, or goods provided pursuant to a Border Wall Contract.*

*“City” means the City of Oakland.*

**“City contracting policies” means any policies of the City Council applicable to City contracts for goods and services, or to such contracts considered or awarded in connection with a covered or related transactions, including, but not limited to, City’s prevailing wages, living wage, equal benefits, local and small local business enterprise, apprentice and local hire, nuclear free and nondiscrimination policies.**

**“Contract” means any agreement to provide goods to, or perform services for or on behalf of, the City, or such contracts considered or awarded in connection with a covered or related transaction. *Agreements advertised, solicited, or initiated prior to the Operative Date of this Chapter 2.\_\_\_\_\_, including amendments to existing Contracts. Only agreements first advertised, solicited, or initiated on or after the Operative Date are included in the definition of “Contract.”***

**“Contracting Department” means the City department, office, board, commission, or other City agency authorized to enter into a Contract on behalf of the City.**

**“Contractor” means any person, partnership, corporation, joint venture, company, individual, sole proprietorship, vendor or other non-governmental legal or business entity who seeks to contract, submits a qualification statement, proposal, bid or quote or contracts directly or indirectly with the City for the purpose of providing goods or services to or for the City, or who seeks to or contracts to provide goods or services in connection with a covered or related transaction, including, without limitation, any contractor, subcontractor, consultant, sub-consultant or supplier at any tier. The term “contractor” shall include any responsible managing corporate officer who has personal involvement and/or responsibility in obtaining a contract with the City or in supervising and/or performing the work prescribed by the contract.**

**“Contracting officer” means the City employee responsible for administering the contract.**

**“Commodities” shall include, but not be limited to, supplies, goods, commodities, vehicles, machinery, and equipment.**

"Covered transaction" means application for or participation in a City contracting policy program, activity, contract or related transaction, regardless of type, amount or source of funding.

*"Duration of prohibition" governs the date at which the prohibition starts and when the prohibition is reviewed for further action. For contractors under contract to work on the Border Wall, the prohibition starts immediately upon the issuance of a "Certificate of Non-Compliance" and will be reviewed 5 years after completion of the Border Wall work.*

*"Executive Order" means the Executive Order entitled, "Border Security and Immigration Enforcement Improvements," Exec. Order No. 13,767, 82 Fed. Reg. 8793 (January 25, 2017).*

"Limited Restricted Waiver" means that upon careful review, the City Administrator may issue a limited restricted waiver as set forth in subsection 2.050 only in instances where there is a significant additional cost such that the expenditure will be fiscally imprudent; in the case of an emergency where the health safety and welfare concerns of Oakland residents are at issue; or this policy conflicts with law(s) specific to this prohibition.

*"Operative Date" means 90 days after the effective date of this Chapter 2.\_\_\_\_\_*

"Professional Services" shall mean any skilled or licensed services including without limitation, any engineering, architectural, construction, financial or information technology contract, providing any consulting advice or technical assistance, or otherwise acting as an agent pursuant to a contractual agreement.

"Proposal" means any response to a solicitation, application, request for proposal, invitation to submit a proposal or similar communication by or on behalf of a contractor seeking to participate or receive a benefit, directly or indirectly, in or under a covered or related transaction.

"Related transaction" means a transaction directly related to a covered transaction, which assists the participant in executing a covered transaction, regardless of the extent of the influence on or substantive control over the covered transaction by the person performing the related transaction. Related transactions include, but are not limited to, transactions of the participant with any of the following persons:

1. Contractors (including direct subcontractors at any tier);
2. Principal investigators;
3. Loan officers;
4. Staff appraisers and inspectors;
5. Underwriters;

6. Bonding companies;
7. Appraisers and inspectors;
8. Real estate agents and brokers;
9. Management and marketing agents;
10. Accountants, consultants, investment bankers, architects, engineers, attorneys and others in a business relationship with participants in connection with a covered transaction under an City contracting or agreement or activity;
11. Vendors of materials and equipment in connection with an City contracting, agreement or activity;
12. Closing agents;
13. Turnkey developers of projects;
14. Title companies;
15. Escrow agents;
16. Project owners;
17. Employees or agents of any of the above.

## **2. \_\_.030 Border Wall Entity List**

*A. The City Administrator shall develop and post, using credible information available to the public, a list of Border Wall Entities as determined by the City Administrator to have entered into Border Wall Contracts. The City Administrator shall develop the initial list no later than the Operative Date, except that the City Administrator has the obligation to use his or her best efforts to develop the list as soon as practicable after enactment. Once developed, such list will be posted on the City Administrator's website, and updated twice a year thereafter.*

*B. Prior to the final development and posting of the list required to be produced pursuant to subsection 2. \_\_.030 A., and with each biannual update of the list, the City Administrator shall provide written notice to all Border Wall Entities to be included on the list, together with written notice informing such entity or person that inclusion on such list would make the entity or person unable to enter into Contracts with the City, and that such entity or person may apply to the City Administrator to appeal the City Administrator's decision and seek to be removed from such list pursuant to the requirements of subsection 2. \_\_.030 C, or may seek a court order for the same purpose.*

*C. In the event an entity or person included by the City Administrator on the list referenced in subsection 2. \_\_.030 A appeals the City Administrator's decision, it must certify, in writing, to the City Administrator's satisfaction that such entity or person permanently has ceased performing such work, or obtains a court order from a court of competent jurisdiction that such entity or person shall be removed from such list due to the court's determination that such entity or person permanently has ceased working on a Border Wall Contract. If the City Administrator receives a satisfactory certification or court determination as described in the preceding sentence, then the City Administrator shall remove such entity or person from its list referenced in subsection 2. \_\_.030 A.*

**2. \_\_.040. General Prohibited Purchasing Transactions,  
Licensed Contractors, Technology Vendors, Suppliers**

**A. General prohibition**

1. The City of Oakland shall be prohibited from entering into any contractual agreement for the purchase of services, goods, equipment, *cyber network or cloud computing, internet, or cloud-based computer technology or services* with any “*BORDER WALL ENTITY*” individual, firm, or financial institution who provides any services, goods, equipment or information technology or cloud-based technology or services, to construction of the a wall along any part of the United States – Mexico border. Such prohibited contracts include, but are not limited to:
  - i. professional services, including but not limited to, financial, banking, architectural, engineering, design, information technology or consulting services.];
  - ii. construction or public works of improvement;
  - iii. software, hardware, electronic equipment and other types of information technology or *related cyber network including, without limitation, cloud computing , internet, or cloud-based computer technology or services,* or digital purchases;
2. This subsection shall apply only to those contracts awarded by the City Council. For those contracts not awarded by the City Council, the City Administrator
3. shall promulgate an administrative instruction pursuant to Section VI so that City departments meet the intent of this Ordinance with respect to the award of professional service contracts.

**B. Solicitations**

*Contracting Departments shall include a reference to the prohibitions and requirements set forth herein in its solicitations for contracts, notice inviting bids/quotes, requests for quotes, requests for proposals/qualifications including without limitation for professional services, construction, information technology or cyber, internet, or cloud-based services. Contracting Departments will require all entities or persons that submit a bid or proposal in response to a solicitation for procurement for a Contract, or otherwise proposes to enter into a Contract, to certify that the entity or person is not identified on the list referenced in Chapter 2. \_\_.030 and that the entity or person will not enter into a Border Wall Contract during the term of the proposed Contract. All entities or persons that submit a bid or proposal in response to a solicitation for procurement for a Contract, or otherwise propose to enter into a Contract, shall execute an Affidavit as set forth in Chapter 2. \_\_.040 C below that the entity or person is not on the list referenced in Chapter 2. \_\_.030 and that it commits to not entering into a Border Wall Contract during the term of the proposed Contract.*

*The City will include a reference to the prohibitions set forth herein in its solicitations for contracts such as notices inviting bids/quotes, requests for quotes, requests for*

*proposals/qualifications or any other type of submission for consideration to secure a City contract, including without limitation, to professional services, construction, information technology or related cyber network or cloud computing , internet, or cloud-based computer technology or services, or engineering, architectural, geo-technical, financial and other such technical services.*

#### C. Affidavit Required

1. Prior to contracting with any firm or individual for the provision of professional services, the City Administrator, or any official agent of the City of Oakland, shall obtain from said firm or individual an affidavit stating that the policy of said firm or individual is to forego any contractual relations to provide construction, engineering, architectural, geo-technical, information or cyber technology, or any other type of professional services in connection with the Border Wall Work or Border Wall Contract, for the duration of the City of Oakland contract. The provisions of this Section shall apply to renewals of existing contracts as well as to new contracts. The affidavit shall require said firm or individual to notify the City if it subsequently enters into any contractual agreement to work on the border wall.
2. The requirements of this Section shall be satisfied by ensuring that professional services are provided only by firms, individuals or financial institutions who have submitted affidavits pursuant to subsection 2.\_\_.040 C or granted a waiver under subsection 2.\_\_050, and upon the promulgation of the administrative instruction issued pursuant to subsection 2.\_\_060, the compliance therewith by those entities seeking to contract with the City.

#### D. Non-complaint Businesses

*City will reject bids, quotations, proposals or other submission whereby contractors or proposers refuse to submit or fail to provide, the affidavit referenced above, or that refuse to comply with the policy, unless a waiver is granted by the City Administrator pursuant to subsection 2.\_\_.050 below. City will reject any bids, quotes, proposals or responses to City solicitations from any contractor or proposer that refuses to submit or otherwise fails to comply with the affidavit requirements of Chapter 2.\_\_40 C.*

At the City Administrator's discretion, the City Administrator may prepare a list of firms or individuals potentially providing professional services to the City of Oakland who have submitted an affidavit that complies with the preceding subsection. Said affidavits shall be filed with the City Clerk.

#### E. Contract Stipulation

Prior to the City Council awarding any contract to a vendor for the purpose of supplying a commodity to the City of Oakland, the City Administrator, or any official agent of the City of Oakland, shall require the contractor to stipulate, as a material condition of the contract, that it has not been hired to provide services, goods, products, equipment, or information or cyber technology, construction, architectural, engineering, or any professional services . . . . for the construction of the Border Wall, or any Border Wall Work or provide such services for the duration of the City of Oakland contract. Contractor further will stipulate that failure to comply with the requirements of this Chapter 2.\_\_\_\_.0 shall constitute a material breach by Contractor of the terms of the Contract. The City is its sole discretion shall determine such failure.

**2.\_\_\_\_.050. Non-Applicability, Exceptions and Limited Restricted Waiver.**

The prohibition on contracting with firms that work on the Border Wall may be waived through a Limited Restricted Waiver by the City Council or City Administrator for purchases within their respective authorities for the following reasons:

- i. There is no other qualified responsive bidders, proposers, or prospective vendors or providers that comply with the requirements of this Chapter 2.\_\_\_\_ to perform the applicable Contract, or as determined in writing by the City Administrator, the City would otherwise be unable to obtain essential goods or services on a reasonable basis; or]*
- ii. The City Administrator determines, pursuant to applicable provisions of the Oakland Municipal Code, that the Contract is necessary to respond to an emergency which endangers the public health or safety; and further determines that no entity that complies with the requirements of this Chapter 2.\_\_\_\_ and is capable of responding to the emergency is immediately available to perform the required services; or*
- iii. The City Administrator determines that there is a substantial difference in cost to purchase professional or technical services from another provider so that it impractical, fiscally imprudent or cost-prohibitive to contract with the sole or the few contractors or proposers that comply with this Chapter 2.\_\_\_\_.*
- iv. A Contractor has demonstrated that it has ceased to perform Border Wall Work, so long as the scope of those services has ceased before the Operative Date.*
- v. This policy conflicts with law(s) specific to this prohibition.*

The City Administrator shall maintain a record documenting the basis for, and periodically report to the City Council, every exercise of Limited Restricted Waiver implemented pursuant to this subsection, or any determination of non-applicability or exception. The City Administrator shall develop rules and regulations or Administrative Instruction which specifically address both the criteria and reporting procedures. Such rules and regulations shall be approved by the City Council.

**2.\_\_\_\_.060. Rules and Regulations**

The City Administrator shall be authorized to promulgate any rules and regulations or Administrative Instruction, necessary or appropriate to carry out the purposes and requirements of this Ordinance, effective upon approval of the City Council.

**SECTION 2. \_\_.070. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 2. \_\_.080. Effective Date.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

2119206v1

IN COUNCIL, OAKLAND, CALIFORNIA,

NOV 28 2017

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN AND PRESIDENT REID - 8

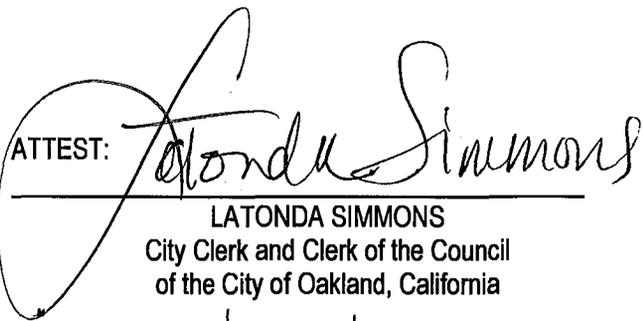
NOES - 0

ABSENT - 0

ABSTENTION - 0

Introduction Date

NOV 07 2017

ATTEST:   
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Date of Attestation: December 1, 2017

**NOTICE AND DIGEST**

**ORDINANCE TITLE (Indent half inch both sides and justified)**

**ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO PROHIBIT CITY FROM CONTRACTING WITH COMPANIES THAT BID OR PROPOSE ON CONTRACTS OR CONTRACT WITH THE FEDERAL GOVERNMENT TO PROVIDE SERVICES OR GOODS TO CONSTRUCT THE BORDER WALL REFERENCED IN EXECUTIVE ORDER NO. 13767, DATED JANUARY 25, 2017**

**Ordinance amending the Oakland Municipal Code to prohibit City from contracting with companies who bid or propose on contracts or contract with the Federal Government to provide services or goods to construct the border wall referenced in Executive Order No. 13767, dated January 25, 2017.**